——Arts. 226, 311—Order of dismissal based partly on erroneous assumption of fact—High Court will not decide as to proper punishment on deletion of erroneous portion but quash such order. See Ibid, Art. 311. AIR 1960 Mad 393 (DB).

——Arts. 226 and 311 (2) — Railway servant — Reduction in rank by way of seniority — Writ to quash.

Even assuming that the seniority of the railway servant has been adversely affected by an order of the General Manager passed in contravention of a rule, the railway servant has no justiciable right which can be enforced by the High Court by the issue of a writ or other appropriate order. Even if there was a reduction in rank by way of seniority it is obvious that it was not as and by way of punishment. Rules of seniority, no doubt, are based on certain equitable principles but they also depend upon certain principles of administrative practice which may in certain cases lead to hardship. AIR 1937 P C 31 and AIR 1937 P C 27, Rel. on. 1958 Mad W N 645 : 71 Mad L W 750 : (1959) 1 Mad L J 359 : (1959) 2 Lab L J 613 : AIR 1959 Mad 68 (71) (Prs 11, 12, 13) (DB).

——Arts. 226 and 311 — Scope —'Reduction in rank' contemplated — Variation in order of seniority — Remedy under Art. 226 held cannot be revoked. See Ibid, Art. 311. AIR 1958 Mad 53.

——Arts. 226, 309 and 311 — Administrative acts — Issue of writ — Reversion to original substantive post as administrative measure — No reduction in rank — Petition under Art. 226 — Competency. See Ibid, Art. 311. (1957) 2 Mad L J 515.

——Arts. 226 and 311—Infructuous order.

Contention that Government of Madras had no power to remove petitioner from service and that Government had contravened Art. 311 — Held, that if the contention of the petitioner was sound, the High Court would not be passing any infructuous order — It would be directing the Government to pass a legal order after complying with the provisions of the Constitution of India — To that extent it would be performing its duty to see that no authority in Madras State exercised its powers in derogation of the provisions of the Constitution. 1954 Mad W N 592 : (1955) 1 Lab L J 391 : (1954) 2 Mad L J 591 : AIR 1954 Mad 1043 (1044) (Pt B) (Pr 3).

——Art. 226 — Departmental enquiry — Disciplinary authority having discretion under Central Civil Services (C. C. and A.) Rules, 1957 to permit accused Government servant to engage legal practitioner having regard to circumstances of case — Question whether refusal to allow lawyer amounts to denial of adequate opportunity to defend should depend on facts and circumstances of each case — Case not one of great complexity in which the Government servant could not have himself adequately defended without aid of lawyer — Every opportunity given to him at the enquiry — Government servant stating at enquiry that he had not been handicapped in presenting his case - Held, he could not make a grievance out of the refusal to allow lawyer at the departmental enquiry in the writ application. AIR 1961 Cal 1 (8B) and AIR 1957 Andh Pra 414 and AIR 1958 All 532 and AIR 1962 Orissa 78, Rel. on. AIR 1964 Manipur 46 (57, 58) (Pt C) (Prs 34, 35, 36).

——Arts. 226 and 311—Dismissal of civil servant—Writ against—High Court cannot go into reasons for punishment imposed.

In a writ petition against an order of dismissal passed against a Civil Servant, the High Court cannot go into the reasons which induced the punishing authority to impose the punishment when there has been an enquiry consistent with the prescribed Rules. AIR 1963 S C 779, Foll. (1965) 1 Mys L J 323 (DB).

——Art. 226 — Termination of services without enquiry—Subsequent reinstatement with direction that interim period should be treated as leave without allowances — Direction having been made without finding the servant guilty was not by way of punishment and could not be sustained. See Ibid, Art. 311. AIR 1962 Mys 43 (DB).

——Arts. 226, 309 and 313 — Government servant—Conditions of service — Administrative instructions are not law within meaning of Art. 313 — Error committed by breach of such instructions—It cannot be rectified by application to Court.

The remedy of an employee in this case is not by an application under Art. 226 to the High Court but by an appeal of an official or political kind. AIR 1937 P C 31 and AIR 1937 P C 27 and 1895 A C 229, Rel. on. 38 Mys L J 212 : ILR (1960) Mys 360 : AIR 1961 Mys 247 (252, 256) (Pt C) (Prs 33, 54) (DB).

——Art. 226 — Discretionary orders — Reduction in rank — Reversion of officiating officer for want of vacancy - Question of subsequent promotion — Discretion of Government—Interference by High Court. See Ibid, Art. 311 (2). AIR 1957 Nag 95 (DB).

——Arts. 226, 311 — Jurisdiction of High Court — Dismissal of Government servant under Police Regulation—(M. P. Police Regulation, Regn. 232).

The jurisdiction of the High Court is not restricted only to cases where there has been any infraction of the Constitution but extends also to cases where the Police Act or Regulation have been infringed, in dismissing a police officer from service. ILR (1955) Nag 93 : 1955 Cri L J 974 : AIR 1955 Nag 160 (163) (Pt D) (Pr 15) (DB).

——Art. 226—Dismissal of public servant—Question falling for consideration under S. 240 (2) — Relief under Art. 226 of Constitution. See Government of India Act (1935), S. 240 (2). AIR 1954 Nag 258 (DB).

——Art. 226 — Dismissal of public servant — Application under Art. 226 — Applicant if should be left to his ordinary remedy by suit.

Where a public servant who has been ordered to be dismissed applies for a writ under Art. 226, he should not be left to his ordinary remedy by a suit. Public interest is not served by allowing the validity of the impugned order to remain in doubt till the final result of an ordinary litigation. Notwithstanding the impugned order, the applicant is deemed to be in service and would be entitled to receive his remuneration until his services are validly determined afresh, though he is kept out of actual service as a result of the impugned order. If the applicant is not to be retained in service, there is then no point in prolonging a situation which entitles him to his pay without rendering any service to the State. 1955 Nag L J 145 : AIR 1954 Nag 258 (259, 260) (Pt D) (Pr 8) (DB).

——Art. 226 — Dismissal, removal and reduction in rank—Nature of—Termination of service in ordinary course — Article not applicable — No remedy under Art. 226. See Ibid, Art. 311. AIR 1954 Nag 161 (DB).

——Art. 226—Writ jurisdiction — Railway employee —Misconduct — Subordinate Railway employee demanding and accepting paltry amount of 8 annas from passenger for service rendered—Dismissal from service — It is not within jurisdiction of High Court under Art. 226 to enquire whether punishment of

dismissal was too severe — Railway Establishment Code, Vol. I, R. 1701, Para. 2 (1) ILR (1964) Cut 369 : (1965) 1 Lab L J 181 : (1965) 7 O J D 69 : AIR 1964 Orissa 253 (254) (Pt B) (Pr 5) (DB).

——Art. 226 — Civil Court's jurisdiction to interfere with Government's Order of dismissal of its servant. See Ibid, Art. 311. AIR 1963 Orissa 73 (DB).

——Art. 226 — Departmental enquiry — Dismissal of servant — Power of High Court. See Ibid, Art. 311. AIR 1960 Orissa 26.

——Art. 226 - Powers of High Court — Dismissal of civil servant—Interference.

Where after a consideration of the entire evidence, the Appellate Authority has come to the conclusion that the charges against the Government servant have been proved and that his dismissal from service was proper the High Court in the exercise of its extraordinary jurisdiction under Art. 226 would not interfere with the dismissal order merely because the delinquent was not allowed by the Enquiry Officer to examine a certain witness or to further cross examine certain another witness. I L R (1959) Cut 95 : A I R 1959 Orissa 152 (155) (Pt C) (Pr 11) (DB).

——Art. 226—High Court's power under — Nature and scope of.

A writ of certiorari is not meant to correct an erroneous decision of an inferior tribunal. The High Court in such cases is not to act as an appellate Court and correct what it may consider to be an error in the decision, nor has it anything to do with the appreciation of evidence. Irregularities in the conduct of departmental inquiry regarding the allegations against a civil servant or in reception of evidence therein, rejection of defence as unreliable and the conclusion being based on insufficient evidence or conjectures are matters which do not fall for consideration of the High Court in proceedings under Art. 226. The fact that certain rules have been framed to safeguard the rights of civil servants in matters of disciplinary action does not mean that the High Court has jurisdiction to quash the order of dismissal simply because the provisions of one or the other of those rules have not been strictly observed So far as there is no contravention of Art. 311 of the Constitution this Court would have no jurisdiction to quash an order of dismissal A I R 1952 S C 192, Ref. I L R (1955) Patiala 416 : AIR 1955 Pepsu 97 (104, 105) (Pt E) (Prs 23, 24).

——Art. 226—Existence of alternate remedy—Fundamental rights.

Where the procedure adopted by the Government in terminating the services of the petitioner who was integrated as a permanent employee on the regular establishment of the Government, was altogether illegal and violated the fundamental rights of the petitioner under Art. 311 it was held that it would not be proper to throw out his petition under Art. 226 merely because it was open to him to file a civil suit against the Government. ILR (1953) Patiala 588 : A I R 1953 Pepsu 196 (200) (Pt D) (Pr 7).

——Arts. 226 and 311—Government servant—Departmental inquiry held against him resulting in his dismissal — Writ petition by servant — High Court's powers in such petition to review findings of Inquiry Officer. ILR (1965) 2 Punj 319.

——Art. 226— Power to interfere — Interim Order of suspension—Suspension order providing subsistence allowance — Order is not punishing measure but interim order — Order cannot be challenged in writ proceedings : A I R 1961 S C 276 and A I R 1954 S C 787, Foll. 1954 Cur L J 489 : 66 Pun L R 1227.

——Arts. 226, 311 —In petition under Art. 226 merits of charges made in the departmental enquiry cannot be considered. ILR (1962) 2 Punj 642 : A I R 1963 Punj 298 (318) (Pt Z6) (Pr 41) (DB).

——Arts. 226 and 311—Departmental enquiry — Enquiry Officer refusing to summon records from possession of employer — Refusal made ground for writ petition as betraying bias — Held that High Court in the writ petition was not sitting as a Court of Appeal and could not go into correctness or otherwise of the grounds for refusal on the part of the Enquiry Officer. 64 Pun L R 431 : (1962) 4 Fac L R 213 : (1962) 1 Lab L J 570 : AIR 1962 Punj 355 (358) (Pt B) (Pr 11).

——Arts. 226, 311—Reduction in rank — Petitioner reduced from his officiating post to substantive post on account of incompetency and not by way of punishment — Article 311 does not apply. See Ibid, Art. 311. AIR 1960 Punj 244.

——Arts. 226 and 311 (2)—Government servant — Departmental enquiry — Nature of function of Inquiry Officer —Enquiry Officer refusing to comply with S. 173 (4), Criminal P. C. — No remedy under Art. 226—(Criminal P. C. (1898), S. 173).

The purpose of a departmental inquiry held against a Government servant is merely to help the Government to come to a definite conclusion regarding the conduct of a Government servant and to decide what penalty, if any, should be imposed upon him. Such a proceeding before the Inquiry Officer cannot be held to be of a criminal or quasi-criminal nature. In this view of the matter the Inquiry Officer is not bound to see that the provisions of S. 173 (4), Criminal P. C., are observed before he proceeds to record evidence in the inquiry. If an Inquiry Officer refuses to comply with the provisions of S. 173 (4), then it cannot be held that it is liable to be set aside by the High Court in the exercise of jurisdiction conferred upon it under Art 226 of the Constitution. 1958 Cri L J 94 : I L R (1958) Punj 218 : AIR 1958 Punj 27 (28, 29) (Pt A) (Pr 5).

——Arts. 226, 311—Removal proceedings—Interlocutory orders — Interference under Art. 226 — See Ibid, Art. 311. AIR 1957 Punj 42 (DB).

——Arts. 226 and 311 — Interference with internal working of department —Object of Art. 311—Interference in borderline cases.

The High Court should not interfere with the internal working of a department except in very extreme cases. The purpose for which Art 311 was enacted was not to reinstate a civil servant who has been proved to have committed misconduct of the grossest type because of a technical flaw in the enquiry held against him. A Government servant should not be dismissed without being furnished a reasonable opportunity of defending himself nor should he be victimised and deprived of the rights of a fair trial. But there are many borderline cases in which the Court should hesitate to interfere if only because cases of misconduct of Government servants are extremely difficult to prove and it is very seldom that a false charge is made the subject-matter of a departmental enquiry. ILR (1956) Punj 361: AIR 1956 Punj 102 (105, 106) (Pt D) (Prs 11, 12).

——Arts. 226, 311 and 320 (3) (c) — Punishment of public servant - Public Service Commission consulted —Interference by High Court.

The proper machinery for advising the Government as to whether a public servant should be punished or not is the Public Service Commission and if they have been consulted in a case and there is no breach of the forms of law or contravention of the rules of natural justice the High Court would be loathe to interfere. AIR 1955 Punj 1 (3) (Pt C) (Pr 10).

——Art. 226—Other remedy—Petition under R. 1727 by Railway servant—(Indian Railway Establishment Code, Vol. 1, R. 1727).

In case of compulsory retirement the only remedy which the Railway servants have is to petition the President under R. 1727 of the Railway Establishment Code. It does not, however, mean that in the case of an ordinary dismissal a Railway servant cannot move the High Court under Art. 226 of the Constitution where he can show that he was removed or dismissed illegally. 56 Punj L R 392 : (1955) 1 Lab L J 408 : ILR (1955) Punj 382 : A I R 1954 Punj 245 (247) (Pt C) (Pr 10).

——Art. 226 — Another remedy open — Petitioner removed from service by departmental head—Petitioner having right of appeal under Civil Service Rules —Remedy to enforce his rights by suit also available —Remedy by way of writ is not open to him — A I R 1950 S C 163, Disting. ILR (1953) Punj 472 : A I R 1953 Punj 137 (142, 143) (Pt C) (Pr 22) (DB).

——Arts. 226 and 311 (2) — Dismissal of Government servant—High Court when will interfere under Art. 226.

The High Court does not go into the merits of the case in the exercise of its extraordinary jurisdiction under Art 226. But the question whether a dismissal is at all justified under Rule 15 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1950, and whether the reason given can at all be a good and sufficient reason is a matter in which the High Court can go in an appropriate case, otherwise it would be open to those armed with the power of dismissal to call any reason a good and sufficient reason and dismiss anybody from service. Therefore, where the reason which is said to be a good and sufficient reason for dismissal is really no reason at all and the matter is apparent and requires no argument, the action of a dismissing authority in holding it to be a good sufficient reason amounts to an abuse of the provisions of the law and the High Court will always step in to prevent such an abuse of the process of law. 1958 Raj L W 392 : ILR (1958) 8 Raj 432.

——Art. 226—Scope of inquiry—Recording of adverse entry in character roll —Justification for, if can be gone into. See Ibid, Art. 311. AIR 1957 Raj 230 (DB).

——Arts. 226, 311—Dismissal of Chaudhari—Procedure to be followed.

Dismissal of a Chaudhari is not a legislative function. Nor can it be said that it is a judicial function. A Chaudhari is a sort of agent of the Government for the collection of land revenue, for which he gets certain remuneration. Appointments and dismissals of agents of this kind can only be a purely executive function. A Chaudhari appointed under the Land Revenue Act of Bikaner is not a person in the civil employ of the State and is not entitled to the protection of Art. 311. At the same time, a distinction must be made between appointment and dismissal of a Chaudhari or persons like that. A person who fails to get an appointment cannot approach the High Court in its extraordinary jurisdiction on the ground that he should have been appointed.

But the case of a person dismissed stands on a different footing. He holds the appointment and unless the appointment is for a temporary period, he can claim that he should not be removed unless there is some defect in him. Where no statute or rule has been pointed out providing the manner in which a case of dismissal of this kind should be dealt with, it is enough if at some stage a hearing in some manner is given to the person against whom the order is passed by some officer on behalf of the authority passing the order. 1956 Raj L W 466 : ILR (1956) 6 Raj 335 : AIR 1956 Raj 110 (111, 112) (Pt A) (Prs 7, 8, 9) (DB).

——Arts. 226 and 311 — Order of termination of service passed prior to Constitution by the then Government of Jodhpur — High Court cannot give any assistance. AIR 1955 NUC (Raj) 1642 (DB).

——Arts. 226 and 311—Jurisdiction under, scope of.

Ordinarily, the High Court would be reluctant to interfere by exercise of its extraordinary powers under Art. 226 in cases of disputes between master and servant as to wrongful dismissal or removal, etc., but where the case involves a substantial question of law as to the interpretation of the Constitution, which Art. 228 requires to be determined by the High Court, as also the validity of a statutory rule of law as being against the Constitution, it is a fit case in which the High Court should exercise its powers under Art. 226. 7 Sau L R 63 : AIR 1954 Sau 146 (150) (Pt D) (Prs 8, 9) (DB).

——Arts. 226 and 311—Declaration under Art. 226.

Where the termination of services of the petitioner was declared illegal and void, the petitioner was granted a declaration that on the date of the petition he was a member of the Service of the State Government in the post he then held. AIR 1942 F C 3, AIR 1948 P C 121, Rel. on. 7 Sau L R 63 : AIR 1954 Sau 146 (150) (Pt E) (Pr 9) (DB).

——Arts. 226, 311 (2)—Scope — In a petition under Art. 226 against the reversion of the petitioner from his post, the Court is concerned only with the question whether there are irregularities in the enquiry which would vitiate it under Art. 311 (2) of the Constitution. AIR 1962 Tripura 15 (16) (Pt A) (Pr 14).

——Art. 226—Mandamus — Issue of — Dismissal of Government servant — Proper writ — Certiorari and not mandamus.

A mandamus to compel re-instatement shall not issue and is not available to a Government servant in cases of wrongful dismissal or removal from service. If the petitioner succeeds, the only writ that can be issued in such cases under Art 226 would be a writ in the nature of certiorari declaring the order of dismissal to be void and inoperative. If the petitioner succeeds, it will not be also necessary to issue a writ declaring the order directing the petitioner to hand over charge of his post to be void and inoperative as it will be automatically vacated if the order of removal is set aside. AIR 1958 Tripura 28 (29, 30) (Pt A) (Pr 2).

23 (i). Service Rules, enforceability of.

——Arts. 226 and 309 — Scope—Engaging in subversive activity—Government servant associating with persons engaged in subsersive activity— Taking interest in political activities of Communist party as long as it is not banned—Allegations do not amount to Government servant being engaged in subversive activity — R. 3 of Civil Services (Safeguarding of National Security) Rules (1949) not attracted — Compulsory retirement in such circumstances amounts to removal from service by way of penalty— Government servant can maintain a petition under Art. 226 of the Constitution. See Civil Services (Safeguarding of National Security) Rules, (1949), R. 3. AIR 1963 S C 1160.

——Arts. 226 and 311 (2) — Powers of High Court — The High Court, when exercising powers under Art. 226 of the Constitution cannot go into the question of unfairness or unreasonableness of a Government servant's service rule. All that can be seen is whether a rule is valid and applicable. AIR 1964 All 411 (414) (Pt B) (Pr 10).

——Arts. 226, 309 and 311 — Departmental rule fixing age-limit for appointment not having statutory force — Appointment in contravention of rule not invalid — (U. P.) Manual of Government Orders (1954 Edition), R. 10.

Rule 10 of the Manual of Government Orders, Uttar Pradesh (1954 Edition) prescribing the age limit for appointment is purely a departmental rule the contravention of which may give rise to some departmental action but would not invalidate the order of the appointing authority, notwithstanding the fact that the person so appointed was, at the material time over the age-limit prescribed by the rule. A writ of certiorari can be issued to quash an order terminating the services of such person on the ground that his appointment was contrary to this rule. (1961) 1 Lab L J 668 : 1961 All L J 170.

——Art. 226—Grounds for interference—Dismissal in violation of Service Rules—Contravention of Art. 311 not proved — Issue of writ. See Ibid, Art. 310. AIR 1959 All 771.

——Arts. 226 and 309— Breach of statutory rules— Regulating conditions of service— Writ of Mandamus—Competency.

Rules made by the Governor General in the exercise of his powers under S. 241, Government of India Act, 1935, regulating the conditions of service of persons appointed to public services have statutory force and it any of these rules are not observed it is open to the person affected by such a non-observance to approach the High Court for relief under Art. 226 of the Constitution and a writ of mandamus can be issued directing the opposite party to enforce those rules. These rules, in so far as they regulate the conditions of service and do not affect the pleasure of the President or the Governor to terminate the services of his employees under Art. 310 of the Constitution, cannot be regarded anything but statutory rules, a breach of which will be enforceable in proper cases by means of a writ. **AIR 1958 All 345 (346, 347) (Pt B) (Prs 8, 10).**

——Art. 226—Exercise of discretion — See Central Civil Services (Temporary Services) Rules (1949), R. 6 (ii). **AIR 1956 All 476.**

——Arts. 226, 311 (2)—Reduction in rank — Order declaring probationer suitable for full membership before he had passed necessary tests under Service Rules—Order is invalid and inoperative—Subsequent G. O. cancelling that declaration and extending his probationary period to enable petitioner to pass tests —No reduction in rank — Article 311 (2) not attracted —Remedy under Art. 226 to impugn G. O. not available — Madras State and Subordinate Services Rules, Rr. 26, 27, 28 and 49— Interpretation — Scope — See Ibid, Art. 311 (2). **AIR 1963 Andh Pra 357.**

■ ——Art. 226—Jurisdiction of High Court — Orders of dismissal of police officers — Conviction of police officers for offences involving moral turpitude under Ss. 331 and 348, Indian Penal Code—Sentence of imprisonment—Declaration of amnesty to all prisoners by Government of Andhra during pendency of appeals against conviction—Orders of dismissal pending appeals to High Court—Not illegal as violative of Police Standing Order No. 77 — Constitution of India (1950), Art. 161—Grant of pardon — Not same as remission of sentence in whole or in part under Ss. 401 and 402, Criminal Procedure Code—Constitution of India (1950), Art. 311 (2), Proviso cannot apply to person dismissed, removed or reduced in rank on the ground of conduct which leads to conviction on a criminal charge—Dismissal not rendered void by the fact that an appeal is pending—Order of dismissal whether becomes null and void on account of P. S. O. No. 77. The Deputy Inspector-General of Police, Northern Range, Waltair v. D. Rajaram, (1959) 2 **Andh W R 526 : ILR (1959) Andh Pra 1294 : 1959 M L J (Cr) 916 : 1959 Andh L T 916 : 1960 Cr L J 565 : AIR 1960 Andh Pra 259 (262, 263) (Pt F) (Prs 17, 19, 23, 24) (SB).**

——Arts. 226 and 311—Jurisdiction of High Court— Government of India Act (1935) — Rules framed under R. 8 (a) — Statutory effect — Violation of, by Tribunal—Power of High Court to question order.

The rules framed under the Government of India Act, 1935, have statutory effect and continue to be in force and binding on the Government and the Government or the Tribunal is not entitled to act in violation of these rules.

Rule 8 (a) enacts as to how the enquiry should be held and in the exercise of the jurisdiction under Art 226, the High Court is entitled to call into question the orders passed by Tribunal refusing to summon the witnesses or to produce the documents required by the petitioner: W. P. No. 817 of 1952, dated 21-9.55 (Andhra). Foll. **(1957) 2 Lab L J 238 : AIR 1956 Andh 203 (207, 208) (Pt C) (Prs 15, 21).**

——Arts, 226, 309, 310, 311 — Applicability —Pleasure of Governor — Breach of service rules not enforceable under Art. 226.

The pleasure of the Governor, so far as the tenure of the office is concerned, is subject only to the express provision of the Constitution embodied in Art. 311 and the breach of the Service Rules apart from the violation of Art. 311 will thus not be enforceable under Art. 226. The rules framed under Art. 309, even though they are statutory rules, cannot be regarded as express provisions of the Constitution so as to affect the pleasure of the Governor under Art. 310. A I R 1959 Mad 1 and A I R 1960 Bom 431 and AIR 1960 Bom 14 and A I R 1958 Bom 283, Rel. on. **ILR (1961) 13 Assam 179 : (1963) 2 Lab L J 3 : AIR 1961 Assam 74 (76, 77, 78) (Pt B) (Pr 6) (DB).**

——Arts. 226, 16 and 309 — West Bengal Civil Service Rules, R. 24 — Civil Services (Classification, Control and Appeal) Rules, R. 22 — Permanent Government Servant transferred to temporary dapartment — Introduction of a scheme by Government providing for absorption into comparable posts after reversion from such department — Reversion to old post with financial advantages — Writ on ground of loss of prospects in old post — Not maintainable — Art. 16 not applicable.

Held, that the order of reversion did not contravene Art. 16 of the Constitution since it did not govern the opportunities of promotions after a person gets employment. (ii) R. 22 of the Civil Services (Classification, Control and Appeal) Rules was not attracted, (iii) the scheme introduced by the Government for absorption of the employees of Civil Supplies Department to comparable posts was merely an administrative scheme and as such could not be enforced by way of a high prerogative writ. Further, as the petitioner was governed by the West Bengal Service Rules, his transfer to the Civil Supplies Department was not in violation of proviso to R 24. Consequently, on his reversion he had no right to join his old department at a post, which he might have reached had he been regularly promoted. The only other alternative was to keep the petitioner at his old post allowing to him all the financial advantages of the pay scale as from time to time revised which had been given to him. No relief could therefore be granted under Art. 226 of the Constitution. **AIR 1962 Cal 587 (589) (Pr 9).**

——Art. 226 — Fundamental Rules, 3rd Edn., R. 56 (b) (i) — Chief Ministerial Officer of Small Causes Court—Applicability of R. 75 (a), W. B. Service Rules —High Court, if can compel Government to use discretion under rule by issue of writ. See West Bengal Service Rules (1941), R. 75 (a). **AIR 1955 N U C (Cal) 2343.**

——Art. 226 — No interference — (Civil Services (Classification, Control and Appeal) Rules, R. 55).

Where in a departmental enquiry the petitioner had not suffered any prejudice by reason of the discrepancies complained of or by reason of the allegations being supplied to the petitioner after he had submitted his explanation to the charge-sheet:

Held, that the infringements of R. 55 of the Civil Services Classification Rules were not of such a nature as to call for interference under Art. 226 of the Constitution. A I R 1954 Cal 335 (338) (Pt B) (Pr 4).

——Art. 226 — Bengal Civil Service (Classifications, Control and Appeal) Rules, R 55 — Departmental Enquiry — Inspection and production of documents. See Bengal Civil Service (Classifications, Control and Appeal) Rules, R. 55. A I R 1953 Cal 361.

——Art. 226 — Contravention of rules under Art. 309 — Decision of Government is not justiciable unless case falls under Art. 311. See Ibid, Art. 309. 1961 Ker L T 461.

——Arts. 226 and 311—Madhya Bharat Union Covenant (1947), Art. 16 (1)—Notification under—Defence Department Notification No. 5 of 1949 dated 14th May, 1949 — Nature of — Not a law or statute laying down conditions of service and rules for pension—It embodies merely administrative directions as to the normal age of superannuation, etc.—No right to be retained till the member attains the age of superannuation—No breach of statutory right involved in retirement before age of superannuation. A I R 1954 S C 680, Disting. No case for interference under Art. 226. Madh B L J 1955 H C R 1353 : A I R 1956 Madh B 40 (42, 43, 44) (Pt A) (Prs 6, 10) (DB).

——Art 226, Art. 310, Art. 311 and Art. 309 Proviso — Civil Services (Punishment and Appeal) Rules, 1950, R. 8—Civil servant—Dismissal of—Mandamus to compel re-instatement does not lie.

It is clear from Art. 310 that persons employed in the service of the State, are engaged on the express statutory condition that they hold their employment at the pleasure of the President or the Governor or the Raj Pramukh, as the case may be, and that they can be dismissed, removed, or reduced in rank at the pleasure of these authorities subject to the limitation imposed by Art. 311. It must be noted that Art. 311 does not in any way, alter or affect the principle embodied in Art. 310 that a Government servant holds office during the pleasure of the President or the Governor or the Raj Pramukh as the case may be. It only imposes certain statutory obligations before dismissal or removal or reduction in rank is effected. It is the breach of these statutory obligations that affords a cause of action to a person adversely affected to complain that his employment has been wrongly terminated. If in the termination of his employment, there is no contravention of Art. 311, the High Court would have no jurisdiction to quash the order terminating the services.

The (Madhya Bharat) Civil Service (Punishment and Appeal) Rules, 1950, which prescribe the conditions of the service, that is to say, the circumstances and the manner in which the employment of a Civil Servant can be terminated, though framed by the Raj Pramukh under the power conferred by the proviso to Art. 309 of the Constitution, do not in any way abridge or control the power of the President or the Governor or Raj Pramukh to dismiss at pleasure a civil servant. These rules are merely administrative rules for the guidance of officers of the Government in the imposition of penalties and in the conduct of departmental inquiries against Government servants. The dismissal, removal or reduction in rank of a civil servant in violation of the Rules would not by itself entitle him to come to the High Court but would leave him to appeal to the administrative authorities. It is only a breach of Art. 311 that furnishes to a Civil servant adversely affected to come to the High Court or to approach a Civil Court for redress.

As there is no statutory obligation on the State to retain him in the service, an order in the nature of a mandamus cannot clearly be issued to the State to reinstate him. A mandamus cannot be issued to compel an appointment in the office held at pleasure. (1872) 2 2 Q B 21, Rel. on.

Even if it is assumed that in the termination of the petitioner's services, Art. 311 (2) of the Constitution had not been complied with, on that ground alone the High Court would not be justified in giving to the applicant the remedy by a mandamus. For, a mandamus is not granted unless it clearly appears that it will be effectual. If the State had sufficient cause to remove the petitioner from service, it would, undoubtedly, remove him again after complying with the provisions of Art. 311 (2), if the Court orders the State by mandamus to reinstate him in the office and thus the State would render the order in the nature of a mandamus inoperative. The petitioner cannot clearly be granted a mandamus to set aside the order of the Government teminating his services though the order may be illegal. A mandamus does not lie for declaring that an act of a person or an authority is illegal and ultra vires. It only lies to compel public officials or bodies to carry out their statutory duties. ILR (1952) Madh Bha 253 : A I R 1952 Madh B 105 (108, 109) (Pt A) (Prs 6, 7) (DB).

——Art. 226 — General Financial Rules, Vol. 1, Rr. 116 and 117—Rule 116 and others are executive orders and not statutory Rules - Action taken under Rules is outside the purview of writ proceedings.

Held on facts, that the Rules applied only when a person was newly appointed to a service or post under the Government. In the case of the petitioner, that happened in 1950 when the princely States merged in the Union of India and the servants of those States were absorbed in the services of the new State of Vindhya Pradesh. 1958 S C R 1013, Rel. on. That being so, the petitioner was disentitled to call in aid R. 116 for relying upon the declaration which he gave subsequently either when he was promoted to the I. A. S. or when he was about to reach the age of superannuation. As indicated by R. 1 of the rules, R. 116 and other rules are essentially executive orders and not statutory rules. They do not confer any legal or enforceable rights on any person and impose no obligation on the authorities for whose guidance they are made. That being so, any action taken thereunder was outside the purview of correction in the writ proceedings and any breach of such a rule, even if patent, would not justify the issuance of a writ of certiorari. AIR 1956 S C 896, Rel. on. 1963 M P L J 862, Dist. 1964 M P L J (Notes) 121.

——Art. 226 — Grounds for issue of writ — Madhya Bharat Civil Services (Punishment and Appeal) Rules, 1950—Breach of—If in itself ground for interference with order of suspension. See Ibid, Art. 309. AIR 1959 Madh Pra 295 (DB).

——Art. 226 — Applicability — State Bank of India (Sub-Accountants and Head Cashiers) Service Rules (1959)—The said rules have no force of law— Their violation will not be enquired into in writ petition. See State Bank of India (Sub-Accountants and Head Cashiers) Rules (1959). AIR 1964 Mad 335.

——Arts. 226 and 309 — Scope—Petitioner's name included in list of persons considered fit for promotion — Subsequent removal of his name from list is not justiciable. (1959) 1 Mad L J 220 : 72 Mad L W 255 : 1959 Mad W N 237 : ILR (1959) Mad 639 : 1959-2 Lab L J 514 : AIR 1959 Mad 270 (270) (Pr 1).

——Art. 226 — Person accepting Government service subject to Government Service Conduct Rules — He cannot challenge validity of Rules having taken benefits under it. (1955) 1 Mad L J 538 : 1955 2 Lab L J 473 : 1955 Mad W N 1037: AIR 1955 Mad 468 (469, 470) (Pt C) (Pr 5).

——Art. 226 — Service Rules — Non-observance — Disciplinary action — Relief against, in writ application—Not available unless prejudice has been proved. See Ibid, Art. 311 (2). AIR 1963 Manipur 28.

——Art. 226 — Rules under — Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, Rr. 5, 7 (1) — Government not acting according to Rules — Aggrieved party has right to approach High Court. See Ibid, Art 309. AIR 1965 Mys 244 (DB).

■ ——Art. 226 — Service Rules whether justiciable—Doctrine of pleasure — Extent and scope of — Reversion of Government servant, deputed to other department, to parent department — Service Rule relating to fixation of pay on reversion — Claim under such rule is justiciable right in respect of which relief is obtainable under Art. 226. See Ibid, Art. 309. A I R 1961 Mys 88 (FB).

——Art. 226 — Government Servants Conduct Rules, R. 9—Petitioner purchasing car without prior permission required under R. 9 — Whether serious notice of contravention of R. 9 should be taken or not, in view of subsequent permission obtained, is matter that cannot be looked into under Art. 226. (1965) 7 O J D 74 : (1965) 1 Lab. L J 265 : A I R 1965 Orissa 183 (187) (Pt H) (Pr 17) (DB).

——Art. 226—Rules under Orissa Protection Rules, (Rules for protection of officers of old Bihar and Orissa Services), R. 6—Officer in old Bihar and Orissa Secretariat transferred to Orissa on formation of that State — Confirmation as Registrar in Secretariat on 14-10-1958 while junior officer in old Bihar and Orissa Secretariat confirmed as Registrar in Bihar on 23-8-1956—Contravention of protection afforded to transferred officers —Date of confirmation for purpose of pension must be taken as 23-8-1956. See Government of India (Constitution of Orissa) Order (1936), Para. 23 (2). AIR 1964 Orissa 65 (DB).

——Arts. 226 and 311 — Dismissal of civil servant — Petition under Art. 226 challenging order — Considerations for High Court — (Civil Services (Classification, Control and Appeal) Rules, R. 55).

In considering whether the provisions of R. 55 of the Civil Services (Classification, Control and Appeal) Rules have been substantially complied with or not, the High Court has to satisfy itself whether the irregularity committed at any stage of the departmental enquiry really caused prejudice to the public servant concerned, and for that purpose it is very necessary to find out whether the objection to such an irregularity was taken as the earliest possible stage when it could have been remedied. 25 Cut L T 493 : AIR 1957 Orissa 21 (23, 24) (Pt A)(Prs 6, 9) (DB).

——Art. 226—Applicability—Bihar and Orissa Education Code— Rules under — Not statutory — Of no legal force—Assistant Headmaster of an educational institution—Services dispensed with by the Managing Committee — Not properly constituted as per the Rules of the Code—Issue of writs.

B applied under Art. 226 of the Constitution for the issue of writs on the ground that his services were illegally terminated by the resolutions of the Managing Committee of Bhakta Madhu Vidyapitha which was alleged to have been constituted properly as per rules under the B. and O. Education Code and the appeal preferred by him to the D. P. I., Orissa was dismissed in spite of the report of the Inspector of Schools in his favour,

Held: The real question is whether a legal right has been made out and whether the Managing Committee was illegally constituted or acted in violation of any statutory duty imposed upon it. The Bihar and Orissa Education Code and the rules in it are merely departmental regulations which do not create any statutory or legally binding rights and duties. They do not derive their validity by virtue of any legislative sanction.: Nothing is shown that they have the force of law. On this preliminary question being found against the applicant. merits of the case are not to be gone into. 18 Cut L T 334 : AIR 1952 Orissa 259 (259) (Pr 1) (DB).

——Arts. 226 and 311 (2) — Service Rules — Non-compliance with—Effect — Civil Services (Classification, Control and Appeal) Rules, R 55 — Case to which Art. 311 (2) is held not applicable— Still non-compliance with R. 55 will invalidate discharge. See Ibid, Art. 311 (2). AIR 1961 Pat 339.

——Art. 226—Breach of Civil Service Rules — Civil servant aggrieved—High Court cannot order enforcement of rules. AIR 1955 N U C (Punj) 4999.

——Arts. 226 and 311—Jurisdiction — Applicability —Transfer of service and of lien without consent of Government servant — Legality — (Fundamental Rules, Rr. 12-A and 15).

Fundamental R. 12-A read with Fundamental R. 15 authorises the transfer of a Government servant from a permanent post in any service or department to a permanent post in any other service or department, so as to abolish the lien on the original post and to create a lien on the new post. Such permanent transfer can be made. irrespective of the wishes of the Government servant concerned.

Further, such transfers are not made as a matter of any punishment and there is no reduction in rank. AIR 1952 Orissa 258, Disting. 1957 Raj L W 382 : AIR 1957 Raj 230 (231) (Pt A) (Prs 4, 5) (DB).

23 (j). Non-compliance with procedure.

——Art. 226 — Grounds for issue of writ — Government servant—Reversion to substantive rank—Omission to follow procedure laid down in Art 311 or S. 240, Government of India Act, 1935—Power to issue writ. See Ibid, Art. 311 (2). I L R (1957) 9 Assam 223.

■ ——Art. 226—Dismissal of Government servants — Non-compliance with procedure under S 240, Government of India Act, 1935 — Mandamus if can issue — Dismissal in contravention of Indian Independence Act (1947)—Right to relief. See Government of India Act (1935), S. 240. AIR 1954 Assam 224 (FB).

——Arts. 226 and 311 — Infringement of constitutional right under Art 311—Petition under Art. 226 —Practice in Bhopal Judicial Commissioner's Court.

Judicial Commissioner's Court at Bhopal has consistently held that an application under Art. 226 of the Constitution lies only in the case of infringement of fundamental right as stated in Part III of the Constitution. A public servant under the State or Union has a certain right under Art. 311 of Constitution to a proper and due enquiry according to the rules prescribed therefor. The right of being heard in a due, proper and prescribed enquiry is one which is cherished by a servant with same acidity or confidence as any citizen of India cherishes his fundamental right. Both these rights are provided under the Constitution and even if these rights may not fall within the purview of fundamental right under Part III, still it is undisputed that it is his constitutional right and is the very essence of his own and

his dependants living. That being so, it is but proper and according to the Constitution that protection under the Constitution should be available to them and in this view the petition under Art 226, is tenable to enforce a constitutional right and the Judicial Commissioner's Court has power to interfere and set right any infringement of such right in its substance or its enforcement.

Then again, it is now well settled that any action or order in contravention or violation of natural justice infringes the fundamental rights of every person. Such principles of natural justice may be illustrated by rules that no person shall be condemned or made to suffer without giving him a hearing or without evidence to support the condemnation or by caprice of the authority condemning him. If, therefore, it is proved that the applicant has been condemned in violation of any of the principles of natural justice, then the action or order of the authority by which he is so condemned to suffer infringes his fundamental right and the Constitution has made provision for bringing such authorities under the supervision of the ordinary Courts in India. One of such provisions is the power given to High Courts in the States under Art. 226, (1) and Art. 227 (1) of the Constitution. AIR 1954 Bhopal 25 (27) (Pt A) (Prs 8, 9).

——Art. 226—States Reorganisation Act (1956), S. 88—Actionable wrong other than breach of contract—Meaning of — Dismissal of Government servants — Order challenged on ground of infringement of Art. 311 (2)—Protection under Art. 226 available. See States Reorganisation Act (1956), S. 88. AIR 1959 Bom 363.

——Art. 226—Traffic Accounts Code, R. 846—Standing Orders, Rules 31 and 237 (h)—Railway Establishment Code, R. 1706 R — Railway servant charge-sheeted for misconduct—But penalised for negligence coupled with violation of rules—Held as conduct of servant did not amount to misconduct, charge-sheet must be treated as vague — Penal order must be quashed See Ibid, Art. 311 (2). (1965) 10 Fac L R 263 (Cal).

——Art. 226 — Departmental inquiry conducted in a manner contrary to law—Order of dismissal—Liability to be set aside. See Ibid, Art. 311. AIR 1961 Cal 40.

——Art. 226—Invalid order—Dismissal order passed against railway servant—Departmental inquiry defective — Order is invalid. See Ibid, Art. 311 (2). AIR 1956 Cal 662.

——Arts. 226 and 311 — Enquiry into misconduct of Civil servant - Strict adherence to rules—Failure does not entitle servant to complain against punishment unless Art. 311 is violated — Kerala Civil Services (Classification, Control and Appeal) Rules. See Ibid, Art. 311. AIR 1960 Ker 224.

——Art. 226—Object of Art. 311 — Protection given to Government servants—Extent of. See Ibid, Art. 311. AIR 1954 Madh B 49 (DB).

——Arts. 226, 227 and 311 — Charge of corruption against Govt. Servant—Inquiry and report by Disciplinary Proceedings Tribunal—Dismissal of servant by Govt. — Appeal to Governor under Civil Services (Classification and Appeals) Rules—Dismissal—Petn. under Art. 226—Maintainability.

Held that (1) neither the Govt. nor the Disciplinary Proceedings Tribunal fall within Art. 227.

(2) that the fact that rules are made to safeguard the rights of civil servants in matters of disciplinary action does not mean that the High Court has jurisdiction to quash orders of Govt. dismissing a civil servant because one or other of the rules has been contravened. As there was no contravention of Art. 311 of the Constitution the High Court had no jurisdiction under Art. 226 to quash an order of dismissal by the Govt. 64 Mad L W 436 : 1951 Mad W N 410 : 1951-1 Mad L J 709 : 1951 Mad W N 410 : AIR 1951 Mad 882 (882, 883) (Prs 2, 6) (DB).

——Art. 226 — Requirements of Art. 311 (2) not fulfilled—Order terminating service quashed. See Ibid, Art. 311 (2). AIR 1965 Manipur 46.

——Arts. 226, 311 (2)—Departmental inquiry—Non-compliance with relevant rules — Prejudice—(Book Circulars, No. 13, Part I, Rr. 8-A and 13-A).

Where a Sub-Inspector of Police in a departmental inquiry against him was prevented from putting up a proper defence because of the failure of the authorities concerned to apprise him sufficiently of the grounds on which the proposed action was determined.

Held, that there was non-compliance with rules regarding departmental inquiry which resulted in prejudice to him. The provisions of Art. 311 (2) could not also be deemed to be duly complied with in such circumstances. This attracted the jurisdiction of the High Court under Art 226 AIR 1954 Nag 90, Disting. ; AIR 1954 Nag 229, Rel. on. AIR 1957 Nag 18 (19) (Pr 7).

——Art. 226—Dismissal of Police officer contrary to Police Regulation 241—If can be questioned.

Although a dismissal by the Governor of a person holding a civil post under the State may not be open to question under the Constitution, a dismissal of a Police Officer by a District Superintendent of Police stands on a different footing. If such dismissal is contrary to Police Regulation 241, it is contrary to law and can be questioned under Art. 226 of the Constitution. 1951 Nag L J 593.

——Arts. 226 and 311 (2) — Railway Services (Safeguarding of National Security) Rules, R. 4 (b) — Termination of Service — Per Ramaswami J : One notice for making enquiry—Second notice indicating the punishment proposed and for showing cause against it is not required, though the rule is in terms similar to Art. 311 (2) of the Constitution—Rule 4 (b) has to be read in its context — Procedure under and context of R. 4 and Art. 311 (2) indicated—Per Sarjoo Pd. J : There is no distinction between wording and context of Art. 311 (2) and R 4 (b) of National Security Rules — But question of want of second notice held could not be agitated in proceedings under Art. 226, but could be taken up by way of a suit. See Railway Services (Safeguarding of National Security) Rules, R. 4 (b). AIR 1953 Pat 92.

——Art. 226 — Decree by Civil Courts setting aside dismissal from service on ground of non-compliance with provisions of Constitution — Government can direct further enquiry. 1960 Raj L W 385.

——Art 226—Certiorari—Issue of writ—Dismissal of subordinate employee by Director of Education—Latter not following procedure prescribed by R. 7 of Jaipur Civil Service Regulations.

The tribunal or the authority whose decision is questioned by a writ of certiorari must be under a legal obligation to act judicially. If the law under which the authority is making a decision itself requires a judicial approach, the decision will be quasi-judicial.

The Jaipur Civil Service Regulations can neither be said to be statutory law nor rules made under the authority of a statute. They are simply rules for the guidance of the authorities. It cannot be said that whatever is contained in R. 7 of Appendix L casts a legal duty upon the heads of the departments or other authorities to adopt the particular procedure

laid down therein. If they ignore that procedure, it cannot be said that they have acted in breach of some legal duty. Therefore, a writ of certiorari cannot issue against the Director of Education who has dismissed a subordinate employee without following the procedure prescribed by R. 7. **1952 Raj L W 118 : I L R (1951) 1 Raj 134.**

23 (k). Suspension.

——Art. 226—Government servant—Order of suspension in contemplation of departmental inquiry — Subsequent order of discharge set aside as illegal — Effect of — Subsequent order of suspension with retrospective effect—Legality.

The petitioner was first placed under an order of suspension. As a result of subsequent departmental inquiry instituted against him he was discharged from service. This order of discharge was found to be illegal and was set aside by the High Court under Art. 226. The authority concerned informed the petitioner that he will be treated as under suspension from the date of discharge. The petitioner who was then dismissed from service after giving him show cause notice again moved the High Court under Art. 226.

Held, that the first order of suspension merged in the order of discharge, and was not revived when the order of discharge was set aside by the High Court. Consequently, it was no longer possible to rely on that order of suspension. Even if the second order of suspension be considered as a fresh order, such an order of suspension with retrospective effect could not be passed. Hence that order of suspension, must be quashed. AIR 1955 S C 600, Foll; AIR 1954 Cal 340, Rel. on. **60 Cal W N 628 : AIR 1956 Cal 447 (448) (Pr 5).**

——Art. 226 — Scope — High Court cannot go into question whether order of suspension was based on proper materials—Suspension does not amount to dismissal, discharge or reduction in rank. See Constitution of Jammu and Kashmir (1957), S. 103. AIR 1964 J & K 14 (DB).

——Art. 226 — Reduction in rank — Suspension does not amount to. See Ibid, Art. 311. AIR 1954 Madh-B 49 (DB).

——Art. 226—Termination of services of temporary Government servant during suspension — Remedy against. See Ibid, Art. 311(2). A I R 1954 Madh B 49 (DB).

——Arts. 226, 311, 12—Writ of certiorari—Co-operative society registered under Co-operative Societies Act—Included within definition of 'State' in Art. 12—Amenable to writ jurisdiction — Not competent to order suspension of employee pending inquiry if not provided by a bye-law — Suspension order with retrospective effect is illegal.

A co-operative society registered under the Co-operative Societies Act, 1912, being an authority or body of persons having the power of framing bye-laws would fall within the definition of 'State' in Art. 12 of the Constitution. A I R 1956 Trav-Co 19 (FB), Rel. on. View of Krishnan, J., in A I R 1959 Madh Pra 218, Dissent. from.

A co-operative society is not an 'individual' in the context of the administration of bye-laws. Byelaws can be impugned on the ground of unreasonableness. Third parties are bound by byelaws without any consent on their part. Byelaws thus stand on the same footing as a statutory rule so far as enforcement is concerned. For that reason if an authority acts in excess of, or refuses to exercise, or abuses, the power granted to it, a writ can issue to correct its action.

The bye-laws give a legal right to the servant apart from the contract and both the society and the servant are bound by it. The enforcement of such a legal right forms an appropriate subject-matter for the issue of a writ under Art. 226 of Constitution.

Under the general law a master cannot suspend his servant. He can either dismiss him or continue him in service on fresh terms. AIR 1941 Nag 125 and AIR 1945 Nag 183 and AIR 1945 Nag 244 and AIR 1946 Nag 347, Rel. on.

Held, that the society had no power to suspend the petitioner employee except by way of punishment. The society's order suspending its employee pending enquiry was without jurisdiction and liable to be quashed. Held, further that the order of suspension could not be, in any case, of retrospective effect. AIR 1955 S C 600, Relied upon. Held also that the co-operative society was entitled to pass a fresh order of dismissal after obtaining due sanction from the Registrar and hence its further action was not barred. **(1962) 1 Lab L J 353 : (1961) 3 Fac L R 357 : I L R (1961) Madh Pra 673 : 1961 M P L J 1059 : 1961 Jab L J 786 : 1961 M P C 572 : AIR 1961 Madh Pra 289 (291, 292, 293) (Prs 7, 10, 11, 12, 15, 16, 17, 19) (DB).**

——Art. 226 — Fundamental Rules, 3rd Edn. — Appendix XXV, Part E—Suspension before commencement of criminal proceedings—Legality.

Under Appendix XXV, Part E. to the Fundamental Rules, suspension of a government servant can be ordered even before the commencement of criminal proceedings against him. What is required is that there should be an accusation of a criminal offence against him and not that criminal proceedings should actually commence in the sense that a challan is filed. **I L R (1952) Nag 52 : 1952 Cri L J 845 : 1952 Nag L J 221 : AIR 1952 Nag 170 (172) (Pt E) (Pr 9) (DB).**

——Art. 226—Subsequent valid order of suspension of public servant — Previous illegal order can be quashed.

Public servant, suspended by order of person having no authority — Rule issued on footing that order was illegal — Order sought to be justified — Subsequent valid order of suspension by proper authority, during hearing of rule — High Court would quash previous illegal order, since the petitioner had acquired a valuable right under Civil Law for he would be entitled to his full pay as long as the illegal order was in force — (Discretionary power when to be exercised indicated). A I R 1952 S C 106; A I R 1953 S C 277, Rel. on. **I L R (1954) Patiala 105 : A I R 1954 Pepsu 98 (109) (Pt G) (Pr 27).**

——Art 226—Suspension order made when enquiry was suspended—Order is not illegal. See Central Civil Services (Classification, Control and Appeal) Rules (1957), R. 12. AIR 1960 Punj 147.

23 (l). Justiciability of punishment.

See Note 23 (h).

24. Clarification, order for.

——Art. 226 — Certiorari — Writ to quash order of Minister — Power of High Court to seek clarification.

The position of the Minister before the High Court is that of a party, he being represented by the Government Advocate. The High Court is entitled to ask a party for clarification. The High Court can seek clarification by the Revenue Officer of the order passed by him when the order has been understood in conflicting ways. AIR 1943 F C 72, Rel on. **ILR (1951) Hyd 845 : AIR 1952 Hyd 10 (14) (Pt B) (Pr 17) (DB).**

25. Company, application by.

See Note 6.

26. Complicated question of fact.
See Note 79.

27. Concurrent jurisdiction of High Court and Supreme Court.

● ——Art. 226—Applicability — Government servant challenging validity of service rule — Proper remedy available is writ petition to High Court under Art 226 — Writ petition directly to Supreme Court under Art. 32 not competent. See Ibid, Art. 32. 1964 (2) Cri L J 481 : AIR 1964 S C 1585.

● ——Art. 32 — Applicability — Infringement of fundamental right to carry on business — Application for writ dismissed by High Court but judgment in favour of petitioners — Application for Special Leave pending — Supreme Court has power to grant relief under Art 32.

Where in effect, the judgment of the High Court was in favour of the petitioners though in form the writ petition was dismissed and the petitioners' fundamental right to carry on business was certainly involved in the case the Supreme Court should not refuse relief under Art. 32. Shrinivasa Reddy v. State of Mysore, 38 Mys L J 71: 1960 Mad W N 98: (1960) 2 S C R 130 : 1960 S C J 1092 : A I R 1960 S C 350 (353) (Pt C) (Pr 7).

● ——Art. 32—Scope.

The jurisdiction conferred on the Supreme Court by Art. 32 is not concurrent with the one given to High Courts by Art. 226. 52 Cri L J 391 : 1951 S C J 98 : 1950 S C R 940 : 64 Mad L W 378 : 1951 Mad W N 709 : 1951 Mad W N (Cr) 213 : A I R 1950 S C 124.

——Art. 226—Construction—"Notwithstanding anything in Art. 32"—Interpretation of.

The words "notwithstanding anything in Art. 32" in the beginning of Art 226 of the Constitution have a special significance and cannot be ignored. They mean and only mean that in spite of the provisions of Art. 32, every High Court shall be empowered to issue writs of the sort specified in the Article. They do not mean or imply that the exercise of this power will be subject to any future legislation by Parliament. 1952 Cri L J 660 : A I R 1952 Bhopal 1 (3, 4) (Pt B) (Prs 9, 10, 12, 17).

——Art. 32—Application for certificate under Art. 134 (1) (c) against order of detention under the Preventive Detention Act (1950) — Application under Art. 32 to Supreme Court against identical order of detention summarily dismissed — In view of that fact application under Art. 134 (1) (c), held failed on merits. See Ibid, Art. 134 (1) (c). 1962 (1) Cri L J 282 : A I R 1962 Cal 122 (DB).

——Art. 226—Powers of High Court—Supreme Court refusing leave to appeal—High Court, if can exercise powers under Art. 226. See Ibid, Art. 136. A I R 1958 Mad 398 (DB).

28. Conduct of petitioner.
See Notes 35, 39 and 48.

29. Contractual rights, enforcement of.
(a) Alternative remedy.
See Note 7.

29. Contractual rights, enforcement of.

● ——Art. 226—Order for payment of money can be made under Art. 226 to enforce statutory obligation.

The High Court normally does not entertain a petition under Art. 226 of the Constitution to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimant and leaves it to the aggrieved party to agitate the question in a civil suit filed for that purpose. But an order for payment of money may sometimes be made in a petition under Art. 226 against the State or against an officer of the State to enforce a statutory obligation. Where the petition under Art. 226 is for enforcement of the liability of the Collector imposed by S. 14 of the Orissa Sales Tax Act it can only be allowed subject to the restrictions which have been imposed by the proviso. Burmah Construction Company v. State of Orissa, 1962 S C D 240 : 1962 Supp (1) S C R 242 : (1961) 12 S T C 816 : 28 Cut L T 150 : (1962) 2 S C J 148 : AIR 1962 S C 1320 (1322, 1323) (Pt B) (Pr 6).

——Art. 226—Contractual obligations—Writ to enforce—When will issue.

Ordinarily, the High Court will refuse to intervene under Art. 226 of the Constitution in a matter which in final analysis has to interpret a contract arrived at between the parties and give relief upon it. The proper forum for such disputes to be settled is the agency of the regular Courts. But where the State decides to employ coercive process of recovering as an arrear of land revenue the amount alleged to be payable to it under a contract, the High Court will not hesitate to intervene if upon the facts accepted or established, the amount sought to be recovered is not payable to the State even if the terms of the contract have to be construed. AIR 1961 All 485 (486, 487) (Prs 6, 8, 9).

——Art. 226—Immunity from income-tax claimed on basis of merger agreement—Dispute arises out of merger agreement and is not justiciable. AIR 1961 All 280 (DB).

——Art. 226—Other remedy open—Enforcement of contractual rights — Agreement under U. P. Educational Code—Arbitration Board constituted in breach of agreement—Interference—Power of—(Arbitration Act (1940), Ss. 14 (2) and 33) — (U. P. Educational Code (1936), Para 358 (2)).

Held, on facts (1) that this being a dispute of a contractual nature the High Court would decline to entertain it in the exercise of its jurisdiction under Art. 226 (2) that the applicant's speciäc remedy was to require the arbitrator under S. 14, Arbitration Act to cause the award to be filed in Court and thereafter to make an application under S. 33 under which an award can be challenged on any ground. 1957 All L J 741 : AIR 1957 All 737 (738) (Prs 4, 5) (DB).

——Art. 226—Mandamus—Rights relating to contract—All-India Postal Workers Union (Class III) (Allahabad Branch) Constitution — Rule 45—Scope of—Breach of R. 45—Writ of mandamus—Issue of.

Rule 45 of the Constitution of the Allahabad Branch of the All-India Postal Workers Union (Class III) has not got statutory force. It is only in the nature of a contract binding on the members of the Union. Any breach of such rule cannot be enforced by a writ of mandamus under Art. 226 of the Constitution. AIR 1957 All 234 (236, 237) (Pt C) (Pr 14).

——Arts. 226, 311—Persons employed on contract basis—Applicablility of Articles—(Master and Servant—Dispensing with services). See Ibid, Art. 311. AIR 1956 All 43.

——Arts. 226, 299 — Contract with Government — Government cancelling offer even before contract was concluded — Aggrieved party cannot claim any right to maintain writ petition—Proper course is to proceed under general law. AIR 1959 S C 490, Rel. on. (1965) 2 Andh W R 383 : AIR 1965 Andh Pra 425 (431) (Pt C) (Pr 12).

——Art 226—Contractual obligations—Remedy for enforcement—Issue of writ—Propriety—Art. 298.

(Per C. P. Sinha, C. J., agreeing with Deka, J., Mehrotra, J contra).

Though the powers given to the High Court under Art. 226 are very wide, where the question posed is referable to any contract between the parties, that matter must be litigated in the ordinary Civil Courts and not under Art. 226. If the State Government is acting as a lessor under a contract, then the State Government stands on the same footing as any private lessor. The Deputy Commissioner acting under the order of the State Government, the lessor, in taking possession of the land cannot be said to be acting in his executive capacity. AIR 1952 S C 59 and Civil Rule No. 69 of 1954 (Assam) and Civil Rule No. 131 of 1956 (Assam). Foll.; AIR 1956 All 564 and AIR 1954 S C 447 and AIR 1954 S C 415 and AIR 1954 S C 92 and AIR 1954 S C 119 and AIR 1953 S C 108, Dist.

The question whether in such a case the Government can resume the land without bringing a suit for that purpose must be left to be decided by the appropriate ordinary Courts. **ILR (1961) 13 Assam 32 : A I R : 1961 Assam 20 (22, 26) (Prs 5, 6, 12, 13) (DB).**

——Art. 226—Contractual rights — Apprentices appointed prior to nationalisation by an Insurer—Not employees of the Insurer—S. 11, Life Insurance Corporation Act does not apply—Writ petition under Art. 226 for fixing their grade etc., is not maintainable. See Life Insurance Corporation Act (31 of 1956), S. 11. **('63) 67 Cal W N 855.**

——Art. 226—Rights relating to contracts—Enforceability.

The High Court in the exercise of its jurisdiction under Art. 226 does not enforce performance of a contract or prevent the breach of an obligation under the contract. **('58) 62 Cal W N 384.**

——Art. 226—Conditions of service founded on contract — Benefit of maxim audi alteram partem not given—Issue of writ.

It cannot be laid down that even where the conditions of service of a person are not governed by any statute, but are founded, on a contract, he is entitled to the benefit of the maxim audi alteram partem. A writ should not, therefore, issue in favour of such a person even if he has not been given the benefit of the maxim. AIR 1953 Punj 88, Distinguished. **AIR 1953 Him Pra 103 (104) (Pt B) (Pr 3).**

——Art. 226—Contract of personal service—Specific performance — Writ petition for reinstatement — (Specific Relief Act (1877), S. 21 (b)).

A contract of personal service is not specifically enforceable and a suit by an employee for the relief of reinstatement is liable to be dismissed. The emplovee cannot obtain that relief by means of a writ petition for it is one of the cardinal principles governing writ petitions that none will issue where either the party claiming it has not the legal right to it, or there is no corresponding legal duty cast upon the respondent to perform the act for which the writ is claimed. **AIR 1953 Him Pra 103 (104) (Pt C) (Pr 4).**

——Art. 32 (2-A) as applied to State of Jammu and Kashmir—Scope—Contractual rights not covered.

Under Art. 32 (2-A) of the Constitution of India as applied to the State of Jammu and Kashmir a writ for enforcement of contractual rights cannot be granted, because such a right is not a fundamental right so as to call into operation the provisions of that Article. 1953 S C J 323; AIR 1953 S C 250, Relied on. **AIR 1959 J & K 10 (10, 11) (Pt A) (Pr 3) (DB).**

——Art. 226—Applicability -Contractual obligations —Agreement by student (petitioner) to serve State for specified period after taking degree—Recovery of compensation payable under agreement, by Government for alleged breach — Breach of agreement disputed by student petitioner — Remedy lies in regular Civil Court and not under Art. 226 — Use of Revenue Recovery Act for recovery does not alter the situation. AIR 1961 All 485, Disting. **1964 Ker L T 316 : AIR 1964 Ker 272 273) (Prs 3, 5).**

——Arts. 226, 16— Breach of contract — No fundamental right is involved.

Where the grievance relates to a wrongful termination of a contract with the Government for the supply of milk to hospital, it cannot be agitated in proceedings under Art. 226. There is no scope for the applicability of Art. 226 to such a case. AIR 1953 S C 250, Foll.; AIR 1954 Mad 549 and AIR 1955 Mad 385, Relied on. **1959 Ker L T 125 : A I R 1959 Ker 239 (241) (Prs 14, 17) (DB).**

——Art 226—Executive or administrative orders — Infringement of provisions of Travancore Education Code — Issue of writ — (Travancore Education Code).

A teacher in a private school is not a servant of the Government. The relation between himself and the manager of the school is purely contractual and Art. 226 could not be invoked for the vindication of any right flowing from such a relationship. Education Code and the orders issued from time to time by the Government or the Department have no statutory force and infringement of the provisions of the Code or such orders could not be made the subject of judicial review. A teacher in such a school must seek his remedies against the management of the school and not the Government. **1958 Ker L T 124.**

——Arts. 226, 299 (1) — "For any other purpose" — Existence of legal right is essential for exereise of jurisdiction under Art. 226 — Claim to enforce right under contracts with State — Contracts not complying with Art. 299 (1) — Right cannot be enforced under Art. 226.

Article 226, can only be invoked for the enforcement of fundamental rights and other legal rights if the petitioner has no other specific remedy which is equally convenient, beneficial and effective.

The existence of a legal right is the foundation of the exercise of the jurisdiction under Art 226 A I R 1952 S C 12; AIR 1953 S C 210 and AIR 1950 Madh B 46, Rel. on

Where the petitioners claim to enforce a right to certain forest areas and to the manufactured material (charcoal and kattha) under contracts between them and the State authority the D. F. O) and the contracts admittedly do not comply with the requirements of Art. 299 (1), the contracts being unenforceable, the petitioners have no legal right to work the forest areas and to the manufactured material which can be enforced by any direction or writ under Art 226.

The provisions of Art. 299 (1) are mandatory and if a contract on behalf of the Government does not satisfy the requirements of that article, the contract is not binding on the Government and is unenforceable against it. AIR 1954 S C 236; AIR 1952 Cal 306 and AIR 1955 Assam 86, Rel. on. (1916) 2 K B 193 and (1949) 1 K B 227 Disting. **ILR (1956) Madh Bha 1 : AIR 1955 M B 188 (191, 192) (Pt A) (Pr 9) (DB).**

——Art 226 — Government granting lease in Nazul lands — Lessee alleged to have committed breach of conditions of lease — Question whether there had or had not been breach of condition of lease could be determined only in a civil Court—Government deciding to exercise right of re-entry as lessor on breach

of condition of lease — Government asking the lessee to vacate—Government's right of re-entry is like that of any lessor – Government cannot forcibly evict lessee —He can evict him only by a civil suit. 1963 M P. L. J. 701 and M. P. No. 482/64 dated 9th February, 1965 Foll. **1965 M P L J (Notes) 176.**

——Art. 226 – Petition not to be entertained to enforce civil liability for breach of contract.

Held that the amount which the petitioners desired to be refunded to them had not been forfeited by the State. It had been only withheld till the petitioners paid the amount of rent said to be due from them in respect of the distillery building. The question whether the opponent was justified in refusing to return the amount under the circumstances depended upon the terms of the contract and the licence. High Court should not normally entertain a petition under Art. 226 to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimant and should leave the aggrieved party to agitate the question in a civil suit. An order for payment of money might some time be made in a petition under the Article against the State or against an officer of the State to enforce a statutory obligation. The obligation which the petitioners were seeking to enforce was one arising under the contract and could not be regarded as a statutory obligation. There was no breach of any statutory obligation or violation of any fundamental rights of the petitioners. That being so, the petitioners had a right to take the matter in a civil Court. A I R 1952 S C 1320, Rel. on. 1963 M P L J (Notes) 174.

——Arts. 226 and 299 - Scope of— Contract not satisfying requirements of Art. 299—Contract not binding on Government —Person aggrieved can have no remedy under Art 226.

The remedy provided by Art. 226 can be resorted to only for enforcement of fundamental rights and other legal rights if the petitioner has no other remedy which is equally convenient, beneficial and effective.

The provisions of Art. 299 (1) are mandatory, and if a contract on behalf of the Government does not satisfy the requirements of that article, the contract is not binding on the Government and is unenforceable against it. In such a case the person aggrieved can have no legal right which can be enforced by any direction or writ under Art. 226. AIR 1954 S C 236, Rel. on. **1961 Jab L J 452 : 1961 M P C 204 : ILR (1959) Madh Pra 854 : 1961 M P L J 627 : A I R 1961 Madh Pra 364 (364, 365) (Pt A) (Prs 2, 3) (DB).**

——Art. 226—Enforcement of contractual rights.

Where under an agreement entered into between the petitioner and the Collector, the petitioner agreed to purchase stated quantities of rice from the Collector and to sell it to the public at prices fixed by him and the Collector terminated the agreement without any enquiry as to the misconduct alleged against the petitioner.

Held, that the question of violation of the principles of natural justice would not be attracted to a case, where the act of the Government amounted merely to a breach of contract. The mere fact that the seller of the rice happened to be the Collector did not take the case out of the rule of law that a mere breach of contract has not remediable by a high prerogative writ. **73 Mad L W 209 : 1960 Mad W N 173 : (1960) 1 M L J 328 : I L R (1960) Mad 557 : A I R 1960 Mad 350 (351) (Pr 2).**

——Art. 226—Contractual rights involved—Jurisdiction under Art 226 will not be exercised — Fact that State is a contracting party makes no difference. AIR 1959 S C 490 and AIR 1958 S C 532 and **A I R 1954 Mad 549, Rel. on. I L R (1962) Cut 331 : A I R 1962 Orissa 183 (187) (Pt B) (Pr 10) (DB).**

——Art. 226—Sales Tax—Bihar Sales Tax Act (19 of 1947), Ss. 2 (g) and 13 — Contract for assembling and installing machinery plant — Supply of goods in execution of contract — Liability to pay sales tax — Application under Art. 226—Maintainability. **(1958) 9 S T C 639 (Pat).**

[Reversed in AIR 1961 S C 1615.]

——Art. 226—Rights initially based on contract protected by statute—Violation thereof by statutory body — Writ petition by aggrieved party is competent. **ILR (1964) 2 Punj 150 : AIR 1964 Punj 533 (539) (Pt C) (Pr 15) (DB).**

——Art. 226—Service contract—Breach of—Rights of parties — See Contract Act (1872), S. 39. **AIR 1956 Punj 220.**

——Arts. 226, 19 — Supply of electrical energy—No fundamental right — Default in payment of bills — Disconnection of premises — Writ petition not maintainable. See Ibid, Art. 19. **AIR 1959 Raj 275.**

——Art. 226—Scope — Cases arising out of contractual relationship.

The High Court will not use its extraordinary powers under Art. 226 in cases arising out of contractual relationship, where there is a specific remedy available otherwise, and where the harm done can be compensated for by a suit for damages for breach of contract. So far as the primary relief of writs of prohibition and certiorari is concerned the latter writ is issued to an interior Court to quash the proceedings of that Court which are in excess of its legal authority. Similarly, a writ of prohibition is issued to prohibit an inferior Court from acting in excess of its legal authority. The order against which a writ of certiorari may be directed should be a judicial or quasi-judicial order.

Lease by Government— Eviction of lessee by Government Officers, acting for Government as lessor— Officers acting either as agents of lessor or as persons having no authority.— Tenants can either apply for reinstatement under S. 7 of the Rajasthan Tenants' Protection Ordinance or file a regular suit either in revenue or civil Court — Writ application will not be entertained. **AIR 1954 Raj 81 (82, 83) (Pt B) (Pr 6) (DB).**

——Art. 226—Scope.

The Industrial Tribunals under the Industrial Disputes Act, 1947, are charged with difficult and delicate task and in the interests of industrial peace should be allowed to discharge their duties without delay or interference. Any employer who feels the urge to move the High Court will do well to note that Art. 226 of the Constitution is no charter for the preservation of antique concept of contractual rights in the field of labour relations against the impact of awards which are liberal or legislation which is progressive. A I R 1953 S C 53, Foll; AIR 1951 Mad 974; AIR 1953 Mad 102, Rel. on. **ILR (1954) Trav-Co 322 : 1953 Ker L T 856 : AIR 1954 Trav Co 240 (243) (Pt C) (Pr 10) (DB).**

——Art. 226 — Applicability — Abkari contract between State and citizen for vending toddy—Obligation of citizen to conform to terms of contract— Government seeking to enforce terms after due notice and hearing objections—If violation of fundamental right to carry on business — Certiorari—If lies.

It is not the object of the Constitution of India to enable citizens to break or ignore the obligations arising under lawful contracts entered into by them on

the pretext of such obligations being repugnant to the recognition of fundamental rights. When a person enters into a contract, such as an Abkari contract to vend toddy, he is bound to conform to the conditions of that contract, and the State is perfectly justified in enforcing the terms of the contract; and when the State seeks to enforce the same after giving due notice, the citizen cannot approach the High Court and apply for a writ of certiorari on the ground that the Government is denying his fundamental right of carrying on his business or acting contrary to the principles of natural justice. No writ or direction can issue in such a case. **1951 K L T 329 : AIR 1952 T C 287 (289) (Pt B) (Pr 8) (DB).**

——Art. 226—Contractual matter—Issue of writ.

There is no occasion for the issue of a writ on what appears to be a simple issue arising out of contract. such as payment of entertainment tax. **A I R 1952 Vindh Pra 35 (35) (Pt A) (Pr 4).**

——Art. 226 (1)—Invasion of right created by contract—Issue of writ.

An invasion of a right created by contract of lease for which the lessee can seek relief in the Civil Court for compensation or cancellation of the lease or otherwise is not such an invasion of a fundamental right as to call for an extraordinary remedy. **A I R 1952 Vindh Pra 13 (15) (Pt C) (Pr 9).**

29 (a). Alternative remedy.

See Note 7.

30. Corporation, application by.

See Note 6.

31. Costs in writ proceedings.

(a) By advocate.

(b) Inferior tribunal, cost in favour of or against.

(c) Special costs.

31. Costs in writ proceedings.

——Arts. 226, 136 — Writ petitions and appeals from orders thereon — Tribunals joined as parties—Cost of lawyers—Generally not allowed.

In writ petitions and in appeals from the orders passed on the petitions, the tribunals may be proper and necessary parties, but unless allegations are made against them which need a reply from them, it is not usual for the authorities to be represented by lawyers in Court. In ordinary cases, their position is like that of Courts or other Tribunals against whose decisions writ proceedings are filed, they are not interested in the merits of the dispute in any sense, and so, their representation by lawyers in such proceedings is wholly unnecessary and even inappropriate. They should, therefore, bear their own costs. Syed Yakoob v. K. S. Radhakrishnan. **(1964) 5 S C R 64 : A I R 1964 S C 477 (483) (Pt E) (Pr 19).**

——Art. 226 — Costs in writ proceedings — Costs against party beyond territorial jurisdiction.

Where the prime mover (Central Government, in this case) of proceedings, sought to be quashed by writ proceedings, was beyond the territorial jurisdiction of the High Court, it is true the High Court cannot issue a writ directed to that party, but it does not mean that costs cannot be awarded against that party, when that party is given an opportunity to appear and represent its case before the High Court.

There may be a case where a person, residing outside the jurisdiction of the High Court may institute a suit in a Court within the jurisdiction of the High Court. In such a case, if a writ of certiorari or of prohibition is issued against that Court, the liability for the costs incurred by the petitioner would fall not on the Court but on the person, who initiated those proceedings, even though he may be residing outside the jurisdiction of the Court. **(1955) 28 ITR 211 : ILR (1955) 2 All 600 : AIR 1955 All 515 (518) (Pt C) (Pr 8) (DB).**

——Arts. 226 and 311 — Costs—Suspension of Government employee from service—Allegations found untenable — Re-instatement—Proceedings under Art. 226 by employee for direction to pay arrears of salary —Writ allowed—Employee entitled to costs. 68 Cal W N 1028 : (1965) 2 Lab L J 321 : AIR 1965 Cal 281 (282) (Pt C) (Pr 7).

——Art. 226—Costs—(C. P. Code (1908), S. 35).

Where the application under Art. 226 was dismissed but involved the interpretation of a recent statute which had not yet been authoritatively interpreted the Court made no order as to costs. **58 Cal W N 617 : AIR 1955 Cal 72 (76) (Pt H) (Pr 20).**

——Art. 226 — Costs — Petitioner successful — But petition filed just two days before the date of poll—Petitioner asked to bear his own costs. AIR 1959 Him Pra 20 (25) (Pt B) (Pr 30).

——Art 226—Costs—Petitioner not disclosing in his affidavit material correspondence relating to his case —Petitioner is not entitled to costs. 1964 Ker L J 130 : 1964 Ker L T 140 : ILR (1964) 1 Ker 662 : AIR 1964 Ker 194 (197) (Pt B) (Pr 10).

——Art. 226 — Legal practitioner—Fees—Writ petition — In special cases Court will allow more fees than the maximum fixed —High Court Rules (Madras) —Rules to regulate proceedings under Art. 226, R. 7, High Court (Madras) Fees Rules (1956), O. 5, R. 16— Per Rajagopalan Offg. C. J. AIR 1962 Mad 36 (43, 44) (Pt D) (Prs 21, 22) (DB).

——Art. 226 — Practice — Costs — (Civil Procedure Code (1908), S. 35).

In view of the delay and loss to the petitioner who was granted the relief prayed for, full costs, were awarded. **ILR (1956) Nag 157 : AIR 1956 Nag 1 (8) (Pt I) (Pr 52) (DB).**

——Art. 226—Costs.

Petition under Art. 226 allowed—Petitioner himself partly at fault resulting in the order which was quashed under Art 226—Action of authorities bona fide—Parties directed to bear their own costs. **AIR 1953 Trav-Co 551 (552) (Pt B) (Pr 7).**

31 (a). By advocate.

——Art. 32—Costs—Advocate ordered to pay costs personally—(C. P. Code (1908), S. 35).

An advocate presented a petition under Art. 32 for a writ of habeas corpus on behalf of a lady and appeared as her next friend. The petition did not disclose that he made any attempt to consult the person who he said was the husband of the lady, nor did it show that he made any attempt to contract either the lady or even her uncle. He had three hearings in the Court despite the warning he was given about costs and the Attorney General was also aked to appear. When the arguments were fully concluded and he found that the Court was against him he asked for permission to withdraw the petition. That was refused and the petition was dismissed.

Held, that the advocate should be made to pay the costs personally. Vidya Verma v. Shiv Narain Verma, **1956 S C J 121 : 1956 All W R (H C) 168 : 1956 Nag L J 200 : 1956 All L J 156 : 1956 S C A 357 : 1956 B L J R 133 : (1955) 2 S C R 983 : 1956 Cr L J 283 (S C) : AIR 1956 S C 108 (110) (Pt B) (Pr 12).**

31 (b). Inferior tribunal, costs in favour of or against.

——Art. 226 — U. P. (Temporary) Control of Rent and Eviction Rules (1949), R. 7 — Rent Control Officer acting under the rule must consult the owner and make the allotment in accordance with his wishes — Failure to comply with the requirement vitiates the order of allotment — Non-compliance due to deliberate defiance of rule and not due to bona fide mistake — Costs in the writ proceedings should be ordered to be paid by the officer personally. ILR (1962) 2 All 377.

——Art. 226 — Writ petition — Rule as to costs of Tribunal and parties.

As a rule of practice, whenever a writ is sought challenging the order of a Tribunal, the Tribunal must always be a necessary party to the petition. It is equally clear :that all parties affected by that order should also be necessary parties to the petition.

Where the Tribunal decides to show cause and to contest the petition, it must take the risk as to any order that might be made with regard to costs. If the petition succeeds, the Tribunal would have to pay the costs of the petition. If the petition fails, the petitioner would have to pay the costs of the Tribunal. But the practice which is growing up for Tribunals merely to appear and to submit to the order of the Court has to be discouraged. Every citizen in that sense of the term has to submit to the orders of the Court. There is no reason why a Tribunal should file its appearance in order to do something which it will have to do, whether it appeared or not.

If the Tribunal is not contesting the petition, there is no reason why it should merely appear to file an affidavit to place all the relevant and material facts before the Court. If the Court requires any facts or information, it is always open to the Court to direct the Tribunal to file the necessary affidavit, and this can be done without the Tribunal appearing and submitting to the orders of the Court. Therefore, as a matter of practice if the Tribunal merely appears in order to submit to the orders of the Court ordinarily the Tribunal should be given its costs. 55 Bom L R 573 : ILR (1953) Bom 800 : AIR 1954 Bom 33 (34, 35) (Pt B) (Prs 6, 7) (DB).

31 (c). Special costs.

——Art. 226 — Special costs — Award of — Powers of High Court.

The arrest of the petitioner in this case was manifestly illegal due to the grossly exaggerated notion of the officials of the Co-operative Department of their powers under S. 42 (4-A) of the Co-operative Societies Act. Further the hearing of the case was quite unnecessarily prolonged as a result of the attempt of the State to justify the arrest.

Held, that the circumstances of this case justified the awarding of special costs of Rs. 500 to be paid to the petitioner. AIR 1959 All 733 (737) (Pt E) (Pr 15).

——Art. 226 — Costs or damages — Power of Court to award — (Civil Procedure Code (1908), Ss. 35 and 35-A).

No doubt the rule that costs should follow the event would apply even to proceedings under the writ jurisdistion, unless of course some special reason can be shown for making an order otherwise. But an order of costs is one thing, and an order of costs which is really an order for damages independently of the conduct of the suit or proceeding is quite another matter.

In a mandamus proceeding it is not proper that a decision on a question of damages which the petitioner may eventually suffer should be given. 1958 All L J 879 : AIR 1959 All 226 (229, 230) (Pt B) (Pr 20) (DB).

——Art. 226 — Laches — Habeas Corpus petition — Effect of delay — (Criminal Procedure Code (1898), S. 491).

Though the principle is that in cases in which the petitioner does not come to Court for redress at the earliest opportunity, the Courts shall refuse the relief prayed for, unless the petitioner is able to satisfy the Court that there is good and valid reason for the delay, delay in filing the petition is not by itself such a fatal defect as to disentitle a petitioner to the relief he wants.

Held, on facts that the delay in filing the petition had been satisfactorily accounted for and the Court would therefore, not be justified in rejecting the petition on that ground. 1957 Cr L J 1361 : ILR (1957) 2 All 42 : AIR 1957 All 782 (791) (Pt B) (Pr 12) (DB).

32. Court-fees.

See also Note 10.

——Art. 226—Andhra Court-fees and Suits Valuation Act (VII of 1956), Sch. 2 Arts. 11 (S) and 11 (U)—Petition under Art. 226, Constitution of India for appropriate direction or order — Court-fees payable on petition would be under Art. 11 (S) and not under Art. 11 (U). See Andhra Court-fees and Suits Valuation Act (VII of 1956), Sch. II Art. 11 (S). (1964) 2 Andh W R 290.

——Art. 226—Andhra Court-fees and Suits Valuation Act (7 of 1956), S. 79 (2)—Applicability—Proceeding arising otherwise, interpretation of — Writ petition—Nature of. See Andhra Court-fees and Suits Valuation Act (7 of 1956), S. 79 (2). AIR 1958 Andh Pra 267.

——Arts. 226, 225, 246 (3), Sch. VII, List II, Item 3 —High Court prescribing court-fee for proceedings before it in original jurisdiction — Powers of State legislature in this respect—Court-fee on writ petitions. See Ibid, Art. 225. AIR 1957 Andh Pra 123 (DB).

——Art. 226 — Act prescribing fee on writ petitions except habeas corpus writ to High Court, validity — Fees whether tax — See Andhra Court fees and Suits Valuation Act (7 of 1956), Sch. I, Art. 11 (1). AIR 1957 Andh Pra 123.

——Art. 226—States Reorganization Act (1956)—Ss. 3, 119, 120 and 121 — Telangana with Hyderabad forming part of Andhra Pradesh — Income-tax Appellate Tribunal at Hyderabad—Writ of mandamus—Court-fee — Necessary adaptations and modifications to Hyderabad Court-fees Act not made — Hyderabad Court-fees Act applies and not Andhra Court-fees and Suits Valuation Act— (Hyderabad Court-fees Act (2 of 1324F), Sch. II, Serial No. 1 (d) :—(Andhra Court-fees and Suits Valuation Act (7 of 1956), Sch. II, Art 11(1).) See States Reorganization Act (1956), S. 3. AIR 1957 Andh Pra 123.

——Art. 226—Withdrawal of petition—Court-fee to be refunded.

Several petitioners jointly made an application under Art. 226 of the Constitution claiming relief against the State by way of re-intstatement. Petition was opposed as being bad for multifariousness due to

misjoinder of parties and cause of action. The petition, therefore, was sought to be withdrawn with prayer for refund of court-fee.

Held, that it would be proper to order in exercise of inherent jurisdiction the refund of court-fees to the petitioners. 1960 M P L J (Notes) 45.

33. Courts, writs to.

See Note 5.

34. Declaratory relief.

● ——Art. 32—Powers of Supreme Court — Declaratory relief—Grant of.

Held, that the powers of the Supreme Court under Art. 32 are wide enough to make even a declaratory order where that is the proper relief to be given to the aggrieved party. If the impugned Act has taken away or abridged the petitioners' right under Art. 19 (1) (f) by its own terms and without anything more being done and such infraction cannot be justified, a declaration as to the invalidity of the impugned Act together with the consequential relief by way of injunction restraining the respondents from asserting any rights under the enactment so declared void will be the only appropriate reliefs which the petitioners will be entitled to get. Kochunni Nayar v State of Madras, 1959 Ker L J 464: (1959) 2 S C A 248: (1959) S C J 858 : (1959) 2 Andh W R (S C) 70 : (1959) 2 Mad L J (SC) 70: (1959) Supp (2) S C R 316: AIR 1959 S C 725 (732, 733) (Pt D) (Pr 11).

● —Art. 226—Declaration of rights.

The primary purpose of Art. 226 seems to be the enforcement of legal rights and obligations and not their declaration in vacuo. Sri D G. Vidyalaya Association v. State of U. P., 1962 All L J 329 : 1962 All W R (H C) 243 : ILR (1962) 1 All 737 : AIR 1962 All 187 (191) (Pt B) (Pr 16) (FB).

——Art. 226—Declaratory relief—Grant of.

When exercising its writ jurisdiction the High Court should not attempt to grant a declaration on the basis of a decision arrived at on a consideration of disputed facts. But where the basic facts are unchallenged and the inferences to be drawn from them are obvious the High Court is not debarred from giving a declaration if it appears necessary in order to meet the ends of justice. Civ. Misc. Writ Appln. No. 534 of 1952 dated 3-12-1954 (All), Rel. on.

Petitioner seeking in effect a declaration that he had not forfeited his Indian citizenship by applying for Pakistani passport—Basic facts unchallenged—Declaration granted under Art. 226. 1960 All L J 461 : 1960 All W R (HC) 646 : A I R 1960 All 637 (640, 641, 642) (Pt C) (Prs 7, 10).

[Overruled on another point in A I R 1962 S C 1052.]

——Art. 226—Declaratory relief.

While considering whether or not the rights of a person have been infringed it is open to a Court to consider the constitutionality of a statute under which the impugned orders are passed. But in a case where no orders have been passed under an impugned Act and no rights of the petitioner have been invaded mere declaration that the impugned Act is unconstitutional cannot be given. 1959 All W R (H C) 509 : 1959 All Cr R 427 : A I R 1959 All 57 (67) (Pt H) (Pr 21).

——Art. 226—Other remedy open.

Writ proceedings are not meant for declaratory decrees or for giving money decrees. In case a person is entitled to any subsistence allowance from his employer he can file a separate suit. The argument that the suit would involve considerable time is not acceptable because if it were accepted every suit for money should be filed under the writ jurisdiction. (1956) 1 Lab L J 242: AIR 1956 All 43 (46) (Pt D) (Pr 9).

——Art. 226 — Directions, orders or writs, etc. — Declaratory relief.

The writ jurisdiction under Art. 226 should not be utilised for the purpose of granting merely declaratory reliefs. ILR (1955) 1 All 25 : 1954 Cr L J 691 : AIR 1954 All 319 (323) (Pt D) (Pr 3) (DB).

● ——Art. 226 — Declaratory relief.

The powers of issuing writs, orders or directions should not be utilized for giving what is in essence a declaratory relief. Maqbulunissa v. Union of India, 1953 All L J 148 : 1953 All W R (H C) 212 : I L R (1953) 2 All 289 : A I R 1953 All 477 (479) (Pt C) (Pr 10) (FB).

[Overruled on another point in AIR 1961 S C 532.]

——Art. 226 — Declaration that a decree passed under an Act is null and void—If can be granted.

It is very rarely that a declaration that a decree passed under an Act is null and void is given by a Court on an application under Art. 226 of the Constitution and even otherwise as there is an alternative remedy by suit. 1952 A W R (HC) 139 : ILR (1953) 2 All 849: AIR 1952 All 697 (697) (Pt A) (Pr 3) (DB).

——Art. 226 — Powers of High Court — Grant of declaration or refund.

The High Court in exercise of jurisdiction under Art. 226 would not grant declaration or direct the refund of the amount collected from the petitioners, for in such an eventuality, any person seeking such relief, should have recourse to the ordinary Courts of law. I L R (1960) Andh Pra 42 : A I R 1960 Andh Pra 234 (246) (Pt L) (Pr 68) (DB).

——Art. 226—Writ of certiorari — What relief can be granted—Declaration of right.

Declarations are not granted by the High Court by the issuance of a writ of certiorari. Declaration of right is not a form of relief which is appropriate to proceedings under Art. 226. It is only for the enforcement of a right, that these extraordinary powers of the High Court can be invoked. A I R 1959 Andh Pra 471 (Pt G) (Pr 29) (DB).

——Art. 226—Right to relief—Relief of declaration—If available in proceedings under. See Ibid, Part III, Art. 13. A I R 1959 Andh Pra 471 (DB).

——Art. 226—Wrong recitals in letters or correspondence — If can be declared null and void or ultra vires. A I R 1958 Andh Pra 632 (635) (Pt C) (Pr 8) (DB).

——Art. 226—Declaratory relief—Permissibility.

Where a petitioner seeks a declaration that the officer dealing with his income-tax assessment should be directed to keep himself within the limits and bounds of the statute, such relief being merely declaratory, should not be granted 1958 Andh L T 528 : (1958) 2 Andh W R 353 : (1958) 34 I T R 216.

——Art. 226—Declaratory relief—What is.

An application for an order directing the respondent to forbear from holding elections to the municipal council is not one for declaratory relief. I L R (1956) Andh Pra 480 : 1956 Andh W R 711 : A I R 1957 Andh Pra 833 (837) (Pt G) (Pr 18) (DB).

——Art 226—Certiorari — Dispute between private parties—Infructuous declarations sought for—Jurisdiction cannot be invoked.

The jurisdiction of the High Court under Art. 226 of the Constitution cannot be invoked for the purpose of obtaining infructuous declarations.

Held, on facts, that under Art. 226 of the Constitution the High Court could grant relief to the petitioner only against illegal acts of the State. It could not exercise its power to decide the dispute as to the interpretation of the agreement or the possession being taken by the other parties in a private capacity over the land as a trespasser. (ii) that merely because the land was sought to be acquired for the Corporation, no relief could be granted against it for the acts which it was alleged to have done as trespasser or in violation of the terms of its agreement with the petitioner independently of the Government. I L R (1962) 14 Assam 404 : A I R 1962 Assam 132 (133) (Pt B) (Prs 5, 6) (DB).

● ——Art. 226—Relief of declaration.

Obiter. — Article 226 is not to be allowed as a substitute for declaratory suit. But, it does not follow that no kind of declaration can be given by way of relief under Art. 226. The jurisdiction of the High Court under Art. 226 is comprehensive enough to include powers which civil Courts can exercise. Declarations can be given by the civil Courts only in respect of certain rights and under certain conditions Art. 226 does not impose any restrictions on High Courts in the matter of reliefs. It leaves the power conferred on High Courts completely unfettered. If a declaration is a suitable relief in the circumstances of a given case, High Court is not precluded from granting it under Art. 226 The power under Art. 226 is not limited to the issue of unusual prerogative writs, other orders and directions can issue. These can be issued for the enforcement of fundamental rights and other purposes. A I R 1951 S C 41 : 1951 S C J 29, Rel. on ; A I R 1952 Madh B 105 ; A I R 1953 Punj 137, Commented on. Hiranmoy Bhattacherjee v. State of Assam, AIR 1954 Assam 224 (249, 250) (Pt N) (Pr 53) (FB).

——Art. 226—No existing grievance, no writ

In an application under Art. 226 the High Court is not required to grant a declaration in favour of the applicant unless that declaration is necessary for the exercise of the applicant's rights. If there be no existing grievance, no declaration can be given. A I R 1950 S C 41 ; (1952) 3 S C R 28, Rel. on. **I L R (1954) 2 Cal 281 : 57 Cal W N 194 : A I R 1953 Cal 187 (188) (Pt A) (Prs 6, 7) (DB).**

——Art. 226—Relief—Industrial dispute—Report by Labour Officer ultra vires so far as petitioners were concerned—Although writs of certiorari, prohibition or mandamus could not be issued in the case, declaration could be given. **1960 Ker L J 999 : (1960) 2 Lab L J 523 : 1961 Ker L T 223 : A I R 1961 Ker 265 (268) (Pt E) (Pr 14) (DB).**

——Art. 32 — Scope of — Mere declaration is not permissible.

The power conferred by Art. 32 on the Supreme Court has been conferred for enforcement of any of the rights conferred by Part III of the Constitution and hence a mere declaration would not be permissible within the purview of the article. **1956 Cri L J 1400 : A I R 1956 Kutch 12 (13) (Pt A) (Pr 5).**

——Art. 228—Declaratory relief.

It is true that Art. 226 of the Constitution confers a power of issuing writs on the High Court not only for the enforcement of any of the rights conferred by Part 3 but also for 'any other purpose". Even then, the granting of mere declaratory relief cannot be said to be contemplated under Art. 226 of the Constitution. Unless a declaration is necessary for the exercise of the applicant's right, such a declaration could not be given. **1956 Cri L J 1400 : A I R 1956 Kutch 12 (13) (Pt B) (Pr 6).**

——Art. 226—Jurisdiction under—Mere declaration cannot be granted—Warrant against petitioner without jurisdiction to be executed beyond jurisdiction of High Court — Writ under Art. 226, cannot be issued.

The High Court should not take action under Art. 226 unless it is first satisfied that the petitioner has a legal right which has been infringed or is about to be infringed or some illegal wrong has been inflicted upon him or is about to be inflicted upon him ; the jurisdiction under Art. 226 cannot be exercised for the purpose of granting merely a declaratory relief.

The High Court will not interfere under Art. 226 for the mere purpose of granting a declaration that the warrant under S. 100, Criminal P. C. issued by the District Magistrate of Dewas for the recovery of the petitioner from a house in Delhi is without jurisdiction if the declaration cannot be followed up by the grant of any relief. If in spite of the patent defect of the jurisdiction in the warrant, the Station House Officer of Dewas is permitted by the authorities in Delhi to execute the warrant and if the petitioner at any future time happens to be in the place named in the warrant, the petitioner can move the appropriate Court for having the execution of the warrant stayed. **1955 Cri L J 276 : Madh B L J 1954 H C R 1070 : Madh B L R 1954 Cr 160 : A I R 1955 Madh B 20 (21) (Pt A) (Pr 3) (DB).**

——Art. 226 — Declaratory relief — Issue of writ—Jurisdiction.

What the petitioner really wanted was a declaration that the settlement come to did not bind the petitioner. To get such a relief it must file a suit for a declaration. The jurisdiction of the High Court in relation to writs cannot be availed of for that purpose. **(1959) 1 Lab L J 520 : (1959-60) 16 F J R 106 : 72 Mad L W 386 : (1959) 2 Mad L J 173 : 1959 Mad L J (Cr) 627 : I L R (1959) Mad 891 : A I R 1959 Mad 441 (444) (Pt C) (Pr 14).**

——Art. 226—Mandamus—Not issued for declaring rights.

No writ of Mandamus can issue, the object of which is to declare the rights of the parties. A I R 1953 Punj 137 and A I R 1952 Cal 496, Rel. on. **(1956) 26 Com Cas 431 : ILR (1957) Mad 383 : 70 Mad L W 28 : (1957) 1 Mad L J 254 : A I R 1957 Mad 309 (312) (Pt A) (Pr 3) (DB).**

——Art. 226—Declaratory relief.

Court will not exercise jurisdiction merely for purposes of granting declaration, if it cannot be followed by grant of effective relief — Legality of search challenged — No articles seized — Petition will not be entertained inasmuch as there would be no order for return of articles, if search were held to be illegal. **19 Cut L T 103 : 1953 Cri L J 1041 : A I R 1953 Orissa 153 (154) (Pt B) (Pr 3) (DB).**

——Art. 226—Scope—(Contract Act (1872), S. 24).

The provisions of Art. 226 do not apply for getting a declaration, that is, for purposes of enforcement of a contract or to prevent breach of contract. Where, therefore, the contract was entered into between the State and the petitioner after tenders had been called, and a clause in the contract gave to the Government the right to cancel the contract at any time without assigning any reason and without their being liable for any compensation, the application under Art. 226, by the contractor that his contract was put an end to "as a result of executive action which was capriciously taken and the action of the Government was mala fide" and that it has resulted in a breach of his fundamental right under Art. 14 of the Constitution, was liable to be dismissed. Case law reviewed. (1884) 113 U. S. 27 and (1947) 334 U. S. 1, Distinguished.

ILR (1953) Punj 113 : AIR 1953 Punj 239 (239, 240) (Prs 2, 6, 7).

——Art. 226—"Directions, orders or writs".

Under Art. 226 no relief can be given which will be in the nature of declaration. A I R 1950 Pat 222 (FB), Dissented from. ILR (1953) Punj 472 : A I R 1953 Punj 137 (143) (Pt D) (Pr 23) (DB).

35. Delay in applying.

(a) Habeas Corpus.
(b) Mandamus.
(c) Factor in exercising discretion.
(d) Limitation.
(e) Absence of diligence.
(f) Excusable delay.

35. Delay in applying.

——Art. 226—Laches.

The question whether a party is guilty of laches depends upon the facts of each case. A I R 1956 Ajmer 73 (76) (Pt F) (Pr 24).

——Art. 226 — New point—Objection regarding writ petition being belated, not raised before Single Judge, must be overruled in appeal. ILR (1965) 1 All 329.

——Art. 226—Delay — Proceedings for acquisition of petitioner's land started in 1949 — Government's sanction to acquire land published in 1954 — Writ petition filed in June, 1956 — No award prepared under S. 11 of Land Acquisition Act — Disputed land not yet acquired — Held there were no laches on part of petitioner in filing petition — It was open to him to file petition at any time before his land was actually acquired and possession taken over. I L R (1965) 1 All 329.

——Art. 226—Certiorari—Laches.

So far as a writ of certiorari is concerned, the rule has always been that if a person wants to seek the aid of the Court in getting such a writ issued, he must act with the least possible delay and if he is guilty of laches, he must offer some adequate explanation. A I R 1962 All 114 (115, 116) (Pt A) (Pr 5) (DB).

——Art. 226 — Reference under S. 3, U. P. Industrial Disputes Act — Interference on ground of delay on application under Art. 226 is within discretion of High Court. See U. P. Industrial Disputes Act (28 of 1947), S. 3. A I R 1955 N U C (All) 2664.

——Art. 226—Laches and delay—Effect.

It is well settled that the jurisdiction of the High Court will not be exercised in favour of persons who are guilty of laches and inordinate delay. (1959) 2 Andh W R 53 : A I R 1959 Andh Pra 471.

——Art. 226—Delay—Effect of.

An aggrieved party who wants the High Court to exercise these extraordinary powers under Art. 226 must be very vigilant and seek relief at the earliest date. If he fails to do so and has no satisfactory explanation for the delay, then his petition is liable to be thrown out in limine. (1959) 36 I T R 527 (Bom).

——Art. 226—Delay—Effect of.

Where there has been delay or acquiescence, the Court may refuse to intervene, irrespective of the fact as to whether the assessment was valid or not. If the assessment was invalid, such an action on the part of the Court did not make it valid. But an equity Court was not bound to intervene if there had been delay or acquiescence, but would leave the parties to their ordinary legal remedies if any. (1960) 38 I T R 316 : ILR (1960) 1 Cal 33 : 64 Cal W N 963 : A I R 1959 Cal 697 (698, 700) (Pt A) (Prs 2, 6).

——Art. 226—Mandamus.

One of the conditions precedent to the issue of a writ of mandamus is that the party applying for it must not be guilty of any laches. A I R 1953 Cal 659 (657) (Pt D) (Pr 34) (DB).

——Art 226 — Laches — Writ petition — Delay—Effect of. See Constitution of Jammu and Kashmir (1957), S. 103. A I R 1958 J & K 11 (FB).

——Art. 226—Application under—Delay in making—It is for Court to examine question of delay — Failure on part of opposite party to object on ground of delay is immaterial. 1961 M P L J 1465 : 1962 Jab L J 80 : A I R 1962 Madh Pra 50 (53) (Pt B) (Pr 8) (DB).

——Art. 226—Application under—Delay in making—Application admitted for hearing — Still question of delay can be canvassed at time of hearing. 1961 M P L J 1465 : 1962 Jab L J 80 : AIR 1962 Madh Pra 50 (53) (Pt C) (Pr 8) (DB).

——Art. 226—Laches—Effect.

Mere delay in certain circumstances may not be sufficient to defeat the petition for a writ of certiorari. AIR 1954 Nag 151 (FB), Foll. 1959 M P C 712 : ILR (1959) Madh Pra 191 : 1959 M P L J 1179 : 1960 Jab L J 45 : A I R 1960 Madh Pra 109 (111) (Pt A) (Pr 8) (DB).

——Art. 226 — Minimum Wages Act (1948), S. 20 (2)—Delay in filing application — May be condoned on ground of bona fide ignorance of law. Question is for authority to decide — Not a matter for interference in proceedings under Art. 226 of the Constitution—Constitution of India, Art. 226. See Minimum Wages Act (1948), S. 20 (2). A I R 1961 Mad 310.

——Art. 226—Delay in filing writ petition — When a ground for refusing to exercise jurisdiction.

It is well settled that the delay in invoking the jurisdiction of the High Court is not by itself a ground on which the Court should refuse to exercise its jurisdiction. The question as to whether jurisdiction should be declined on the ground of delay is a matter of sound judicial discretion. Unless the delay in invoking that jurisdiction has resulted in prejudice, which must, from the very nature of the case, be reasonably expected High Court should not refuse to exercise that jurisdiction. ILR (1960) Mys 73.

——Art. 226—Jurisdiction under—Nature—Effect of inaction and inordinate delay in applying.

The power of the High Court under Art. 226 of the Constitution is a discretionary one. Inaction on the part of a petitioner for a long time and inordinate delay in approaching the Court may itself form sufficient ground for refusing the discretionary relief. AIR 1955 Pepsu 129 (131) (Pt C) (Pr 11) (DB).

——Art. 226—Laches — Effect of, on petitions under Arts. 226 and 227—No distinction. See Ibid, Art. 227. AIR 1962 Punj 490.

——Art. 226 — Laches — Effect—See Mines and Minerals (Regulation and Development) Act (1948), S. 5. A I R 1959 Punj 54.

——Art. 226 — Delay — Principles — Interference under inherent powers, with orders passed before Constitution.

Article 226 of the Constitution prescribes no period of limitation, but ordinarily no application under it will be entertained unless it is made soon after the right sought to be protected is infringed. No relief is ordinarily granted to a person who does not seek his remedy under the said Article with due diligence. Whether there is delay or not must be decided with respect to the facts of each particular case. 1953 Ker L T 703 : ILR (1953) T C 962 : AIR 1954 Trav.Co 55 (56, 57) (Prs 5, 9) (DB).

——Art. 226—Laches.

The object behind Art. 226 being the rectification of grave injustice, mere delay cannot be a ground for refusing a just writ. In considering what is delay, consideration must be paid to the harassment caused. AIR 1954 Nag 151 (FB), Rel. on. AIR 1951 Mad 250, Dist. AIR 1959 Tripura 21 (24) (Pt D) (Pr 20).

35 (a). Habeas Corpus.

——Art. 226—Delay — Habeas corpus petitions made to jail authorities reaching Supreme Court after four weeks—Delay held inordinate—Such petitions should be sent directly and at once to Supreme Court and to High Courts where they are addressed to them. 1965 Ker L T 1229 : 1966 Cr L J 602 : AIR 1966 S C 816 (819) (Pt D) (Para 12).

35 (b). Mandamus.

——Art. 226—Mandamus—Delay.

A writ of mandamus is not a writ of course or right but is within the discretion of the Court; and if there has been undue delay, it is usually not granted. It would, however, depend on the facts of each case as to whether the delay in that particular case was sufficient to disqualify the petitioner from getting the relief. The mere fact that the petitioner was in jail does not prevent him form making a petition for issue of the writ to the High Court. A I R 1956 Kutch 9 (12) (Pt D) (Prs 18, 19).

——Art. 226—Mandamus—Laches.

A writ of mandamus is not a writ of right. A person invoking the special jurisdiction of the Court for the extraordinary remedy is required to be diligent. If he comes late and does not give any explanation for the delay he does not become entitled to the remedy. AIR 1957 Cal 310, Foll. ('62) 66 Cal W N 1029.

——Art. 226—Laches—Effect — Petition for writ of mandamus.

A writ of mandamus is not a writ of right and a person invoking the special jurisdiction of the Court for the extraordinary remedy by way of a writ is required: to be diligent. A delay of about two years is fatal. AIR 1957 Cal 310, Foll. ('58) 62 Cal W N 437.

35 (c). Factor in exercising discretion.

——Art. 226—Writ petition—Limitation for filing—No law providing such period—Delay and laches — When bars discretionary relief—Petition challenging acquisition proceedings—Nature of—Effect of delay.

There is no rule of law laying down any period of limitation for filing of petitions under Art. 226 of the Constitution. The question of delay or laches is only one of the circumstances which the High Court while exercising its discretion under Art. 226 of the Constitution takes into consideration. Whether in a particular case the petitioner forfeits the exercise of discretion in its favour on account of laches or undue delay would depend on the peculiar circumstances of that case, nature of the executive action prejudicing its rights and the nature of the relief which the High Court can give under Art. 226 of the Constitution. There is no hard and fast rule laid down in this respect by the High Court or by the Supreme Court which is applicable universally in all circumstances. 1965 All L J 1187 : AIR 1966 All 237 (239, 240) (Pt A) (Pr 5).

——Art. 226 — Laches — Delay in filing petition challenging validity of land acquisition proceedings —Delay is not absolute bar to filing of petition and Court will not be deterred in entertaining petition where attempt is made to by-pass statutory provisions. AIR 1965 All 356 (360) (Pt C) (Pr 11).

——Art. 226—Laches—Relief not necessarily barred.

The relief under Art. 226 is in the discretion of the Court. There is no rule which debars a petitioner from getting relief merely because there is delay in presenting the petition. The matter of delay is only one of the considerations, which arises in granting or refusing relief under the article. 1962 All W R (H C) 12.

——Art. 226—Belated application — High Court not to exercise discretion in favour of petitioner. A I R 1955 N U C (All) 4441.

——Art. 226—Delay in applying—Petitioner is disentitled to get relief. AIR 1955 NUC (All) 4163.

——Art. 226 — Laches — Effect—Petitioner guilty of laches—Petition may be rejected. (1959) 1 Lab L J 554 (Andh Pra).

——Art. 226—Laches—Delay—Effect.

No limitation is prescribed for the exercise of powers under Art. 226, but if there has been delay, the High Court will be reluctant to exercise its discretion under Art. 226. Each case will have to be looked at on its own facts. 1961 (2) Cri L J 195 (Assam).

——Art. 226—Laches—(Sales Tax—Assam Sales Tax Act (XVII of 1947), S. 31 (1)).

Where the assessment has been completed and in some cases even the amount had been realised the High Court would not be inclined to interfere under Art. 226 of the Constitution. Civil Rules No. 132 of 1952, dated 30-1-1956 (Assam) Foll. (1957) 8 S T C 416 : AIR 1956 Assam 185 (186) (Pr 1) (DB).

——Art. 226—Delay in applying — Discretion of High Court.

The conduct of the petitioner is a relevant consideration when he comes for relief by way of extraordinary writs under Art. 226. It may disentitle him to the extraordinary relief without creating any estoppel.

Held, that for three years the petitioner was acquiescing in the order of suspension and compulsory retirement expressly and by necessary implication and was struggling to get a higher pension on the basis of compulsory retirement. In these circumstances considering his conduct of acquiescence, his failure to appeal from the order under the Fundamental Rules and also delay of three years which could not be accounted for on any reasonable basis, no case had been made out for interference with the order. ILR (1955) 7 Assam 410: AIR 1956 Assam 12 (14, 15) (Pt B) (Pr 9) (DB).

——Art. 226—Delay.

Petition under Art. 226 for writ directing Government not to enforce award of Industrial Tribunal—Award notified in October, 1952 — Petition presented on 19th November, 1953—The fact of delay, held could not be ignored. ILR (1954) 6 Assam 161 : AIR 1954 Assam 161 (164) (Pt C) (Pr 7) (DB).

——Arts. 226 and 227 — Laches.

A petitioner wanting to invoke the Court's jurisdiction under Art. 226 or 227 must come up for relief as quickly as possible.

Held on the facts of the case arising out of a dismissal of a Government servant that there was not such a gross delay on the part of the petitioner that the Court should dismiss petition solely on the ground of delay. 60 Bom L R 624 : (1958) 2 Lab L J 692 : AIR 1960 Bom 9 (10) (Pt A) (Pr 3) (DB).

——Art. 226—Laches.

It has been the uniform practice of the Hyderabad High Court not to entertain applications not filed within reasonable time from the date of the order impugned. The remedy under Art. 226 of the Constitution is a discretionary one, and the Courts will refuse to exercise the discretion in favour of a person who has not been diligent. ILR (1956) Hyd 724: AIR 1957 Hyd 14 (14) (Pt A) (Pr 3) (DB).

——Art. 226 — Laches — Extraordinary jurisdiction is seldom exercised. A I R 1955 N U C (Hyd) 1547 (DB).

——Art. 226—Delay—Effect of.

Though, ordinarily, a party invoking the jurisdiction of the High Court under Art. 226 should come at the earliest possible moment, no hard and fast rule can be laid down and it would be within the discretion of the Court trying the application to interfere in appropriate cases even if the applications are presented beyond the conventional period permitted for filing a Civil Revision Petition. 1958 Ker L J 198 : 1958 Ker L T 130 : ILR (1958) Ker 319 : AIR 1958 Ker 357 (382) (Pt A) (Pr 42) (DB).

——Art. 226—Laches—Effect.

Long delay should disentitle the petitioner to relief under Art. 226 of the Constitution. 1957 Ker L T 1082.

——Art. 226—Limitation—Effect of laches.

Though no limitation is provided for an application under Art. 226, ordinarily it is to be presented as soon as practicable after the event that furnishes a cause for the relief claimed. If the petitioner is guilty of laches it would be justifiable to deprive him of his costs. 1956 Madh B L J 187 : Madh B L R 1956 Civil 33 : AIR 1956 Madh B 175 (177) (Pt D) (Pr 6) (DB).

——Art. 226—Laches—Mere delay—Effect.

Although mere delay in approaching the Court would not legalise that what is illegal, yet the power exercisable by the High Court under Art. 226 of the Constitution is discretionary, and in the exercise of that discretionary power the question of delay can properly enter into its consideration and unexplained and unreasonable delay would disentitle the petitioner to obtain redress. No distinction can, however, be made whether the case is one for the enforcement of fundamental right or for any other purpose, so as to place the former upon a higher level which would fetter the discretion of the High Court in the exercise of its power irrespective of the extent and propriety of the delay. AIR 1954 Nag 151 (FB), Foll. 1961 M P L J (Notes) 61.

——Art. 226—Delay in filing application—Exercise of discretion by High Court—Conduct of applicant to be taken into consideration. AIR 1965 Manipur 39 (Pt A) (Prs 14, 15).

——Art. 226—Delay.

Where on merits the petitioner has a good case he should not be deprived of his remedy by a writ application merely because of the delay for which the petitioner is not responsible. ILR (1954) Cut 644 : AIR 1955 Orissa 151 (156) (Pt E) (Pr 17) (DB).

——Art. 226—Petition under — Effect of delay.

It would be an abuse of the power given to the High Court under Art. 226 to issue a writ in respect of an order of removal passed against the petitioner in the year 1948, which order the petitioner apparently accepted without demur at least till 1950. The exercise of the power under the Article is discretionary, except in the matter of enforcement of fundamental rights, and no writ can issue where the petitioner had waited from 1948 to 1954 without taking necessary action against the order. (1958) 1 Lab L J 324 : 1956 B L J R 49 : AIR 1956 Pat 23 (28) (Pt D) (Pr 14) (DB).

——Art. 226—Delay in making petition.

A party aggrieved by an order of a Court or Tribunal if he seeks to invoke the extraordinary but discretionary remedy of a writ to avoid miscarriage of justice, must do so as early as possible. In cases where there is other remedy also available, a great and unexplained delay in making the petition might render it liable to be dismissed on that score. However, where the aggrieved party has no other remedy under the law, the delay in filing a petition cannot by itself be sufficient ground for rejecting it outright. ILR (1954) Patiala 1 : AIR 1953 Pepsu 133 (136) (Pt C) (Pr 4) (DB).

——Art. 226—Inordinate delay.

Where there is inordinate delay in making the application, the Court may in its discretion reject the application. (1950) 2 Pepsu L R 443.

——Art. 226—Laches and delay afford good and valid ground for refusing writ.

Relief by way of a high prerogative writ being in the discretion of the Court, want of due diligence and promptitude on the part of the claimant may afford good and valid grounds for refusing this relief. AIR 1956 Punj 10 and AIR 1956 Punj 92 and AIR 1954 Bom 202, Rel. on. AIR 1960 Punj 58 (61, 62) (Pt. G) (Pr 5).

——Art. 226—Laches—Effect.

Acquiescence and laches would be a relevant factor and will have to be taken into consideration while exercising discretionary power under Art. 226 of the Constitution. ILR (1959) Punj 1518 : 61 Punj L R 785 : AIR 1959 Punj 460 (461, 462) (Pt B) (Pr 4) (DB).

——Arts. 226 and 227—Laches and delay in presenting petition is a ground for not exercising extraordinary jurisdiction. 1964 Raj L W 380.

35 (d). Limitation.

——Art. 226—Writ of quo warranto — Belated petition cannot be dismissed for delay— Cause of action arises 'de die in diem.'

There can be no question of delay in presenting a petition for a writ of quo warranto in which the right of a person to function in a certain capacity is challenged. Every day that the person so acts in that capacity a fresh cause of action arises. ILR (1958) Bom 113, Rel. on. AIR 1965 All 151 (152) (Pt B) (Pr 6).

——Art. 226—High Court Rules and Orders (All)—Writ Petitions Limitation—Petition filed beyond 90 days of the order without explaining the delay—Petition dismissed. (1962) 46 ITR 529 (All).

——Art. 226—Application under— Limitation — Exclusion of period—Writ application against judgment or order of Court or Officer — Period required in

obtaining copy of such judgment or order should be excluded—Period of 14 days for service of notice under Chap XXII, R. 1 (4) should also be excluded—High Court Rules and Orders—Allahabad High Court Rules—Chap. XXII, R. 1 (3), (4). 1961 All L J 726: ILR (1961) 2 All 409.

——Art. 226—Application under—Limitation.

The writ petitions under Art. 226 of the Constitution should be filed as quickly, after the delivery of judgment of the inferior tribunal as possible. A period of 90 days, which is the period fixed for appeals to the High Court from the judgments of Courts below, should be taken as the period for application for the issue of a writ of certiorari, and that time can be extended only when circumstances of a special nature, which are sufficient in the opinion of the Court, are shown to exist 1956 All L J 334: AIR 1957 All 47 (47) (Prs 2, 3) (DB).

——Art. 226—Laches—Effect—Other remedy open—Issue of writ.

The Petitioner who was a railway servant was removed from service. After pursuing the remedies under the Railway Establishment Code, he filed a writ petition against his removal on the ground that he had not in law been removed from service, the petition was filed more than ninety days after his memorial to the General Manager was rejected.

Held, that (i) the alternative remedy of suit for damages for wrongful removal of service was not appropriate. (ii) Since the judgment of the High Court in 1956 A L J 584 in which the ninety days rule of limitation was laid down had not been delivered when the petition was filed, the petition could not be dismissed on the ground of unreasonable delay. (1957) All WR (H C) 138: (1957) All L J 143: ILR (1957) 1 All 24.

——Art. 226 — Audi alteram partem — Petition for setting aside auction sale held by Official Receiver under Provincial Insolvency Act filed beyond 21 days—Application for condoning delay under S. 5, Limitation Act—Court without even ordering notice to the Official Receiver or the auction purchaser, condoning delay and entertaining application for setting aside sale—Held, that there was violation of the principle of natural justice contained in maxim audi alteram partem. See Limitation Act (1908), S. 5. A I R 1964 Andh Pra 50 (DB).

——Art. 226—Expression 'Court of appeal'—Includes every superior Court having power to review decision—Time spent in writ petition — Petition dismissed on ground of other remedy—Time held deductable under S. 14. See Limitation Act (1908), S. 14. I L R (1962) Andh Pra 865.

——Art. 226—Limitation—Appeal against judgment of single Judge—Limitation—(Limitation Act (1908), Art. 151)—(Andhra State Act (XXX of 1953), Ss. 32 and 55)—High Court Orders and Rules — Andhra Pradesh High Court (Appellate Side Rules, R. 51).

All appeals against the judgments of a single Judge on petitions under Art. 226 of the Constitution should be brought within twenty days as prescribed by Art. 151 of the Indian Limitation Act read with Ss. 32 and 55 of the Andhra State Act. R. 14 of the rules framed by the High Court for proceedings under Art. 226 does not lay down any period of limitation for the purpose and R. 51 of the Appellate Side Rules cannot be attracted to appeals against orders of a single Judge made on the original side of the High Court and a proceeding in a writ petition is a proceeding on the original side of the High Court. (1960) 1 Andh W R 36: ILR (1959) Andh Pra 1315: 1960 Andhra L T 183: AIR 1960 Andhra Pra 364 (365) (Prs 3, 4, 5) (DB).

——Art. 226—Limitation.

In the absence of valid grounds for the delay, an original petition should be filed within three months of the date on which the order sought to be quashed was passed. AIR 1959 Ker 21 (23) (Pt A) (Pr 5) (DB).

——Art. 226 — Violation of fundamental right — Continuing wrong —Limitation.

In ordinary cases, the Court would be unwilling to exercise its discretion where there have been laches. But in so far as a writ is sought on the ground of the violation of some fundamental right, the breach should be regarded to be a continuing wrong and as such the question of limitation does not arise. English Law should not in this respect be followed, the reason being that the English Constitution is not a written Constitution and there are no such fundamental rights as are the special features of the Indian Constitution. AIR 1954 M B 173 (175) (Pt D) (Pr 14) (DB).

——Art. 226 — Application under —Limitation — [Letters Patent, Cl. 27 (Nag)] — [High Court Rules and Orders — Nagpur High Court Rules, Ch. 4, Rr. 11 and 14]. AIR 1953 Nag 80, AIR 1953 Nag 251, Misc. Petn. 162 of 1952, Misc. Petn. 254 of 1952, Misc. Petn. 224 of 1952, Misc. Petn. 164 of 1952, Overruled.

It would be wholly repugnant to the nature of the proceedings and of the powers of the Court that are invoked, in the absence of a rule framed under Cl. 27 of the Letters Patent, to postulate an artificial, much less an arbitrary, standard to determine whether a petition should be thrown out in limine or considered on merits. Unless, by undue delay or laches, inconsistent legal or equitable considerations have arisen which judicial conscience cannot with equanimity ignore, justice should not be denied simply because the Court has not been moved soon after the injury was caused or threatened and the delay has not been explained. The question of delay or laches cannot be determined with reference to the number of days that have elapsed since the injury. It is presumably for this reason that the Constitution has not provided any limitation on the discretion of the Court in regard to the exercise of its powers under Art. 226, and has left it to the Court itself to determine the limits to which it will go, depending upon the justice of each case. Inasmuch as judicial decisions cannot make law, they cannot also create any rule or practice without reference to any rule making power. Thus the High Court cannot lay down a rule of diligence by reference to a number of days by a decision without framing it under its rule-making powers. Krishna v. Chief Secretary, M. P. Govt., 1954 Nag L J 218: ILR (1954) Nag 179: A I R 1954 Nag 151 (156, 157) (Prs 25, 27, 28) (FB).

——Art. 226—Laches.

Where a special law has been framed with the particular idea of expediting the disposal of a matter, it is imperative on every party who is aggrieved by the order passed under such a law to approach the High Court without undue delay. The period of 45 days, from which would be deducted the time taken up in obtaining a copy of the impugned order, is sufficient for any person who is aggrieved by the order to come up to High Court. But apart from that, if there is any further delay, then he has got to explain it. This is not a rule of limitation, but only a rule which raises a certain presumption and further it is meant to apply only to petitions whether the main relief sought is quashing an order of an inferior tribunal. A I R 1953 Nag 89 (FB), Expl.; A I R 1953 Nag 80 (FB), Ref. ILR (1953) Nag 837: 1953 Nag L J 189: AIR 1953 Nag 251 (253) (Pt F) (Pr 9) (DB).
[Overruled in AIR 1954 Nag 151 (FB)].

——Art. 226 — Limitation — Application filed 45 days after passing of impugned Order — Burden of proof is on applicant to show that court could not have been moved earlier. ILR (1952) Nag 934: (1933) Nag L J 57 : AIR 1953 Nag 80 (81) (Pr 1) (DB).

[Overruled in A I R 1954 Nag 151 (FB)].

——Art. 226— Dismissal of Public Servant — Commencement of limitation— Reliefs of declaration that order is wrongful and of arrears of salary cannot be separated —Writ petition for former relief —Does not suspend running of limitation. See Limitation Act (1908), Art. 102. AIR 1964 Orissa 111 (DB).

——Art. 226—Order under Art. 226—Leave to appeal to Supreme Court — Time requisite for obtaining judgment can be excluded. 1952 Raj L W 511 : ILR (1952) 2 Raj 492 : A I R 1952 Raj 180 (181) (Pt A) (Pr 7) (DB).

——Art. 226 — Limitation — Reasonable time for presentation of application for writ.

The conventional period permitted for presentation civil revision petitions may be regarded as a reasonable time for the presentation of applications for writs, orders or directions under Art. 226. AIR 1957 Trav-Co 231 (232, 233) (Pt A) (Pr 9) (DB).

● ——Art. 226 — Laches.

The period available for a civil revision petition is the reasonable time within which an application under Art. 226 should be presented. No hard and fast rule however can be fixed in that regard and the matter should be left to the discretion at the trying Judge or Bench to accept a petition though presented beyond that period and deal with it on the merits. A I R 1954 Trav Co 55, Referred. S. Mahadeva Iyer v. State. 1954 Ker L T 427 : I L R (1954) T C 1000 : AIR 1954 Trav-Co 469 (469) (Pt A) (Pr 1) (FB).

35 (c). Absence of diligence.

——Art. 226—Delay.

Notification against which writ was sought becoming effective on 31-3-1952—Applicant receiving copy on 18-4-1952—Representation to Chief Commissioner on 24-4-1952 — Decision not communicated — Oral information that representation would be rejected — Writ application on 18-11-1952 — Cause of action for writ held based on communication received on 18-4-1952 — Delay of 7 months held could not be condoned. 1953 A M L J 1 : A I R 1953 Ajmer 2 (1) (2) (Pr 2).

——Art. 226—Certiorari—Laches — U. P. Consolidation of Holdings Act (5 of 1954), Ss. 11 and 42 — Writ petition filed after 6 months challenging order in appeal passed by Dy. Director of Consolidation as one without jurisdiction — Order not challenged on this ground before Director in revision, which was decided on merits—Petitioner contending that though revisional authority had power to revise order of Dy. Director, he, the petitioner, had no right to file revision, and also requesting to deduct time spent in revision in considering delay — Held, that time taken in pursuing revision could not be deducted as on petitioner's own contention, he had no right to apply in revision — Held further that though Dy. Director had no jurisdiction to decide the appeal, his order had merged into that of the Director, in revision, which was on merits. 1965 All W R (HC) 666 : 1965 All L J 718.

● ——Art. 226 — Laches—Review application before Board of Revenue—No allegation of discovery of new and important matter — No mistake or error apparent on the face of the record — Board's order wrong on account of erroneous interpretation of law — Petitioner wasting time before applying for certiorari — High Court refused to issue certiorari. I L R (1963) 2 All 751 : 1963 All W R (HC) 498 : 1963 All L J 731 : AIR 1964 All 213 (220) (Pt G) (Pr 18) (FB).

——Art. 226—Delay.

Where the petitioners instead of coming to the High Court within reasonable time from the dates on which the assessment orders were passed, wasted time by applying to the Sales Tax Officers for rectification, they could not, after the delay of much time, be allowed to attack the validity of the assessment orders. (1964) 15 S T C 523 (All).

——Art. 226 — Delay — Notice under S. 9, Land Acquisition Act on 28-12-1960 — Writ petition more than six months after — Petition suffers from defect of delay — Since important questions of law were raised, his Lordship heard the petition on merits. A I R 1960 All 564 and A I R 1959 All 380, Distinguished. AIR 1963 All 426 (428, 429) (Pt A) (Pr 9).

——Art. 226 —Writ petition against assessment of tax filed beyond time — Petitioner formerly member of Town Committee — Delay due to filing of second appeal which does not lie, cannot be condoned. See Municipalities — U. P. Town Areas Act (II of 1914), S. 18. 1962 All L J 1115.

——Art. 226 — Laches — Writ petition — Delay — Effect.

It has been unanimously held that if there had been laches in bringing the matter to the High Court by way of writ petition, the Court will not interfere. (1960) I Fac L R 477 : 1960 All L J 288 : (1960) 2 Lab L J 146 : A I R 1960 All 551 (553) (Pt A) (Prs 8, 9).

——Art. 226 — Laches—Effect.

Where the impugned order was passed as long ago as February, 1950, but the petitioner moved the High Court under Art. 226 for the first time in September, 1956, and that too 13 months after the previous petition of similar nature by another had been dismissed by another Judge of the High Court and feeble explanation was attempted for the delay, the petition deserves to fail. AIR 1960 All 438 (440, 441) (Pt B) (Prs 6, 7).

——Art. 226 — Delay in applying — Effect—Single application in respect of several orders — Competency.

Where a joint writ petition when there were separate assessment orders and separate appeals was filed 8 months after the dismissal of appeals and the explanation for the delay was unsatisfactory and, further, the copies of the orders of assessment were not filed with the writ petition, the writ petition was liable to be dismissed. 1958 All W R (HC) 224 : (1958) All L J 137 : ILR (1958) 2 All 692.

——Art. 226 —Laches — Writ of certiorari to quash order against Government servant — Arts. 310 and 311.

Where in a petition praying for a writ of certiorari quashing the orders of transfer and suspension passed against the petitioner, a civil servant, it was found that the transfer order was passed on 2nd May, 1951, and the order of suspension, on 16th March, 1954, and the writ petition was filed on 26th April, 1956.

Held, that so far as the orders of transfer and suspension were concerned, there were clear laches on the part of the petitioner. (1958) 2 Lab L J 673 : 1958 All L J 218 : 1958 All W R (HC) 284.

——Art. 226—Laches—Effect of—(Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 4 (2)).

Where an order of correction under S. 4(2) of the U. P. Act 1 of 1951 is passed so far back as the year 1954 and the petitioner comes to the High Court in the year 1956 long after the order had been passed the High Court will not exercise its discretion under Art. 226 of the Constitution in circumstances. 1957 All L J 188.

——Art. 226—Laches.

Where the petition for writ was filed after more than two months of the impugned order and in the meanwhile as many as 158 witnesses had been examined before the Election Tribunal it was held that the petition was unduly delayed so as to disentitle the petitioner to any relief. 1955 All L J 425 : AIR 1955 All 251 (252) (Pt C) (Pr 5) (DB).

——Art. 226—Laches — Delay on ground of poverty cannot be condoned. AIR 1955 N U C (All) 5494.

——Art. 226—Laches (Per Sapru J.).

The High Court should not exercise its discretion in issuing writs in favour of applicants who did not raise any objection at the time when the charges under S. 40 of the U. P. Municipalities Act were forwarded to them by the U.P. State Government, that there was any ambiguity about the charges and that they were framed in such a manner as not to enable them to know the exact nature of the case against them and who went on even after the order of removal had been passed, making representations to Government without protesting against the vague, ambiguous or defective nature of the charges and did not choose to come to the High Court until after the lapse of a year of the passing of the final order by Government. The applicants had an alternative remedy, i. e., they could go to a civil Court and challenge the order passed against them on the ground that it was arbitrary, capricious, wanton and that the action in removing them was not bona fide. I L R (1952) 1 All 880 : AIR 1953 All 739 (744, 745) (Pt D) (Pr 20) (DB).

——Art. 226—Laches — Petition filed 4½ years after date of making of order — No reasonable explanation offered — Petition should fail on ground of laches. I L R (1960) 2 Andh Pra 441 : (1960) 2 Andh W R 20 : (1960) 39 I T R 629 : A I R 1960 Andh Pra 614 (615) (Pt A) (Pr 5) (DB).

——Art. 226—Laches—Effect of delay.

A person who invokes the jurisdiction of the High Court under Art. 226 should be diligent and when the delay is calculated to put the other parties to the proceedings to a great loss and prejudice the relief asked for will ordinarily be refused. AIR 1960 Andh Pra 343 (346) (Pt F) (Pr 12).

——Art. 226—Delay—Impugned order of Collector passed on 28-9-1950 — Appellate order of Board of Revenue passed on 27.8.1951 — Government rejecting memorial on 2-7-1955—Writ petition in April 1957—No explanation for inordinate delay — Petition would be rejected. (1960) 2 Lab L J 283 (Andh Pra).

——Arts. 226 and 311—Inordinate delay.

Normally, an aggrieved person should seek his remedy under Art. 226 within a period of six months. A petition filed after a delay of five years challenging an order of dismissal from service, without any satisfactory explanation for the inordinate delay, will not be entertained.

(This apart, it was held that no constitutional safeguard guaranteed under Art. 311, was violated.) (1959) 2 Lab L J 271 (Andh Pra).

——Art. 226—Laches — Effect — Petitioner guilty of laches — Petition may be rejected. (1959) 1 Lab L J 554 (Andh Pra).

——Art. 226—Adhiars found to be in possession of land in excess of 10 acres and only for 5 or 6 years—Landholder a blind person and a minor requiring land for personal cultivation — Right of occupancy not acquired — Application for ejectment held maintainable and allowed—Writ petition against appellate decision of Subordinate Judge — Delay in filing—Interference in extraordinary jurisdiction not called for. See Tenancy Laws — Assam Adhiars Protection and Regulation Act (12 of 1948) (as amended in 1955 and 1957), S. 5(1). AIR 1965 Assam 18 (DB).

——Art. 226—Laches—Effect of—Inordinate delay.

Petitioner submitted to the order of the State Transport Authority obtained renewal of his permit and applied nearly 3½ years afterwards under Art. 226 for a writ directing the State Transport Authority not to compel him to ply his bus on rotation.

Held, that the petition was liable to be dismissed on the ground of inordinate delay in applying. 1956 Madh B L J (Bhopal) 79 : A I R 1956 Bhopal 55 (57) (Pt B) (Pr 9).

——Art. 226—Laches of applicant.

Where the applicant under Art. 226 for the issue of a writ has been guilty of laches of nearly six months and the interest of a third party has been created in the land in dispute in the meanwhile and such third party has invested large sums of money on the land the High Court will refuse to issue a writ in the exercise of its discretion as it would militate against third party's interest for no fault of his. AIR 1953 Cal 223; A I R 1953 Nag 80 and A I R 1951 Mad 204, Rel. on. AIR 1954 Bhopal 1 (3) (Pt C) (Prs 12, 13).

——Arts. 226 and 227 — Laches — Petition filed after 90 days from date of order impugned — Competency.

Although no period of limitation is fixed for exercise of jurisdiction under Arts. 226 and 227 of the Constitution, if a petition is, however, filed more than 90 days from the date of the order impugned, and no reasonable explanation is offered therefor, it cannot be said that the remedy has been prosecuted with due diligence. In such a case, the High Court will not exercise its extraordinary jurisdiction under Arts. 226 and 227 of the Constitution in favour of the petitioner. A I R 1954 Bom 202 and A I R 1956 Bom 128, Foll., (1958) 1 Lab L J 28; 36 I T R 527 and A I R 1960 Raj 56, Dist. 1961 Nag L J (Notes) 63.

——Art. 226—Laches.

In all writ petitions under Art. 226 it is incumbent upon the applicant to approach the High Court as early as possible and without undue delay. Where the applicant took more than three months to file the application it must be rejected. AIR 1956 Bom 128 (129) (Pt C) (Pr 4) (DB).

——Art. 226 — Delay — Question of fact — Other remedy open—[Sea Customs Act (1878), S. 188].

A consignment of marbles arrived in Bombay on 19th December, 1952, and the bill of entry in respect of this consignment was prepared and lodged by the appellants. The contention of the Customs authorities was that the goods shown in the bills of lading were not marbles :covered by entry serial No. 103, but were game requisites-covered by serial No. 325, and that the appellants had committed a breach of the Import Trade Control Regulations by importing game requisites without the requisite licence. It was in respect of this contravention that the order was ultimately made by the Collector of Customs on 5th March, 1953 imposing a penalty of Rs. 20,000 upon the appellants. The appellants challenged this penalty, first, on the ground that the Collector had no jurisdiction to impose a penalty exceeding

Rs. 1,000. The other ground on which they challenged this order was that they had committed no contravention of the Import Trade Regulations.

The appellants preferred an appeal under S. 188 of the Sea Customs Act to the Central Excise authorities. But that appeal was dismissed because, as provided by S. 189 the appellants did not deposit the sum of Rs. 20,000. That appeal was dismissed on 16th June, 1953, and it was only on 24th February, 1954, that the petition under Art. 226 was preferred.

Held, that in this particular case, delay might be excused as far as the first ground was concerned. But there could be no justification whatsoever for the gross delay on the second ground. That ground concerned a question of fact, and if the High Court could go into that question, the appellants should have approached the Court immediately, and not waited for the length of time they had taken. But apart from the question of delay, the appellants were not entitled to ask the High Court to go into that question. The only tribunal that had been set out by the Sea Customs Act was, first the Collector who had made the order and then the appellate tribunal which had been set up under S. 188 and that section in terms provided that every order passed in appeal under the section shall, subject to the power of revision conferred by S. 191 be final. **ILR (1955) Bom 318 : 56 Bom L R 115 : 1955 Cr L J 423 : AIR 1955 Bom 113 (121, 122) (Pt E) (Pr 22) (DB).**

——Art. 226 – Laches—Dismissal of Civil Servant — Issue of writ.

Where the order declaring that the petitioner had ceased to be in the employment of the Government and that the vacancy also had been filled up was passed on 7th May, 1956, and the petitioner applied for a writ under Art. 226, on 12th February, 1957:

Held, that the petitioner had not at all been vigilant. To allow the application after such a long delay would not only prejudice the administration but the new appointment which had been made, and would therefore be unjust. **AIR 1958 Cal 407 (411) (Pt D) (Pr 19).**

——Art. 226—Laches — Delay in applying—Effect.

A party desiring to invoke the assistance of the High Court by way of a writ, cannot be allowed to carry on private negotiations for the reversal of the order complained of for years and years and then when such negotiations fail, come up to the High Court at long last with an application under Art. 226. In such circumstances the application is liable to be thrown out on the ground of delay alone. **AIR 1957 Cal 720 (723) (Pt A) (Pr 8) (DB).**

——Art. 226 — Laches — Mandamus — Petition for writ—Delay—Effect of.

A writ of mandamus is not a writ of right. A person invoking the special jurisdiction of the Court for the extraordinary remedy by way of a writ is required to be diligent.

Held, on facts that the High Court would not be inclined to come to the assistance of a petitioner by a writ if he comes to the Court after six months of the order complained against. **99 Cal L J 39 : ILR (1958) 2 Cal 1 : 61 Cal W N 420 : AIR 1957 Cal 310 (316, 317) (Pt G) (Pr 22) (DB).**

——Art. 226—Unreasonable delay—No explanation—Petition not entertained. AIR 1953 Cal 223 (226) (Pt D) (Pr 9).

[Overruled on another point in AIR 1954 Cal 171.]

——Art. 226 — Petition praying for issue of writ of certiorari—Laches—Other remedy open—(Himachal Pradesh (Courts) Order (1948), Para. 32 (1) (a) (i).)

A Government servant filed a writ petition praying that a writ be issued to the State of Himachal Pradesh and the Union of India directing them to continue him in service. That petition was dismissed by the High Court, leaving him to seek his remedy by way of suit. He accordingly filed a suit for a declaration that the termination of his services was illegal. He obtained a decree from the Court of the District Judge. The Union of India having presented a writ petition against the District Judge after a lapse of one year and nine months.

Held, that the writ petition could not be entertained because (i) the delay in making the petition was not satisfactorily accounted for; (ii) it was open to the Union of India to file a second appeal from the appellate decision of the District Judge under para. 32 (i) of Himachal Pradesh (Courts) Order. **AIR 1960 Him Pra 16 (17, 18, 19) (Prs 7, 9, 14).**

——Art. 226—Delay in appplying — Good and satisfactory reason not given — Petition is liable to be dismissed on ground of delay itself. (1960) 1 Ker L R 684 : 1960 Ker L J 651 : 1960 Ker L T 727 : (1960) 2 Lab L J 207: AIR 1961 Ker 123 (123) (Pt B) (Pr 2).

——Art. 226 — Laches — Effect—Scheme published under Ss. 68-C and 68-D, Motor Vehicles Act (1939), after rejecting petitioner's objection — Writ Petition filed more than nine months after publication of scheme—Writ would be refused petitioner not having acted expeditiously. 1959 Ker L J 1221 : 1959 Ker L R 1271 : 1959 Ker L T 1184.

——Art. 226 – Laches — Resolutions in regard to amendment of bye-laws of co-operative society passed unanimously at meeting held on 7th August, 1955—Petitioner member present at the meeting and resolutions passed in the presence and apparently with his concurrence — Petition under Art. 226 questioning validity of resolutions and registration filed only on 14th November, 1956 — Delay that had occurred held inordinate and petition should be dismissed on that ground. 1957 Ker L T 56 : 1957 Ker L J 199 : AIR 1957 Ker 14 (15) (Pt B) (Pr 5).

——Art. 226 — Application by Municipal Counsel seeking writ of certiorari for quashing notification under S. 6, Land Acquisition Act for acquisition of land belonging to respondent and award of Land Acquisition Officer — Application filed after 14 years after issue of notification and when no time was lost in taking possession of land covered by notification—Held, petitioner could not be allowed to challenge validity of the notification. 1965 Jab L J 1060 : 1965 M P L J 961.

——Arts. 226 and 227— Delay in moving High Court caused on account of proceedings before Board of Revenue—Proceedings before Board of Revenue were untenable and misconceived — High Court declined to issue writ on the ground of inordinate delay. 1963 M P L J (Notes) 145.

——Art. 226—Petitioner's claim for extra pay alleged to be attached to a post — State refusing to pay—Remedy is by way of suit — Claim not preferred within limitation by petitioner—He cannot enforce his right under Art. 226 — Petition to enforce civil liability arising out of breach of contract or tort not to be normally entertained.

Held, on facts, if the petitioner had disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he could not be permitted to urge that as a ground for the Court dealing with his petition under Art. 226 to exercise its discretion in his favour. A I R 1981 S C 1506, Rel. on. The Court should not normally entertain a petition under Art. 226 to enforce a civil liability arising out of a breach of contract or tort to pay an amount of money due to the

claimant and the aggrieved party should be left to agitate the question in a civil suit filed for that purpose. A I R 1962 S C 1320, Rel. on. 1963 M P L J (Notes) 67.

——Art. 226 — Delay — Case not involving violation of fundamental rights or want of basic jurisdiction — Unexplained delay renders application incompetent.

Although the powers of the High Court under Art. 226 of the Constitution are wide, but having regard to the plenary nature of those powers, they have to be exercised with caution. Except in cases where fundamental right has been shockingly violated, or the authority concerned has acted altogether without basic jurisdiction, unexplained delay on the part of the petitioner in approaching the High Court for redress under Art. 226 of the Constitution is by itself sufficient to justify rejection of the petition. 1961 M P L J (Notes) 291 : 1962 Jab L J 475 : A I R 1962 Madh Pra 133 (135) (Pt A) (Pr 6) (DB).

——Art. 226—Application under — Delay in making —Considerable and unexplained delay disqualifies petitioner to assistance.

Though there is no limitation for an application for relief under Art. 226 and the Court will not call upon the petitioner under Art. 226 to give a strict arithmetical account of every day, delay that is considerable and unexplained disqualifies the petitioner to any assistance. It is certainly a principle of prudence and diligence to be applied reasonably, and further, the explanation of the delay, if any, should be considered sympathetically. But this does not mean that delay especially of several months, should be overlooked as a matter of course. A I R 1954 Nag 151 (FB) and A I R 1960 Madh Pra 299, Rel. on. 1961 M P L J 1465 : 1962 Jab L J 80 : A I R 1962 Madh Pra 50 (53) (Pt A) (Pr 6) (DB).

——Art. 226—Laches—Writ proceedings by retrenched Government servant — Delay in filing application after exhausting remedies under Service Rules—Application may be dismissed on that ground alone. See Constitution of India, Art. 311. A I R 1960 Madh Pra 299 (DB).

——Art. 226—Delay—Delay of eight months in filing petition not satisfactorily explained — Petition rejected. 1960 M P C 570 : 1960 Jab L J 1028 : 1961 M P L J 138 : A I R 1960 Madh Pra 282 (285) (Pt B) (Pr 11).

——Art. 226—Delay in applying—Effect.

The remedy under Art. 226 is extraordinary and the relief is discretionary. The High Court would not be inclined to give any relief to the petitioner on account of the unexplained delay in his coming to High Court. 1959 Jab L J 326 : 1959 M P L J 679 : AIR 1959 Madh Pra 195 (203) (Pt F) (Pr 32) (DB).

——Art. 226—Laches—Effect.

The order of the Board of Revenue was passed on 15th April, 1955, and the petition was filed on 1st February, 1956, i.e., nearly 9½ months after the final decision. No explanation had been given by the petitioner for the delay.

Held, that the petition was liable to be dismissed on the ground of inordinate delay. 1957 Jab L J 86 : 1957 M P C 32 : A I R 1957 Madh Pra 50 (52) (Pt C) (Pr 10).

——Art. 226—Laches—Effect—Jurisdiction of High Court—Nature of.

Where the action of the Custodian with respect to the property, in dispute was taken as far back as the year 1949 and even the objections raised by the petitioner before the Custodian were decided finally on 9-12-1954 by the Deputy Custodian General but the petition was filed more than twelve months after and the delay in filing petition was not at all explained:

Held, that the petitioner approached the High Court very late, and the petition was liable to be dismissed. 1957 Jab L J 210 : 1957 M P C 102 : 1957 M P L J 156 : A I R 1957 Madh Pra 32 (36) (Pt B) (Prs 31, 34) (DB).

——Art. 226 — Question depending on facts—Industrial dispute — Delay in raising dispute—Ground of delay though raised by party not considered by Labour Court—High Court has no jurisdiction to proceed with it in certiorari and to hold that laches did not disentitle the concerned party to relief. W. P. No. 129 of 1962 dated 21st April, 1964 (Mad), Reversed. A I R 1948 Mad 154, Foll. 1965 Mad W N 188 : (1965) 2 Lab L J 237 : (1965) 11 Fac L R 294 : (1965-66) 28 F J R 71 : (1965) 2 M L J 298 : 78 Mad L W 252 : A I R 1965 Mad 454 (456, 457) (Pt B) (Prs 6, 8) (DB).

——Art. 226—Delay—Delay in moving High Court not accounted for convincingly — No circumstances for condonation of laches shown — High Court can refuse to exercise jurisdiction under Art. 226—Refusal of exercise of jurisdiction prohibiting collection of sales-tax under Madras General Sales-tax Act held justified.

No party has a right to approach the High Court and to demand the exercise of jurisdiction under Art. 226 unless he has exhibited due diligence, or if there has been undue delay, he is able to account for it in a convincing manner. The exercise of writ jurisdiction is a discretionary power and a party does not approach the High Court as a matter of vested right irrespective of his own conduct. A party seeking exercise of jurisdiction under Art. 226 in his favour must exhibit due diligence and must not delay in any unconscionable manner and must not be guilty of laches. If he is so guilty, the High Court may decline to exercise the jurisdiction in his favour, though it may be that, from a strictly legal point of view, a good case existed for the exercise of jurisdiction, had the party been diligent. The situation is not affected by the question whether the party did or did not exhaust the other remedies open to him.

Where, apart from the failure by the assessee assessed to sales-tax under the Madras General Sales-tax Act, to prefer a statutory appeal against the assessment, there has been considerable delay on his part in moving the High Court for exercise of jurisdiction under Art. 226 by issuing a writ prohibiting the collection of the tax and no facts are disclosed justifying the delay or calling for condonation of the laches on the part of the petitioner, the High Court is entitled to decline to exercise its jurisdiction under Art. 226 in his favour by issuing a writ of prohibition or other appropriate writ, even though from the strictly legal point of view a good case existed for the exercise of jurisdiction, had the petitioner been diligent. A I R 1961 Mad 322 and A I R 1954 S C 403 and W. P. Nos. 972 to 974 of 1960 (Mad) and W. P. No. 966 of 1960 (Mad), Disting. 76 Mad L W 733 : (1964) 15 S T C 63 : A I R 1964 Mad 311 (313) (Pr 7) (DB).

——Art. 226 — Delay — That the petitioner after adverse order was trying to induce Government to reconsider order and that he was unwilling to jeopardise his position by antagonising Government against him by filing writ petition, will not help petitioner to get over infirmities arising out of delay and laches. (1962) 5 Fac L R 262 : (1963) 1 Lab L J 46 : (1962) 2 Mad L J 140 : 75 Mad L W 758 : AIR 1962 Mad 485 (486) (Pt A) (Pr 4).

——Art. 226 — Delay — Writ petition filed 6 years after order of dismissal—Explanation that petitioner

was waiting for disposal of criminal cases against him—Claim not as of right but for mercy—Petitioner not diligent — Delay not pardonable. A I R 1962 Manipur 52 (54) (Pt A) (Pr 8).

——Art. 226—Laches—Delay in applying.

There is no rule of limitation as regards applications under Art. 226 and whether an application should be refused on the ground of laches depends on the circumstances of each case:

Held, that three years was a long period, the petitioner had been guilty of laches and that would be a reason why the petition should not be entertained. A I R 1951 Mad 250 and A I R 1957 Cal 578, Rel. on. A I R 1959 Manipur 17 (20) (Pt E) (Pr 20).

——Art. 226—Laches.

Delay of about three months—No satisfactory explanation given for delay—Delay held as one of grounds for refusing issue of mandamus. AIR 1951 Mad 204, Relied on. 1956 Cr L J 252 : AIR 1956 Manipur 11 (12, 13) (Pt D) (Pr 7).

——Art. 226—Petition under—Laches—Discretion of High Court to issue writ or not — High Court can refuse although violation of fundamental right is alleged.

The petitioner entered Government service in the department of Education in 1932. The respondents entered the department after her. At the time she entered service there was a rule to the effect that no lady should be promoted as a District Educational Officer. Even after the Constitution came into force the rule was not altered. In view of the rule the respondents who were juniors were promoted as D. E. Os. Meanwhile the petitioner was agitating that the rule was invalid in view of Art. 15 and her plea was finally accepted and she was promoted as a D. E. O. in 1954. But it was not given any retrospective effect. Later she was temporarily appointed as Deputy Director of Public Instruction in 1962. But for want of vacancy as she was the juniormost for the post she was reverted to her substantive post. In the writ petition she sought to make the order of her promotion with retrospective effect when her junior was promoted to that post and claimed that her further promotion should be deemed to be with effect from the date when the respondent was promoted and she claimed difference of salary.

Held, that the petitioner was guilty of serious laches. She approached the Court after a delay of over 11 years. She offered no explanation in that regard. Evidently she was sitting on the fence. It was only when she was reverted from the post of Deputy Director of Public Instruction in 1962 for want of vacancy, she thought it fit to dig into the past and resurrect her forgotten grievances.

It is within the discretion of the High Court to issue a writ or not. It is undoubtedly true that the discretion is not an arbitrary discretion but regulated by well-accepted principles. If a party does not move the High Court within a reasonable period after she became entitled to a relief, the reasonableness of the period in a given case depending on its own facts, the High Court would decline the relief prayed for. This would be so whether the relief prayed for by him relates to a fundamental right or otherwise. (1965) 2 Mys L J 589 : AIR 1966 Mys 211.

——Art. 226—Laches — Inordinate delay in filing petition — Petitioner held disentitled to any relief. (1964) 1 Mys L J 318 : AIR 1965 Mys 41 (46) (Pt D) (Pr 7) (DB).

——Art. 226—Laches— Acquisition of lands—Direction under S. 17 (4), Land Acquisition Act issued by Government in Notification under S. 4 of the Act on 13-12-60 — Notification under S. 6 on 10-4-61—Writ petition against direction filed on 31-7-61—Held land-holder acquiesced in the direction by Government and he could not invoke jurisdiction of High Court under Art. 226 for such great laches. (1965) 1 Mys L J 275 : AIR 1963 Mys 318 (323) (Pt D) (Pr 22) (DB).

——Art. 226—Delay — Order of Collector, Central Excises and Land Customs under item (8) of S. 167 Sea Customs Act, imposing penalty not shown to be without jurisdiction — Fundamental rights not infringed—Delay held could not be condoned.

The High Court would refuse to exercise its jurisdiction under Art. 226 when there has been unexplained delay in the presentation of the application for a writ under that article.

Held, on facts that the petitioner failed because of undue delay. Held, further, that since the petitioner failed to show that the impugned order had resulted in any infraction of his fundamental rights or that the order of the Collector was wholly without jurisdiction, it could not be contended by the petitioner that the delay in presentation of the petition should not result in its dismissal. It could not be said that the Collector in making the impugned order under S. 167 (8) of the Sea Customs Act acted wholly without jurisdiction even on the assumption that if there had been no such finding, his order should have to be regarded as one made without jurisdiction. AIR 1954 Nag 151 (FB), Applied. 1961 (2) Cri L J 791 : 39 Mys L J 622 : I L R (1960) Mys 683 : AIR 1961 Mys 263 (265, 266, 267) (Prs 11, 13, 16, 18, 19, 26, 27, 28, 41) (DB).

——Art. 226—Delay of three years.

An aggrieved party who invokes the extraordinary jurisdiction under Art. 226 of the High Court should do so at the earliest opportunity, at any rate within a reasonable period from the date of the order which affects him. When the petitioner moved the High Court under Art. 226 nearly three years after the impugned order, the High Court refused to grant any relief to the petitioner. 38 Mys L J 522 : I L R 1959) Mys 678 : AIR 1960 Mys 255 (259) (Pt B), (Pr 8) (DB).

——Art. 226—Delay in filing application.

When a Government servant aggrieved by an order of reduction in rank passed against him files an application under Art. 226 in the High Court more than two years after the orders of cancellation of his promotion he is guilty of undue delay in filing the application and consequently he is not entitled to succeed. AIR 1959 Orissa 113 (121) (Pt B) (Pr 22) (DB).

——Art. 226—Delay.

Inordinate delay of ten months in seeking the remedy under Art. 226, is a good ground for rejecting the prayer, as the Court will not be inclined in favour of a party who has been admittedly guilty of laches. ILR (1953) Cut 659 : AIR 1954 Orissa 87 (93) (Pt H) (Pr 20) (DB).

——Art. 226—Quo warranto—Laches.

Writ, if can issue after great lapse of time — Quaere.

Held on facts that the petitioner was guilty of laches and was out of Court on this ground. AIR 1952 Orissa 359 (384) (Pt F) (Pr 66) (DB).

——Art. 226—Duty of petitioner.

The duty of the petitioner is to state clearly in the affidavit all matters by way of explanation for any apparent delay in making the application or acquiescence and he has a duty to specifically bring such

matters to the notice of the Court when making the motion. AIR 1952 Orissa 251 (254) (Pt B) (Pr 5) (DB).

—Art. 226 — Laches — Order becoming final by party's own act—Jurisdiction under Art. 226 will not be exercised—Order under Bihar Sales Tax Act (19 of 1959), S. 23.

Where the petitioner by his own default has allowed the law of limitation to run against him and has allowed the assessment order to become final, the High Court will not exercise its extraordinary jurisdiction under Art. 226. AIR 1959 Pat 889; AIR 1961 S C 1506 and 1965 B L J R 314, Rel. on. 1965 B L J R 875.

—Art. 226 — Certiorari — Petition for—Effect of delay and bad faith.

Where there is undue delay in applying for a writ of certiorari without any satisfactory explanation for it and the entire transaction to protect which the writ is prayed, is vitiated by bad faith, the petitioner cannot invoke the extraordinary jurisdiction of the Court under Art. 226 of the Constitution. AIR 1958 Pat 29 (31) (Pt B) (Pr 5) (DB).

—Art. 226—Delay in filing petition—No satisfactory explanation given by the petitioner for the delay—Petition is to be dismissed. AIR 1954 Bom 202 and 1955 P L R 507, Rel. on. 1963 Cur L J 584 : ('64) 66 Punj L R 185.

[Reversed in AIR 1964 Punj 337 (FB).]

—Art. 226—Delay—Writ petition in service matters—Effect.

Delay in service matters is far more objectionable than in others because in the meantime the vacancy caused by the impugned order may have been filled and the aggrieved employee may also have sought service elsewhere. 1963 Cur L J 260 (Punj).

—Art. 226—Delay and laches—High Court refused to exercise its extraordinary jurisdiction.

A petition under Art. 226 of the Constitution must be brought without unreasonable delay and a Court exercising its equitable jurisdiction is extremely reluctant to examine the grievances of a person who has not shown reasonable diligence in the assertion of his claim or who has slept upon his rights for an unreasonable period of time or who has failed to show an excuse for his laches in asserting the said rights. Some satisfactory explanation ought to be given by such a petitioner if he fails to assert his claim at an earlier date. The delay of six months in the present case has not been explained at all and the petitioner has been guilty of undue laches. ('62) 64 Punj L R 1014.

—Art. 226—Laches—Delay—Order of suspension—Inordinate delay of four years in filing petition under Art. 226 seeking to have order of suspension and holding of inquiry quashed not satisfactorily explained and therefore disentitled the petitioner from obtaining extraordinary remedies from High Court. AIR 1960 Punj 646 (649, 650) (Pt C) (Pr 7) (DB).

—Art. 226—Laches—Effect of.

Though it is open to the High Court to allow an amendment to a petition under Art. 226 of the Constitution having regard to the peculiar circumstances of a particular case even after delay, in the matter of exercise of discretion in this respect the Court must have at least some circumstances before it which tend to justify the reason for not applying for amendment in proper time. (1959-60) 16 F J R 152 : A I R 1960 Punj 76 (78) (Pt C) (Pr 11).

—Art. 226 — Laches — Undue and unexplained delay—Effect.

On grounds of undue and unexplained delay and laches relief by way of high prerogative writ can legitimately and properly be refused. A I R 1959 Punj 643 (645, 646) (Pt D) (Pr 5).

—Art. 226—Laches—Effect.

Parties applying under Art. 226 after delay of two years — Alternate remedy by way of appeal against the decision already pending — Petition can be dismissed on these grounds alone. I L R (1958) Punj 134 : AIR 1959 Punj 478 (479) (Pt B) (Pr 8).

—Arts. 226 and 311 — Delay—Effect of—Matters to be considered — Dismissal of Government servant —Petition filed after undue or unexplained delay — Maintainability.

Article 226 does not prescribe any period of limitation, within which an aggrieved party should apply to the High Court for redress. This matter should be considered in conjunction with the nature of the relief, the grounds on which it is so claimed, and the extent of delay. In some cases delay may be such as to lead to inference of acquiescence in the order, which is challenged in the petition, or to inference of waiver against the illegality.

In a case where dismissal is alleged to be wrongful then the order of dismissal should be promptly got set aside. An unexplained delay of three and a half years is obviously culpable delay and that by itself disentitles the petitioner to the relief claimed by him. (1919) 63 Law Ed 650, Foll. AIR 1958 Punj 16 (17) (Prs 4, 5).

—Art. 226—Laches — Excuse should find place in petition.

It is of the utmost importance that a person who seeks the intervention of the High Court under Art. 226 should give a satisfactory explanation of his failure to assert his claim at an earlier date. The excuse for his procrastination should find a place in the petition submitted by him and the facts relied upon by him should be set out clearly in the body of the petition.

An excuse that a person failed to assert his claim because of prudential reasons or because of funds or because of ill-health cannot merit serious consideration. 59 Punj L R 259 : ILR (1957) Punj 1468 : AIR 1957 Punj 220 (221, 222) (Pt B) (Pr 4) (DB).

—Art. 226—Laches—Absence of notice under S. 3, East Punjab Act (38 of 1949) — Ground raised after two years — High Court refused to interfere — (East Punjab Utilisation of Lands Act (38 of 1949); S. 3). 57 Punj L R 506 : ILR (1955) Punj 1357 : A I R 1956 Punj 92 (95) (Pt C) (Pr 12) (DB).

—Art. 226—Delay in filing petition.

The High Court will not grant any relief in the extraordinary discretion conferred by Art. 226 when an aggrieved party comes after a very long delay. Civil Writ Appln. No. 252 of 1954 (Punj), Rel. on. 57 Punj L R 490 : I L R (1956) Punj 55 : A I R 1956 Punj 10 (11) (Pt B) (Pr 7) (DB).

—Art. 226 — Laches — Petition merits dismissal. AIR 1955 N U C (Punj) 4598.

—Art. 226 — Petition for mandamus against State for fixing petitioner as a statistician in Civil Supplies Department in a certain grade — Petition made in 1962 — Position regarding the matter made clear by Government to petitioner as back as 19-10-1953 — Held petition was liable to be dismissed on ground of delay. 1965 Raj L W 373.

—Art. 226—Delay.

Where the application under Art. 226 was filed within six weeks of the dismissal of the review application:

Held, that there was no delay in filing the application. 1955 Raj L W 95 : I L R (1954) 4 Raj 526 : AIR 1954 Raj 214 (217) (Pt F) (Pr 13) (DB).

——Art. 226—Laches.

The proposition that the remedy under Art. 226 must be sought as soon as an injury is caused or threatened is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse, his chances of success in a writ petition become more slender, and in a proper case the Court may throw off a writ petition on the ground of even a short unexplained delay.

Where a petition under Art. 226 by a discharged Government servant was made about 36 months after the date of the impugned order of discharge;

Held, that the fact that the petitioner was pursuing other ultra legal remedies could not afford any excuse for the delay and therefore, the petition deserved to be dismissed in limine. 9 Sau L R 35 : AIR 1956 Sau 39 (40) (Prs 4, 5) (DB).

——Art. 226—Laches—Effect.

Once the final decision of the Government is given a representation is merely an appeal for mercy or indulgence, but it is not pursuing a remedy which the law gave to the petitioner. Such extraneous considerations cannot afford a valid explanation for the delay in applying under Art. 226. A I R 1956 Trav-Co 33, Rel. on 1956 Ker L T 233 : AIR 1957 Trav-Co 214 (215) (Pt A) (Pr 7).

——Art. 226—Laches.

A time lag that can be explained does not spell laches. "Laches" is such negligence or omission to assert a right as, taken in conjunction with the lapse of time, more or less great and other circumstances causing prejudice to an adverse party, operates as a bar in a Court of equity. 1955 Ker L T 659 : A I R 1956 Trav.Co 77 (78) (Pr 3) (DB).

——Art. 226—Laches.

A writ under Art. 226 will generally be refused in all cases where the petitioner fails to show that he has proceeded expeditiously. The only delay which the High Court will excuse in presenting a petition under Art. 226 is the delay which is caused by the petitioner pursuing a legal remedy which is given to him. Once the final decision of Government is given, a representation to the Government is merely an appeal for mercy or indulgence but is not pursuing a remedy which the law gives to the petitioner. A I R 1954 Bom 202, Rel. on.

A Head Constable was dismissed from service by an order, dated 27-9-1950. After making series of unsuccessful applications to the Government he made a petition under Art. 226 on 30-5-1955.

Held, that the petition should be dismissed on the ground of inordinate delay. I L R (1955) Trav Co 1013 : 1955 Ker L T 651 : AIR 1956 Trav-Co 33 (34) (Pt A) (Prs 1, 3, 5) (DB).

——Art. 226—Laches—When can be excused.

Delay in applying under Art. 226 to be excused requires an explanation. Such extraneous considerations as existence of a good case on the merits and the absence of any remedy other than under Art. 226 cannot afford a valid explanation and should not weigh with a Court in deciding whether the delay that has occurred in a particular case is fatal or not. ILR (1955) Trav-Co 1013 : 1955 Ker L T 651 : AIR 1956 Trav-Co 33 (34) (Pt B) (Pr 4) (DB).

——Art. 226 — Laches in presenting petition — Effect.

It is no doubt true that Art. 226 of the Constitution does not prescribe any period of limitation but ordinarily no application under it will be entertained unless it is made soon after the right sought to be protected is infringed and no relief will ordinarily be granted to a person who does not seek his remedy under the said Article with due diligence. AIR 1954 Trav-Co 55, Rel. on.

The fact that the petitioner was moving the Government subsequent to his dismissal for a reversal of their order cannot also be of any avail. The only delay that the Court will excuse is the delay involved in the pursuit of a legal remedy open to the party and no other. AIR 1954 Bom 202, Rel. on.

(In this case the petition having been presented nearly two years and eight months after the first order of dismissal and almost one year after the last order of the Government the High Court refused to entertain it on ground of delay and laches). AIR 1955 Trav-Co 175 (176) (Prs 5, 8).

——Art. 226 — Petition for certiorari—Laches — Limitation.

Applications for writs of certiorari which are for extraordinary remedies should be presented promptly. The period permitted for presentation of civil revision petitions may be regarded as a reasonable time for the presentation of applications for writs, orders or directions under Art. 226. No hard and fast rule can, however, be laid down and it would be within the discretion of the Judge or Bench trying the petition to interfere in appropriate cases even if the applications are presented beyond the aforesaid period of time. (In this case there had been an inordinate and unexplained delay (of 3½ years) in approaching the High Court which under the circumstances was held fatal to the petition for writ of certiorari.) AIR 1954 Trav-Co 55, Ref. Swaraj Motors Ltd v. Aluvaye Municipality, 1954 Ker L T 443 : ILR (1954) T C 997 : AIR 1954 Trav-Co 468 (468) (Pt B) (Pr 2) (FB).

——Art. 226 (1) — Writ of mandamus — Delay in applying.

No doubt an application for a writ in the nature of mandamus against an alleged invasion of a fundamental right can be made at any time; but a person who delays his application by two years cannot be heard to argue that the alternative remedy of his civil suit might take time. AIR 1952 Vindh Pra 13 (15) (Pt A) (Pr 6).

35 (f). Excusable delay.

——Art. 226 — Delay in filing writ petition — Delay condoned by High Court in exercise of its discretion — Though ground appeared to be inadequate, Supreme Court refused to interfere. Corporation of the City of Nagpur v. Nagpur Handloom Cloth Market Co., Ltd, 66 Bom LR 1161 1963 (Supp) 2 SCR 796 : (1964) 2 S C J 595 : AIR 1963 S C 1192 (1195, 1196) (Pt C) (Pr 9).

——Art. 226—Laches—Effect of.

The Judicial Commissioner's Court may entertain a petition even if the petitioner has been guilty of laches and has come to the Court late. AIR 1956 Ajmer 70 (71) (Pt A) (Pr 2).

——Art. 226—Laches—Effect of.

A petition involving the interpretation of validity of a rule (framed under Co-operative Societies Act) cannot be barred on the ground of laches. AIR 1956 Ajmer 63 (66) (Pt E) (Pr 11).

[Reversed on another point in A I R 1961 S C 1743].

——Art. 226 — Laches — Suit for declaration of tenancy right and ejectment of defendants, decreed —Land-holders admitting claim of plaintiff—Appellate Court dismissing suit on ground that lease was not registered — Review application dismissed summarily — Held, time taken in review proceedings should be considered — U. P. Tenancy Act (17 of 1939), S. 55.

The petitioners claiming to be the tenants in possession filed a suit for a declaration about the tenancy right and in the alternative claimed possession. The land-holder and the Gaon Sabha admitted the claim but other defendants contested the suit. The tenancy right was declared as well as ejectment of defendants was decreed. In appeal the suit was dismissed on the preliminary ground that the lease, the basis of claim of the plaintiff, was not registered nor the attestation in lieu of registration was properly done. This decision of appellate Court was confirmed in appeal by the Board of Revenue. The application for review filed by the petitioner was also summarily rejected.

Held, that the rejection of the review application by the Board summarily was wholly unjustified. The petitioners were justified in filing that application and hence the time taken in the proceedings should be excluded in considering the question of laches. Case law discussed.

Even if there was no registered document, by virtue of S. 55 of the U. P. Tenancy Act the tenant could have sued the zamindar for executing a document in terms of the settlement. Therefore, proof of admission only was necessary in order to create tenancy in favour of a person which was amply proved in the case. **1965 All L J 1072 : 1965 All WR (HC) 812.**

——Art. 226 — Question whether writ petition is belated or not is to be considered at the time of admission of the petition — Single Judge having exercised his discretion in favonr of petitioner, it is not for the appellate Court to go into that question and decide whether or not the Single Judge correctly exercised his discretion. **ILR (1965) 1 All 329.**

——Art. 226—Mandamus—Laches—If the petitioner considered that, rightly or wrongly, that remedy lay somewhere else, and diligently pursued that remedy, it is not possible to hold him guilty of such laches as would prevent the High Court from giving him an opportunity of obtaining relief. See Excess Profits Tax Act (1940), S. 19 (2). **(1965) 1 I T J 677: (1965) (All) 58 I T R 626 (All).**

——Art. 226—Laches.

Charge of laches cannot sustain where bona fides in pursuing wrong remedy, resulting in delay, are not open to challenge. 1962 A L J 601, Rel. on. **1964 All W R (HC) 732.**

——Art. 226—Writ petition—Limitation—Delay and laches when bar to grant of relief.

Where an assessee filed a writ petition against the Municipality challenging the imposition of house tax and water tax more than 90 days after the imposition of taxes.

Held, "that the taxes are imposed not for one year but for an indefinite period. Consequently, the liability to pay the taxes was not restricted to any particular period but was imposed for all the times to come. In such matters High Courts have viewed the question of delay leniently. Further, the petitioner could rightly challenge the imposition of the taxes only after steps were taken to recover such taxes from him. It could not be said that there was any unreasonable delay in invoking the jurisdiction of this Court under Art. 226 of the Constitution." **1962 All L J 226.**

——Arts. 226 and 311—Laches—Removal of railway employee from service—Employee proceeding against order departmentally and filing writ petition within 3 months of last order—Petition not belated. 1960 All L J 727 : (1961) 1 Lab L J 424 : AIR 1961 All 338 (340) (Pt B) (Pr 8) (DB).

——Art. 226 — Delay and laches—Order of requisition, infringing fundamental right—Refusal of relief on ground of delay.

Ordinarily delay in coming to the Court may be a good ground for refusing to interfere, but where the fundamental right of a subject is concerned, the Court will not permit the above consideration to intervene. More so where the evidence is that the petitioner has been continuously agitating against the validity of the impugned order of requisition. **1959 All W R (HC) 77 : 1959 All L J 194 : AIR 1959 All 380 (382) (Pt B) (Pr 11).**

——Art. 226 — Laches — Delay in filing petition—Effect.

There is no limitation prescribed for the exercise of the powers under Art. 226 by the High Court. But as the power itself is discretionary, the High Court generally would not exercise its power in favour of a petitioner who has come to Court after a considerable delay. No hard and fast rule can be laid down as regards the actual period.

Where the writ petition was filed nearly five months after the impugned order of assessment was made and the petitioner possibly had still a right to challenge that order when steps would be taken to realise the taxes.

Held, that it could not be said in the circumstances that the delay was so gross as to disentitle the petitioner to get relief under Art. 226. **ILR (1957) 2 All 224 : AIR 1958 All 211 (212, 213) (Pt A) (Pr 5).**

——Art. 226—Laches—Effect (Election).

A candidate for election was informed on 13th November 1956, of the rejection of his nomination and he filed a writ petition on 11th December 1956. The date of election was 20th December 1956. So he asked for interim stay of further elections and though the prayer was not granted the opposite parties were directed not to declare the results of the elections.

Held, that there were no laches. **1957 All L J 247.**

——Art. 226—Laches—Effect.

An order granting leave to the employer to dismiss workmen was passed by the Labour Appellate Tribunal on 17-3-1955. Thereupon the appropriate Government was moved under the Proviso to Sec. 15 (1), Industrial Dispute (Appellate Tribunal) Act to modify the award of the Appellate Tribunal on 29-3-1955. This representation was rejected on 16-4-1955. Thereafter an order dismissing the application was passed on 23-4-1955. Appeal against this order was dismissed on 3-5-1955. Legal opinion was then consulted and some doubt was expressed as to whether the Supreme Court should be moved or the High Court of Pepsu or the Allahabad High Court. Eventually the lawyers advised in the middle of June 1955 that the Allahabad High Court should be moved but that Court had already closed for summer vacation. The application under Art. 226 was prepared on 7-7-1955 and copies of the application were served on the standing counsel on 20-8-1955 and the application was filed on 12-9-1955.

Held, that there was no such delay as to justify the rejection of the application merely on that ground. **ILR (1957) 1 All 109 : (1957) 1 Lab L J 603 : AIR 1956 All 644(648) (Pt A) (Pr 20) (DB).**

——Art. 226—Laches of applicant.

The order of enforcement which was being challenged by writ petition, was passed by the U. P. Government on the 3rd of December, 1949. Thereafter the petitioner writes successive letters to the Government, making representations against that order and it was only on the 21st of June, 1950, that the Government sent its final reply, refusing the request of the petitioner to reconsider that order. Thereafter the petitioner took about two months' time to obtain legal advice and prepare the petition. The petition was presented on the 17th of August, 1950. Upto that date, the order had not been carried out and the State Government was still insisting that the petitioner should comply with it.

Held, that in these circumstances, it could not be said that the petition was very much belated and that the delay in filing it would be a sufficient ground to throw it out. **AIR 1954 All 705 (708) (Pt B) (Pr 3).**

[Overruled on another point in AIR 1961 S C 420.]

——Art. 226—Delay — Challenging validity of bye-law imposing licence fees—Circumstances held outweighed delay.

The delay for four years in applying for writ and challenging a certain bye-law of the District Board imposing a licence fee on certain type of factories (Sugar crushing factory, flour and rice mills, saw mills, etc.), even though they had been paying the fees for four years, without challenge, held was outweighed by the circumstances that the Constitution came into force only in 1950 that the legal position regarding the extent of power to impose license fees, was not known to the members of the public or even to the members of the bar in the Districts and that about 200 criminal prosecutions were pending at the instance of the Board, for non-payment of the licence fees, thus hampering the trade. **1954 All L J 405: AIR 1954 All 675 (678) (Pt C) (Prs 13, 14).**

——Art. 226 — Limitation for invoking jurisdiction under—Delay, when can be condoned — Jurisdiction can be exercised only in furtherance of justice — Order of Municipality in pursuance of Government Order — Order of Government not sought to be quashed — Order of Municipality alone cannot be challenged. **(1962) 1 Andh W R 43 : I L R (1962) Andh Pra 697.**

——Art. 226—Laches.

There is no period of limitation fixed by the Limitation Act for filing writs and in appropriate cases the High Court has power to excuse delay in filing writ. Thus where the petitioner was prosecuting the writ in a wrong Court for the same relief and lost no time as soon as that Court rejected the application on the ground of absence of jurisdiction in filing the writ before the proper Court the objection to the application on the ground of delay is without substance. **(1962) 1 An W R 263.**

——Art. 226—Laches.

A period of six months for a writ of certiorari is reasonable within which a writ petition can be filed unless there are special circumstances for the delay. AIR 1958 Andh Pra 206, Foll. **(1959) 35 I T R 24 : (1959) 1 Andh W R 179 : A I R 1959 Andh Pra 508 (509, 510) (Pt A) (Pr 4).**

——Art, 226 — Laches — Delay in filing writ application—Practice of High Court—(Practice)—(Limitation).

It is a well settled rule of practice that an application by way of writ of certiorari or other writs should be filed within a reasonable time from the date of the order which the applicant seeks to be quashed. Ordinarily, a period of six months may be considered reasonable, but, in extraordinary circumstances the High Court may, in its discretion, excuse the delay. **(1957) 2 Andh W R 233 : 1957 Andh L T 785 : I L R (1957) Andh Pra 594 : AIR 1958 Andh Pra 206 (206, 207) (Prs 2, 7, 9).**

——Arts. 226 and 227— Delay — Effect — Power of High Court not fettered—Government acting under S. 64-A, Motor Vehicles Act, is Tribunal — (Motor Vehicles Act (1939), S. 64-A (Mad. Amendment)).

There is no rigid or inflexible rule holding that a writ should not be entertained after a period of 11 months, even in a case of grave miscarriage of justice and flagrant violation of law.

Assuming that it is not open to High Court to issue a writ of certiorari under Article 226 by reason of the delay, the High Court has right of superintendence under Art. 227 over the Government of Madras acting under Section 64-A of the Motor Vehicles Act as the Government of Madras in exercising judicial powers under Section 64-A of the Motor Vehicles Act is a tribunal. The word 'Tribunal' is sufficiently wide enough to cover even the Government when it exercises judicial functions. AIR 1951 Mad 882; AIR 1951 Assam 96, Disting. **1955 Andh L T (Civil) 831 : 1956 Andh W R 652 : AIR 1957 Andh Pra 739 (742, 743) (Pt C) (Prs 15, 17, 19).**

——Art. 226—Delay and laches — Writ petition to quash notification under S. 6, Land Acquisition Act —Enquiry under S. 9 of Act pending—No unnecessary delay. **1956 Andh W R 1135 : AIR 1957 Andh Pra 686 (687) (Pt C) (Pr 4).**

——Art. 226—Laches — Held, under circumstances there were no laches to file petition under Art. 226 of Constitution. See Minimum Wages Act (1948), S. 5 (1) (a). **AIR 1965 Assam 92 (DB).**

——Art. 226—Delay in making application.

The question of delay is a very potent factor to be taken into account in throwing out an application for a writ of certiorari in limine; but after the issue of a rule nisi when the Court has examined the record and is satisfied that the order complained of is manifestly erroneous and illegal or without jurisdiction, the High Court would be loath to allow the mischief of the order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection.

(Note:—In this case the order of the Election Tribunal was dated 16th December, 1952, and was published in the local official Gazette on 31st December, following. The application for writ of certiorari was filed in August 1953. Yet the application was allowed.) **ILR (1955) 7 Assam 159 : AIR 1955 Assam 163 (170) (Pt G) (Pr 16) (DB).**

——Art. 226—Delay.

The delay in invoking the jurisdiction of the High Court under Art. 226 may be a good ground for declining to grant relief but where there are no laches and there is subsisting cause of action which involves assertion and denial of rights, the new remedy may be availed of, subject to the condition that it should not touch existing rights. Hiranmoy v. State of Assam, **AIR 1954 Assam 224 (245, 246) (Pt L) (Pr 44) (FB).**

——Arts. 226, 227 — Laches — Application suffering from laches is liable to be dismissed unless delay is explained—Period of 90 days from order challenged is reasonable for petition under Arts. 226 and 227—Delay can be condoned. **A I R 1955 N U C (Bhopal) 1784.**

——Art. 226—Delay.

Inordinate delay in filing petition under Art. 226

explained by the fact that the applicant was pursuing his remedy by way of appeals and petitions to department authorities and executive heads — Application held could not be thrown out on the ground of delay. **A I R 1954 Bhopal 25 (27, 28) (Pt C) (Pr 12).**

——Art. 226—Delay—Validity of legislation in question—Maintainability of petition—Question of delay cannot affect maintainability of petition.

Where a constitutional objection to the validity of a legislation is in question, what is involved is infringement of a fundamental right under the Constitution - Question of mere delay, in such a case, will not affect the maintainability of the petition. The objection is fundamental and omnipresent, whether the Court considers the infringement of a fundamental right or considers the question of ultra vires. Unless it is met and negatived, it remains at all future stages of a proceeding. It must be met at any subsequent stage of the litigation between the parties. Delay as such would not be a good ground to defeat a constitutional objection of this kind. **67 Bom L R 85 : 1965 Mah L J 271 : A I R 1966 Bom 36 (43) (Pt D) (Pr 40) (DB).**

——Art. 226—Laches — Delay in making petition—Effect.

Where the petition under Art. 226 is in the nature of a writ of quo warranto where the very right of the person to act in the responsible post of Chief Officer of the Municipality has been questioned and if his appointment is illegal, every day that he acts in that office a fresh cause of action arises and there can be no question of any delay in presenting a petition. **59 Bom L R 1088 : ILR (1958) Bom 113.**

——Art. 226—Laches—Effect.

The petitioner was officially informed by the Registrar of the University of the rejection of his nomination paper and he did not wait for an inordinate length of time, in filing the petition :

Held, that the petitioner was not guilty of delay or laches and as such was not disentitled to a relief under Art. 226 on this ground. **1957 Nag L J 67 : 59 Bom L R 300 : A I R 1957 Bom 215 (216) (Pt A) (Pr 9) (DB).**

——Art. 226 — Sufficient cause for delay in making application—Ignorance of law— Distinction between ignorance of law and mistake of law. See Payment of Wages Act (1936), S. 15 (2). **A I R 1954 Bom 537 (DB).**

——Art. 226—Laches.

The only delay which the High Court will excuse in presenting a petition under Arts. 226 and 227 is the delay which is caused by the petitioner pursuing a legal remedy which is given to him.

Thus where the decision of the Government, dated 15-1-1953 against the order of the Regional Transport Officer was challenged in the High Court on 11-5-1953 and the explanation given by the petitioners for this delay was that on February 19, 1953, the petitioners made a representation to Government to reconsider their decision and the Minister concerned rejected that representation on March 28, 1953, and the petitioners received the final order of Government on April 3, 1953.

Held, that a representation was merely an appeal for mercy or indulgence, but not pursuing a remedy which the law gave to the petitioner. The remedy pursued was extra-legal or extra-judicial. Therefore there had been such delay in the presentation of the petition as would disentitle the petitioner to any relief. **55 Bom L R 922 : ILR (1954) Bom 247 : AIR 1954 Bom 202 (203) (Pt A) (Pr 2) (DB).**

——Art. 226—Laches—Delay in filing writ petition—Matter depends on facts of each case.

Delay and laches are certainly a bar to the maintainability of an application in the writ jurisdiction. But whether there has been delay depends on the facts of each case. The provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. However, the maximum period fixed by the legislature as to the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable. AIR 1964 S C 1006, Foll.

Held, on facts, that the application was made before the period of limitation had elapsed and the delay on the part of the petitioners was not such as to disentitle them from getting relief. **69 Cal W N 328 : AIR 1965 Cal 428 (433, 434) (Pt B) (Prs 14, 15).**

——Art. 226—Delay in filing petition — Notification issued on 16-5-1960 challenged on 3-8-1961—Held in circumstances of case the petition could not be dismissed in limine on ground of delay. (1965) 1 Lab L J 387 : A I R 1964 Cal 519 (532, 533, 539) (Pt G) (Prs 43, 65) (DB).

——Art. 226—Delay — Impugned orders in violation of natural justice—Application for certiorari cannot be rejected on ground of delay alone. (1963) 55 ITR 87 (Cal).

——Art. 226—Delay—Effect.

Where the whole order of requisition is illegal and in the contravention of the express provisions of the statute and also beyond the scope of public purpose as laid down in the statute the delay in filing the application under Art. 226 cannot legalise such illegal order of requisition. **A I R 1958 Cal 510 (517) (Pt F) (Pr 29).**

——Art. 226—Laches—Conduct of petitioner.

The petitioner, instead of filing an appeal against an order of assessment under S. 11 (2) of the Bengal Finance (Sales Tax) Act had filed a review application against that order under S. 20 (4) of that Act beyond the period prescribed by R. 80 of the Sales Tax Rules. The Authority without applying its mind to the question of limitation advised the petitioner to file appeal and declined to entertain the review application.

Held, that the conduct of petitioner was not such as to disentitle him to relief under Art. 226 of the Constitution. (1958) 9 S T C 675 : AIR 1958 Cal 246 (248) (Pt B) (Pr 4).

——Art. 226 — Laches — Petition brought several years after—Competency—Failure to object—Effect of.

A person desiring to invoke the jurisdiction of the Court under Art. 226 of the Constitution must always act with reasonable diligence. If he comes after years of the date of the action of which he complains, he cannot expect his application to be entertained. **ILR (1959) 1 Cal 175 : AIR 1957 Cal 578 (580, 581) (Pt A) (Prs 8A, 9) (DB).**

——Art. 226—Laches—Notice of demand of customs duty under S. 39, Sea Customs Act on 16th April 1958 — Notice giving fifteen days time to assessee to make representation—Assessee making representation —Representation not replied to — Clearance of assessee's second consignment refused in March 1960, unless deman in respect of previous consignment

was met—Writ petition to quash order of demand dated 16th April 1958 filed—Petitioner held not guilty of laches. (1960) 1 Guj L R 267 : A I R 1961 Guj 51 (53) (Pt A) (Pr 5) (DB).

——Art. 226—Laches—Petitioner receiving intimation of rejection of appeal by Lieutenant Governor in December, 1962—Necessary copies obtained and petition filed on 7th March 1963 — Petitioner held was not guilty of laches. AIR 1966 Him Pra 13 (17) (Pt E) (Pr 20).

——Art. 226—Laches.

Proprietary land of petitioners taken over by former ruler of Bhagat State on rent for holding fair—Claim of petitioners for restoration of possession—Order of refusal to return land passed by ruler on 10th April 1948—Merger of States in Himachal Pradesh — Constitution of India coming into force on 26th January 1950 — Offer of compensation made to Government for acquisition of land, by Tahsildar on 12th April 1951—Representations for restoration of land—Final reply of Assistant Secretary (Home and Revenue) by letter, dated 25th June 1952, that land was required for Government purposes — Petitions under Art. 226 filed on 15th September 1952—Time between dates of letter of Assistant Secretary and preferment of petition under Art. 226, held was the only relevant period to be taken into consideration—There were held no laches. AIR 1956 Him Pra 95 (99) (Pt D) (Pr 17).

——Art. 226—Laches — Conservator of Forest alleging petitioner's contractor to have cut trees from reserve forest and demanding compensation from petitioner on the risk of being prosecuted—Petitioner denying his liability—Repeated demands and repeated denials — Petitioner's car attached for recovery of compensation — Petition under Art. 226 on the 18th day after attachment—Held, that application did not suffer from laches — Held, also that application was maintainable since the executive act which gave the cause of action for application under Art. 226, arose after the commencement of the Constitution. A I R 1953 Him Pra 33 (35) (Pt A) (Prs 8, 9).

——Art. 226—Mandamus—Prerequisites—No laches—No other remedy—Demand and refusal of a legal duty—Motor Vehicles Act—Provisions of—Issue of permits — Right to carry motor transport business under Art. 19 (1) (g)—Defence of act of State.

The petitioners under Art. 226 were carrying on motor transport business and applied for renewal of permanent permits after the passing of Motor Vehicles Act. The permits were renewed first for one year and then for two periods of 3 months each when they were finally informed that the State was undertaking the transport business and the permits would not be renewed thereafter. Hence the petitions.

Held: Where the procedure laid down in S. 57 of the Motor Vehicles Act was not followed and no order refusing the renewal of permits after the original period of one year, for the first issue proper under the Act, was passed, it could not be contended that the cause of action arose even when the renewal thereafter was only for 6 months (not in accordance with the provisions of the Act); the petitioners must be held to have thought their applications were still pending until definite refusal has been communicated to him. They could therefore not be held guilty of any laches on their part.

Where no order of refusal has been passed as required by S. 57 (7) of the Act and no copy of the same had been furnished to them by the Authority it cannot be held that they can appeal under the Act and that therefore no application under Art. 226 will lie. (AIR 1951 All 257, Foll.)

They had made the demand to the authority six days prior to their applications under Art. 226 and if they had waited for the replies, their business would run the risk of being stopped. The authority had also already stated that extension of permits will not be granted on any account. Hence there had been a demand and refusal. (A I R 1951 All 257 (FB), Foll.; AIR 1950 M B 46 and AIR 1949 Bom 229, Ref.)

The right of carrying on transport business falls in the category of fundamental rights mentioned in Art. 19 (1) (g). (AIR 1951 All 257 (FB), Foll.)

This fundamental right to carry on transport business within the provisions of Motor Vehicles Act, 1939, cannot therefore be infringed on the ground of nationalisation of transport in the State.

The defence of the 'act of State', in taking over the governance of the Hill States in 1948 against the right claimed as exercised by the petitioners prior to it in those States on the authority of AIR 1915 P C 59; 39 Bom 625 ; 48 Bom 613; AIR 1924 P C 216 ; AIR 1947 P C 1 are not of any avail. The right of the petitioners to ply their trade had been recognised by the Government of India after 15th April 1948 by grant of permits issued to them and could not be taken away subsequently on the rule based on an act of State. It is open to the petitioner to claim those rights in municipal Courts. AIR 1951 Him Pra 36 (39, 40) (Pt A) (Pr 9).

——Art. 226—Laches—Delay which can be excused.

The delay which a Court can excuse is one which is caused by the petitioner in pursuing a legal remedy and not a remedy which is extra legal or extra judicial, such as making representation to the Government. I L R (1956) Hyd 724 : A I R 1957 Hyd 14 (15) (Pt B) (Pr 3) (DB).

——Art. 32 (2-A) (J. and K.)—Certiorari — Laches—Land acquisition proceedings in disregard of provisions of law—Delay in filing petition not sufficient for rejecting petition.

In a matter of a serious nature such as where the property of a person is taken away in disregard of the provision of law, the Court should be very reluctant to reject his petition for a writ of certiorari to quash the entire proceedings on the mere ground of delay. A I R 1962 J & K 19 (20) (Pt A) (Pr 3).

——Art. 226—Laches—Breach of fundamental right.

The discretion vested in the High Court in overlooking delay in the presentation of a petition under Art 226 must be exercised liberally, where a fundamental right is infringed. A I R 1952 Vindh Pra 13 and A I R 1954 Madh B 173 and A I R 1954 S C 403, Rel. on. (1960) 1 Ker L R 439 : 1960 Ker L J 527 : 1960 Ker L T 565 : I L R (1960) Ker 980 : A I R 1960 Ker 386 (388) (Pt C) (Pr 4).

——Art. 226—Laches—Effect.

Order complained against passed on 4-1-1956—Three months period expiring on 4-4-1956 when Court was on vacation — Petition under article filed on reopening day, i. e., on 28-5-1956.

Held, that in the circumstances it could not be said that there had been unreasonable delay. 1957 Ker L J 380 : 1957 Ker L T 411 : A I R 1957 Ker 109 (110) (Pt A) (Pr 2).

——Art. 226—Application under—Delay in making—Petitioner seeking other remedy not provided by law.

The satisfactory way of explaining delay in making an application under Art. 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by the law. If he runs after a remedy not provided in the statute or the statutory rules the High Court cannot condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. 1961 M P L J 1465 : 1960 Jab

L J 80 : A I R 1962 Madh Pra 50 (54) (Pt D) (Pr 9) (DB).

——Art. 226—Laches — Dismissal of review petition —Petition under Art. 226 challenging appellate order about 2½ months after.

Order in Rent Control Appeal was passed on 6-4-1956 and review petition was dismissed on 8-10-1957. Petitioner challenged on 28-12-1957 order passed in appeal and not in review.

Held, that under Art. 226 order in appeal could be challenged whether or not modified in review. The petition could not be deemed to be unduly delayed from the date of the review order. **1958 M P L J (Notes) 75.**

——Art. 226—Laches—Railway employee ordered to retire from particular date—Protest letter immediately sent to personnel officer of the Division and copy to General Manager — Another appeal made to General Manager—No reply—Petition under Art. 226 — Respondent's affidavit that letter not received at Divisional Superintendent's Office—No denial that letters were not received by General Manager — Held, that there were no laches in applying for writ. A I R 1959 Mad 88 (89) (Pt C) (Pr 4).

——Art. 226 — Delay in applying under article—Effect.

Delay by itself should not disentitle the applicant to any relief. If the delay was caused by reasons which could be satisfactorily and properly explained, then the High Court would not refuse the remedy to the petitioner. **(1954) 1 Mad L J 244 : A I R 1954 Mad 587 (589) (Pt A) (Pr 3).**

——Art. 226—Delay in making application.

Though there is no period of limitation as such prescribed for application for the issue of prerogative writs, long delay can be one of the grounds for refusing to grant an application for the issue of such writs. There may, however, be circumstances which should make the High Court take a more lenient view and entertain the application even after delay. **('51) 64 Mad L W 270 : (1951) 19 I T R 402 : (1951) 1 Mad L J 417 : 1951 Mad W N 257 : I L R (1951) Mad 815 : A I R 1951 Mad 204 (206) (Pt C) (Pr 6) (DB).**

——Art. 226—Delay and laches — Land acquisition proceeding — Objection to acquisition taken from the very beginning—Writ petition filed after proceedings under S. 9 of Mysore Land Acquisition Act were taken—Question of delay held was not very material when violation of fundamental right to hold property was complained of. (1965) 1 Mys L J 269 : A I R 1965 Mys 269 (272) (Pt C) (Pr 12) (DB).

——Art. 226 — Delay — Petition made not under genuine awareness of infraction of right but under influence of subsequent events presenting with chance of obtaining relief — High Court should not entertain such petitions.

In a writ petition relating to admission into a college, the circumstance that a considerable portion of the academic year, to which the writ petition relates has expired by itself, may not or need not in all cases disentitle a petitioner from approaching the High Court or disable the High Court from entertaining such petition and issuing appropriate writ or directions such as may be found necessary in the interests of justice. Nor can the fact that petition filed sufficiently early comes to be or happens to be disposed of late in the academic year be of relevance to the point or of assistance to the petitioners.

Where, however, the petitioners have not only delayed long in approaching the High Court, but are obviously acting not so much under a genuine awareness of an infraction of rights cherished by them as under the influence of subsequent events presenting them with a chance of obtaining relief for which they could or should have applied earlier, the High Court should not entertain the petitions. **A I R 1961 Mys 263, Applied. (1963) 1 Mys L J 272 (DB).**

——Art 226—Mandamus—Delay—Petitioner reverted in service on 27-5-1949 — Petitioner continuing in service—Various representations challenging legality and propriety of reversion order — Applications not finally disposed of, when he was ordered to retire compulsorily on 13-12-1951 — Petitioner petitioning for writ of mandamus on 17-12-1951 against both orders, order of reversion and order of retirement—Held, that there was no delay. I L R (1952) Patiala 392 : A I R 1952 Pepsu 152 (155) (Pt B) (Pr 10) (DB).

——Art. 226 — Laches — Delay in filing petition for enforcement of fundamental rights—Relief cannot be refused merely on ground of delay. 1964 Cur L J 517 : A I R 1965 Punj 410 (411) (Pt B) (Pr 6).

——Art. 226—Petition for writ—Fundamental rights affected—Laches of petitioner—Not material.

It is well settled that when such rights as are covered by the chapter on fundamental rights in the Constitution are affected laches in approaching the High Court under Art. 226 would be wholly immaterial. **('61) 63 Punj L R 474.**

——Art. 226 — Waiver — There can be no waiver of fundamental rights by a party and mere laches will not deprive him of that right. A I R 1959 S C 149 and A I R 1959 Punj 544, Foll. (Obiter.) 62 Punj L R 612 : A I R 1960 Punj 439 (444) (Pt E) (Pr 10).

——Art. 226 — Delay — Effect of — Deprivation of fundamental right—Laches—If ground for depriving person of his fundamental rights. See Ibid, Art. 31 (2). A I R 1959 Punj 544 (DB).

——Arts. 226 and 19 (6) — Laches — Fundamental right—Infringemant of—Continuing wrong —Order refusing renewal of licence.

Where an order is passed refusing the renewal of licence of the petitioner to carry on certain business, it cannot be said that there is a continuing wrong by deprivation of fundamental right and that an application for the redress of the wrong can be presented at any time. **59 Punj L R 259 : I L R (1957) Punj 1468 : A I R 1957 Punj 220 (222) (Pt C) (Pr 9) (DB)**

——Art. 226—Laches—Effect—Delay held explained —(Limitation Act (1908), S. 14).

Upon an order passed by the Custodian-General on 12-2-1952 a petition under Art. 226 was filed on 14-7-1952 to the High Court at Allahabad. It was rejected on 23-3-1955 on the ground that that High Court had no jurisdiction to set aside an order passed by the Custodian-General of India. Thereupon an application for special leave to appeal under Art. 136 was filed and dismissed. Subsequently, a writ petition under Art. 32 to the Supreme Court was filed on 6-4-1955 and dismissed on 16-12-1955. Present writ petition was filed within one month thereof.

Held, that in the circumstances the delay was explained satisfactorily. **59 Pun L R 399 : I L R (1957) Punj 1146 : A I R 1957 Punj 197 (199) (Pt A) (Pr 2).**

——Art. 226—Laches—Party spending time in going in appeal where none is provided—Held, party would not be penalised because of delay caused by filing appeals. 1957 Raj L W 560 : I L R (1957) 7 Raj 878: A I R 1957 Raj 343 (348) (Pt E) (Pr 18) DB).

——Art. 226—Delay.

Where the petitioner had not given up contesting the case at any time before he came to the High

Court under Art. 226 he could not be deprived of his right to come to the High Court, on the ground of delay of 2 years. 1957 Raj L W 129 : I L R (1956) 6 Raj 982 : AIR 1957 Raj 19 (21) (Pt B) (Pr 8) (DB)

——Art. 226—Delay in presenting application under, due to applicant's attempt at getting redress by making representations to various authorities—Writ held could not be refused simply on the ground of delay thus satisfactorily explained. 1952 Raj L W 81 : I L R 1951) 1 Raj 888 : AIR 1953 Raj 22 (24) (Pt A) (Pr 6) (DB).

——Art. 226— Negligence — Delay in filing appeal under ordinary law entirely due to action of Court itself—This is no negligence as to disentitle applicant to relief under Art. 226. 1952 Raj L W 154 : I L R (1951) 1 Raj 815 : AIR 1952 Raj 162 (165, 166) (Pt D) (Pr 18) (DB).

——Art. 226—Negligence—Applicant's appeal under ordinary law dismissed for default No further steps taken for restoration — It is negligence and applicant cannot approach High Court and ask it to exercise its extra-ordinary powers under Art. 226 — But it is no negligence if the default is due entirely to his counsel, who failed to appear on account of his illness which fact had been communicated to the Court — In such case High Court will exercise its powers under Article 226. AIR 1947 Bom 46 Distinguished. 1952 Raj L W 154 : I L R (1951) 1 Raj 815 : AIR 1952 Raj 162 (165, 166) (Pt E) (Pr 18) (DB).

——Art. 226 — Application under — Delay — Grain freezed in March 1949 — Applicant making representation to Government — On 3-1-1951 applicant ordered by Government to sell grain at certain rate to certain person—Applicant taking time to make certain representations and after failure of such representations making application under Art 226 on 28-2-1951 —Under the circumstances held time had really to be counted from 3-1-1951 — Application held could not be dismissed on ground of delay. I L R (1951) 1 Raj 692 : AIR 1952 Raj 79 (80) (Pt A) (Pr 6) (DB).

——Arts. 226, 311 — Dismissal of public servant——Application under Art. 226 against State — Effect of delay.

In the absence of the plea that on account of the delay the State has been prejudiced in any manner, mere delay cannot be and has not been considered a bar to the entertainment of an application under Art. 226 of the Constitution by a Public Servant against the order of dismissal passed against him. AIR 1956 Trav.Co 35 (41) (Pt D) (Pr 23).

● ——Art. 226 - Laches.

The period available for a civil revision petition is the reasonable time within which an application under Art. 226 should be presented. No hard and fast rule however can be fixed in that regard and the matter should be left to the discretion of the trying Judge or Bench to accept a petition though presented beyond that period and deal with it on the merits. I L R (1953) Trav Co 962; AIR 1954 Trav Co 55, Ref. S. Mahadeva Iyer v. State, 1954 Ker L T 427: I L R (1954) T C 1000 : A I R 1954 Trav-Co 469 (469) (Pt A) (Pr 1) (FB).

● ——Art. 226—Laches—Opposite party barred from pleading delay as ground for dismissal.

Order for dismissal of Govt. servant on 13-8-1949 —Petition under Article for writ of certiorari presented on 17-7-1952—Opposite party though mentioning in counter-affidavit that on account of delay the petition should be dismissed not pressing the same at trial — Ground also not taken by it in the grounds of appeal or argued at the hearing of the appeal—Matter considered on merits both by trial Court and by the appellate Court which remanded case to trial Court—Held that under circumstances the opposite party was not entitled to plead delay as a ground for dismissing the petition when it was before trial Judge after remand. S. Mahadeva Iyer v. State, 1954 Ker L T 427 : I L R (1954) T C 1000 : AIR 1954 Trav-Co 469 (469) (Pt B) (Pr 2) (FB).

36. Demand and refusal of relief.

See also Note 234.

——Art. 226—Prior demand for justice is not necessary where it would be futile to do so.

A prior demand for justice need not be made where it would be utterly futile to do so. Where the precondition to the granting of relief would be the declaration of certain statutory provisions and statutory rules to be bad, a mere demand for justice would be entirely futile and in such cases absence of prior demand for justice, is not essential for invoking writ jurisdiction of the High Court. AIR 1961 Cal 289 (295) (Pt E) (Pr 7).

——Art. 226—No demand for relief made—Writ cannot be issued—Division of Union into wards—Right to question — (Bengal Village Self Government Act (5 of 1919), S. 101 (2)—Rules framed under, R. 2)

In an application under Art 226 for a high prerogative writ, a party cannot have relief which he has never asked for and that on a case which he has never made in the course of the actual proceedings before his coming to the High Court. 1963 Cal L J 214 : 59 Cal W N 103 : AIR 1955 Cal 529 (532) (Pt C) (Pr 12) (DB).

——Art. 226—Demand and refusal—Need for.

As to whether there was a demand of justice before filing the application under Art. 226 the Court has to look to the substance of the matter. Where although there was no formal demand of justice on the part of the petition in point of fact there was a resistance on behalf of the petitioner when the opposite party wanted to take possession under the order for requisition made under S. 3 (1) of the West Bengal Act (2 of 1948) it cannot be held that there was no demand of justice on the part of the petitioner and denial on part of the opposite party. AIR 1952 S C 16; 1951 S C J 803, Foll. 58 Cal W N 203 : AIR 1954 Cal 394 (394) (Pt A) (Pr 3) (DB).

——Art. 226 — Demand for justice and refusal — Candidate whose examinations were cancelled going individually in deputation to the Faculty—Denial by Head Assistant of Faculty that such demand was made—Denial held not by proper person — It should be either by Secretary to the State Medical Faculty or President of the Governing Body, both of whom were made parties. I L R (1953) 2 Cal 107 : 56 C W N 861 : AIR 1953 Cal 212 (216) (Pt D) (Pr 34) (DB).

——Art. 226 — Application for writ — Demand of justice and refusal—It necessary.

There must be a proper demand of justice as required by law preceding an application under Art. 226 of the Constitution. This demand of justice is not merely a matter of form but is a matter of substance, and the persons, against whom relief is sought must be specifically required to do the very act in respect of which relief is sought against such persons. There are however exceptions to this general rule. ('52) 56 C W N 846.

——Art. 226 Petition under, for issue of writ—Absence of demand for justice — Effect. AIR 1953 Pepsu 24 (24) (Pt A) (Pr 2).

——Art. 226 - Specific Relief Act (1877), S. 46 — Demand of justice. See Specific Relief Act (1877), S. 46. AIR 1953 Punj 137.

—Art. 226 — Motor Vehicles Act (1939), S. 57—Applicant for permit making several applications requesting Regional Transport authorities to consider his application —No action taken—Applicant moving High Court under Art. 226 of the Constitution— It could not be said that the applicant failed to make a demand for justice from authorities before coming to High Court. See Motor Vehicles Act (1939), S. 57. AIR 1953 Raj 1.

37. Directions, orders and writs.

See also Note 85.

(a) Power to pass orders that ought to have been passed.

(b) Writ, in nature of.

37. Directions, orders and writs.

See also Note 85.

—Art. 226—Scope.

Though the relief asked for in a petition under Art. 226 of the Constitution must be one to enforce a legal right and the legal right must be of the petitioner himself who complains of the violation of such a right, the Article is very wide in its scope. It confers a very wide power on the High Court to issue directions and writs of the nature mentioned in that Article. Every citizen has a legal right to file petitions for writs in the nature of habeas corpus or quo warranto as every citizen has the right to approach the Court for relief where the freedom of the individual is threatened or if he thinks that there has been a violation of any statutory provision or rule in making an appointment in which the public at large has some interest. AIR 1965 All 151 (152) (Pt A) (Pr 5).

—Art. 226—Powers of High Court.

Though the powers under Art. 226 are very wide and are not confined to the mere issue of prerogative writs and though the High Courts can pass suitable orders or directions, the said orders or directions must be passed for the same object for which usually the prerogative writs are issued. AIR 1960 All 72 (84) (Pt K) (Pr 45).

—Art. 226—Scope—Powers are very wide — Court can issue any directions to subordinate Courts. A I R 1955 NUC (All) 6046.

—Art. 226 — Powers of High Court — Nature of directions that can be issued by High Court—(1963) 1 Andh W R 344 : AIR 1963 A P 339 (343) (Pt C) (Pr 19) (DB).

—Art. 226—Scope of.

Under Art. 226 the powers of the High Court are not confined to the issue of prerogative writ only. Other suitable writs or orders can also issue of and infringement of legal rights other than fundamental rights can also be remedied by suitable writs. The infringement of a legal right may in appropriate cases attract the exercise of the discretionary powers of the Court under Art. 226. 55 C W N 326; AIR 1950 Bom 363 ; AIR 1950 Pat 387 and AIR 1950 M B 46, Rel. on. ILR (1951) 3 Assam 348 : AIR 1951 Assam 163 (166, 167) (Pt E) (Prs 22, 28) (DB).

—Art. 226—Scope—'Directions, orders or writs.'

Article 226 is not limited to writs but speaks of orders and directions as well. It is true that the Article speaks not of orders and directions simpliciter, but only of orders and directions "to any person or authority, including in appropriate cases any Government." In practice, however, actual orders affecting the orders complained of are made and it is not that only orders or directions are issued to subordinate Courts or Tribunals. 61 Cal W N 1: (1957) 1 Lab L J 272 : AIR 1957 Cal 4 (9) (Pt C) (Pr 20) (DB).

—Art. 226—High Court can go beyond contents of writs.

The High Court in issuing directions, orders and writs can travel beyond the contents of the writs which are normally issued as writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. L R (1899) A C 99 (105), Rel. on. 56 Cal W N 264 : AIR 1952 Cal 610 (612) (Pt C) (Pr 20).

—Art. 226—Declaratory decree that termination of petitioner's services is illegal—Writ cannot issue to restore petitioner to the post.

A mere declaratory decree to the effect that the termination of the petitioner's services was illegal and void, is not executable and no writ directing the State to restore the petitioner to his post can issue. AIR 1960 Him Pra 12 (13, 14) (Pr 8).

—Art. 226—Order or direction—Guiding principle for issue.

The High Court cannot issue any order or direction without being guided by the broad and fundamental principles which regulate the grant of writs It is, therefore, not tenable to say that even if a writ of prohibition or mandamus cannot issue, a direction of order more or less to the same effect may issue. A I R 1951 Mad 249, Rel. on. AIR 1960 J & K 12 (14) (Pt D) (Pr 13).

● —Art. 226—High Court's jurisdiction to entertain application under Art. 226

Per Full Bench (Kaul, C. J dissenting) — Under Art. 226 of the Constitution of India the High Court has jurisdiction to entertain applications with respect to all matters in relation to which the powers conferred by the Article may be exercised. Majority view in AIR 1950 M B 60 (FB), Overruled. AIR 1950 M B 46, Approved.

Per Kaul, C. J. :— In framing Art. 226 the word "Jurisdiction" has been scrupulously avoided and the Constitution has used only the word "power", a word which in Art. 225 is used in a connotation altogether different from that of "jurisdiction." The fact that power to issue orders in the nature of high prerogative writs is conferred upon a court as part of its general authority or capacity does not necessarily carry with it as an incident of that power the jurisdiction to take cognisance of any matter in relation to which any one of those writs could be issued. No doubt this power can be used always but subject to the condition that the High Court has some jurisdiction to implement which this power can be exercised. Thus, apart from the power to pass an order, direction or writ there must exist the authority to take cognisance of the matter in relation to which such order, direction or writ may be issued, otherwise the power remains ineffective or dormant, except in so far as it can be exercised under the existing law. Hence so long as the Madhya Bharat High Court is not invested with any original jurisdiction under Art. 226 or by the Madhya Bharat High Court of Judicature Act (8 of 1949) it cannot entertain an application under Art. 226 Dayabhai Poonambhai Patel v. Regional Transport Authority, ILR (1952) Madh Bha 454 : 52 Cri L J 1305 : AIR 1951 Madh Bha 121 (129, 134, 149) (Pt A) (Prs 48, 49, 77, 157) (FB).

● —Arts. 226 and 32 — Scope — Art. 226 does not provide remedy apart from existing law — High Court has no power to entertain under Art. 226 application for issue of writ of habeas corpus apart from S. 491, Criminal P. C. — Criminal P. C. (1898), S. 491 — AIR 1950 M. B 46, Overruled.

Per Kaul C. J. and Shinde J., (Mehta J. contra);— The Constitution contemplates two kinds of remedies for enforcement of fundamental rights — (1) Consti-

tutional remedies i. e., expressly given by the Constitution and (2) remedies available under the ordinary law of the land. Article 32 deals with a remedy expressly given by the Constitution and called constitutional remedy, while Art. 226 relates to a different subject altogether. It confers certain powers upon High Courts which they may use in the exercise of any jurisdiction vested in them by virtue of Art. 225 or any other provision of the Constitution. The subject matter of Art. 226 is not any jurisdiction which the High Court can exercise, nor any relief which it can give in exercise of a jurisdiction vested in it. It does not deal with either of those matters. On the other hand, it confers upon High Courts certain powers which they may use for giving relief in exercise of their jurisdiction. The extent of the jurisdiction of High Courts, the cases in which it can be exercised and the procedure by which it can be invoked are matters wholly outside the purview of Art 226. Article 226 does not find place in Part 3 which deals with fundamental rights and the constitutional remedies for enforcement thereof. This article belongs to a set of articles which deal with judiciary in the States.

Unlike Art. 32 of the Constitution, Art. 226 does not provide for any remedy which apart from the existing law could be available to a person for enforcement of any of the rights dealt with in Part 3 of the Constitution i. e., fundamental rights. Article 226 must be read subject to Art. 32 (3).

Article 226 only mentions some of the powers which, if law made by Parliament or other appropriate Legislature so provides, may be exercised by the High Courts under circumstances and conditions prescribed by such law. But so long as this is not done the powers conferred by Art. 226 must remain ineffective except in so far as they can be exercised under the existing law.

Accordingly, the High Court cannot entertain an application under Art. 226 for issue of a direction in the nature of habeas corpus apart from the provisions of S. 491, Criminal P. C. : AIR 1950 M B 46, Overruled.

Per Mehta J.— Article 226 is self-contained providing for the extent of jurisdiction to be exercised by High Court and also indicating the relief which can be granted by issue of appropriate writs. The procedure is indicated by rule-making power under Art. 225. The circumstances under which the powers can be invoked are also indicated. The framers of the Constitution did not contemplate that under Art. 226 only remedies available under the ordinary law of the land should be exercised by High Courts, in view of the provisions contained in Art. 226. It has widened and enlarged the jurisdiction and powers of the High Court and has provided remedy. The framers of the Constitution did not intend that the powers conferred by Art. 226 can become effective only after the necesary provision as to the circumstances and conditions in which they can be exercised and the requisite jurisdiction to exercise them is made by appropriate legislation. The exercise of powers conferred by Art. 226 is not left to the uncertainty of future legislation. Anant Bhaskar v. State, 51 Cri L J 1352 : AIR 1950 Madh Bha 60 (62, 64, 65, 67, 70) (Prs 10, 19, 23, 25, 35, 53) (FB).

[Overruled in AIR 1951 M B 121 (FB).]

——Art. 226 — 'Orders or writs' — Power of High Court to pass order or writ.

Our Constitution does not incorporate all the severe technicalities of the English law relating to the various forms of writs. It will not do to ignore the significance of the word 'orders or writs including writs in the nature of'. The circumstance that a petitioner has applied for a particular form of writ whereas he should have asked for a different kind of writ or order does not preclude the Court from moulding the remedy to the circumstances of the case. A I R 1954 S C 440, Rel. on. 1956 Mad W N 262 : (1956) 1 Lab L J 29 : AIR 1956 Mad 220 (225) (Pt G) (Pr 21).

[Overruled on another point in AIR 1958 S C 232.]

——Art. 226—Scope.

It is undoubtedly true that the extent of the power conferred on the High Courts under Art. 226 is much larger than they ever possessed before. But it is not an unlimited power. The words 'to any persen' means to any person to whom according to well-established principles writs like these mentioned in the article would lie ; and the words 'any other purpose' must be read in the context in antithesis to the words 'for the enforcement of any of the rights conferred by Part III. Obviously, writs like habeas corpus, mandamus and certiorari could be issued not only for the enforcement of any of the fundamental rights, but also for the enforcement of other legal rights, subject however to conditions well established. For instance, the writ of prohibition has always been understood as a writ which could issue only to a judicial or quasi-judicial tribunal or an inferior Court. Surely, it cannot be said that now under Art. 226 a writ in the nature of prohibition could issue even to a private person prohibiting him from doing some act which is likely to injure an applicant. A I R 1952 Cal 315, Rel. on. (1954) 1 M L J 429 : 1954 Mad W N 27 : ILR (1954) Mad 754 : 1954 Andh L J (W) H C 29 : AIR 1954 Mad 549 (551, 552) (Pt B) (Pr 9) (DB).

——Art. 226—Power of High Court—Power to issue "directions, orders or writs" apart from specified writs.

Under Art. 226 of the Constitution, the High Court has been empowered to issue any "directions, orders or writs" apart from the specified writs. The argument that "directions, orders or writs" can issue only in the circumstances in which the writs named specifically can issue, if accepted, would so restrict the meaning of the words "directions, orders or writs" as to render them otiose. It is common place that effect must be given to every provision of a statute and that no word should be regarded as a surplusage unless that would lead to an absurdity. Again, the power conferred by Art. 226 on High Courts is discretionary. It would, therefore, not be right to read limitations in the wide powers conferred by the general words used therein merely because these words are followed by some specific words which connote a restricted power, more so when the article provides that the power conferred by the specific words is included in that conferred by the general words. ILR (1951) Nag 791 : 1951 N L J 346 : AIR 1951 Nag 33 (35) (Pts B, C) (Prs 8, 9) (DB).

37 (a). Power to pass orders that ought to have been passed.

——Art. 226 — Writ of mandamus or prohibition in pending appeal.

Scope of mandamus or prohibition never embraced within its ambit a direction to an inferior Tribunal to decide the appeal pending before it in a particular way, though writ may issue to direct subordinate judicial authority to exercise a jurisdiction vested in it. AIR 1955 All 422 (425) (Pt A) (Pr 16) (DB).

—— Art. 226 — Application under S. 13 of Andhra Tenancy Act (18 of 1956), for eviction of tenant — Trial Court not considering at all material evidence on record to determine the main question of default of payment of rent—Appellate Court relying merely on doubtful document and omitting to consider other evidence — Orders of lower Courts must be quashed — Andhra Tenancy Act (18 of 1956), S. 13.

Where in a case for eviction under S. 13 of the Andhra Tenancy Act, the trial Court did not consider at all the material evidence on record to determine the rival contentions, that the amount deposited by tenant was withdrawn by him or was adjusted towards arrears of rent and consequently to that extent the tenant was in fact defaulter or not and the appellate authority also omitted to take into consideration the other material evidence, but relied merely on a document which was not free from doubts :

Held, that the orders of the Appellate Authority as well as the Trial Court must be quashed and the Trial Court should be directed to evaluate the material and give a definite finding as to whether the amount in deposit had in fact been adjusted or not. It was necessary for the Tribunal to evaluate the evidence and reach the conclusion on facts of the case. (1964) 2 Andh W R 279 : A I R 1966 Andh Pra 272 (274) (Pt A) (Pr 4).

——Art. 226—"Directions, Orders, writs, etc."

Petition under Art. 226 for getting permit for cement withheld by authorities—Judge while allowing petition also directing non-applicant authorities to issue permit—Direction held meant substitution of discretion of the Judge himself in place of that of authorities concerned — Direction held was beyond jurisdiction and illegal. 57 Cal W N 790 : AIR 1954 Cal 159 (163) (Pt E) (Pr 16) (DB).

——Art. 226—Powers of High Court — Person asked to leave protected area by Superintendent of Police within 7 days from receipt of notice — Petition for writ for quashing such order—Writ petition dismissed — Petitioner asking for some time to wind up her affairs—Judicial Commissioner has no jurisdiction to grant her time — She may apply to authorities concerned. AIR 1961 Manipur 37 (40) (Pt D) (Pr 14).

■ ——Art. 226—Powers of High Court under—While quashing the order, High Court can pass an order which ought to have been passed — English and American precedents, value of — A I R 1952 Nag 4, Overruled — (Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order, 1949, Cl. 13 (9)).

In an application under Art. 226, before the High Court against an order of Additional Deputy Commissioner confirming the decision of the Rent Controller rejecting the application of the landlord for permission to serve a notice of termination of tenancy on his tenant, upon the need of the landlord being established, the question was whether the High Court could only quash the order and send back the case to the Rent Controller or whether an order granting permission to the landlord to send a notice of termination of tenancy could be passed :

Held, per majority that while quashing the order the High Court could pass an appropriate order which ought to have been passed by the authority concerned, and the High Court had jurisdiction to grant permission to the landlord to serve notice of ejectment : I L R (1951) Nag 769 : A I R 1952 Nag 4, **Overruled**. Case law-discussed.

That the view taken in 'Sagatmel v. M. V. Deo, Addl. Deputy Commissioner, Nagpur', AIR 1952 Nag 4 was too restrictive and that the powers of the High Court under Art. 226 are wider than those envisaged in that decision. In interpreting a constitution or organic statute, that construction most beneficial to the widest possible amplitude of its power must be adopted. This does not connote that High Courts are given unlimited power to do anything by their writs or orders under Art. 226 ; but some limitation must be placed by them on their own powers. At the same time, the power conferred by Article 226 is ample and wider than the power of issuing English prerogative writs. That being so, it would not be correct to limit that power to the Indian law which preceded the Constitution or to the English Common law. Article 226 is, as it stands, an overriding and unfettered article and it is not made subject to any existing laws or to any restrictions imposed by law.

Per Mudholkar, J. ; — Article 226 of the Constitution which confers constitutional remedies is over and above the ordinary law because it is contained in the supreme law of the land. No Act of the Parliament or of a State Legislature can limit or fetter the power conferred by Art. 226. The position is different in England, because the British Parliament, being supreme, can give finality to the decision of a tribunal and take away the powers of the High Court to issue orders in the nature of mandamus, certiorari or prohibition. Even then it has been held by the Courts in England that the King's Bench Division retains power to enquire whether an inferior tribunal has acted within its jurisdiction or not. Therefore the decisions in India prior to the commencement of the Constitution and the decisions from English Courts on this question are of little value in considering the matter. The principles and practices of the Courts in England which are based upon natural justice or upon the ground of expediency (e. g., in order not to oust the jurisdiction of an ordinary tribunal or of a special tribunal created by a statute, or in order to avoid a conflict of jurisdiction with an authority created by the Constitution) should be followed. Where, however, a certain practice is being followed and principle adhered to by the Courts in England for historical reasons or for reasons peculiarly connected with the English legal system, the Courts in India should not follow that practice or adopt that principle.

The English and American precedents may afford us valuable guidance in settling the principles, but they do not control the interpretation of a written Constitution and are not of much assistance in ascertaining the legislative intent of the Constitution-makers. It is proper to interpret Art. 226 as conferring power of the widest amplitude on the High Courts ; and this power must be invoked to redress wrongs and for passing suitable orders to effectuate the decisions of the High Court.

Per Contra. — Article 226 must be taken to have given some concrete and definite powers The power which has been granted must be exercised in accordance with well-established principles. It must stop short with getting rid of orders which are wrong ; but the High Court cannot arrogate to itself the powers of every conceivable tribunal or body in the country and to pass orders in matters which are specially within the competence of those bodies. What is meant by the Article is that sometimes a direction, sometimes an order and sometimes a writ, appropriate to the case, should issue. The words are 'directions, orders or writs' and not 'any direction, order or writ.' Categories are mentioned, but the Article has nowhere said that the High Court can issue any order or direction.

High Court acting under the process of certiorari and mandamus as universally understood, cannot either decide a case itself or compel the inferior legal tribunal to come to a particular decision.

If the High Courts were to decide the matter itself, that would have not only the effect of creating a jurisdiction not existing in the High Court, but also of repealing S. 7 of the C. P. and Berar Regulation of Letting of Accomodation Act (XI of 1946) and Cl. 21 of the C. P. and Berar Letting of Houses and Rent Control Order, 1949. It would also have the effect of giving a finality to the order of the High Court whereas the final order should really be that of the Rent Controller or on appeal of the Deputy Commis

sioner. Bhailai Jagdish v. Additional Deputy Commr., Akola, I L R (1952) Nag 839 : 1952 Nag L J 613 : A I R 1953 Nag 89 (91, 98, 101, 102, 105 110, 112, 118, 120) (Pt B) (Prs 1, 49, 64, 65, 72, 91, 92, 117, 118, 119, 130, 160, 170) (FB).

——Art. 226—Power of High Court—Direction issued to Regional Transport Authority to give effect to certain order.

The power of High Court under Art. 226 is not limited to the issue of only the well-known prerogative writs under the common law. It extends to issuing directions, orders or writs for any other purposes. F. B. decision in Misc. Petn. No. 5 of 1950 D/- 25 8-1950, Relied on.

The Regional Transport Authority, Raipur, directed to observe and give effect to the Order of the Appellate authority dated 23-1-1951 by cancelling the permit granted by it. ILR (1952) Nag 69 : 1953 Nag L J 339: AIR 1952 Nag 111 (115) (Pt E) (Prs 25, 26) (DB).

——Art. 226—Scope — (Matsya Customs Ordinance (1948), S 48).

A writ of certiorari and prohibition may not be available to the petitioners where the Deputy Commissioner, Customs and Excise, Jaipur Division, passing an order under S 48, Matsya Customs Ordinance was not under any legal duty to decide the case judicially or quasi-judicially. But Art. 226 of the Constitution of India is not confined to these writs alone, and the High Court is, therefore, not altogether helpless in giving appropriate relief under Art. 226. (1953) Raj L W 47 : ILR (1952) 2 Raj 511 : AIR 1953 Raj 158 (162) (Pt E) (Pr 10) (DB).

37 (b). Writ, in nature of.

——Art. 226 – Writ of Scire facias — Meaning and nature of, indicated Writ cannot issue to rescind certificate of registration validly granted to company —Duty of Registrar of Companies while granting certificate —Object of company legal —Motive cannot be enquired into Remedy against company lies in winding up — Companies Act (1956), Ss. 33, 12, 234, 235, 237 and 243).

Writ of 'scire facias' is a Latin phrase meaning 'that you cause him to know.' The writ is of two kinds. One is satisfaction of a decree in execution. This has become obsolete. The other is issued for the purpose of rescinding Crown grants. Though it is not abolished it is now out of use even in England, except for recovery of Crown debts, and also for rescinding Crown grants and charters.

It is open to serious doubt whether this can be applied to a company incorporated under the Indian Companies Act or under some special enactment.

If a company is born, the only method to get it extinguished is by resorting to the provisions of enactments, which provide for the winding up of companies. Ample provision is made in the Indian Companies Act in this respect in the shape of Ss. 234, 235, 237 and 243 Remedy by way of a writ of scire facias is misconceived. On the assumption that it was competent for a Court to scrutinise the objects of a company, the Court considered the intent and the purpose of the formation of the company in the instant case and held that there was no foundation for the complaint that the promoters of the company had any evil designs or were actuated by the fraudulent object of defeating the rights and privileges of the workers and working journalists connected with the newspapers by transferring the business of a flourishing going concern to a dummy company I L R (1959) Andh Pra 1210 : (1960) 30 Com Cas 437 : AIR 1960 Andh Pra 123 (126, 127, 128, 129, 130) (Prs 10, 11, 15, 24, 27, 28, 30, 32, 33, 34, 43) (DB).

● —Art. 226—Scope—"In the nature of" — Meaning.

Art. 226 of the Constitution provides that the High Court can issue writs "in the nature of" certiorari and mandamus. The employment of the words "in the nature of" can have but two meanings. First, that archaic language is sought to be avoided and secondly the intention is that the power should be patterned on the accepted practice in the matter of these well-known writs though the writs as such need not be copied. It is obvious that though "blind adherence" is not contemplated, the "nature" of the writs must even be borne in mind. Bhailal Jagdish v. Additional Deputy Commissioner Akola, ILR (1952) Nag 839 : 1952 N L J 613 : A I R 1953 Nag 89 (94, 95) (Pt D) (Pr 28) (FB).

● —Art. 226—Power of High Court — Necessary directions, though not conforming to any of the writs, can be given.

Article 226 gives High Court full authority to issue necessary directions for the enforcement of any of the rights conferred by Part 3 and it does not matter even if the direction does not conform exactly to one of the writs specifically mentioned in the Article Where, therefore, High Court declares a particular provision of law by a State invalid under Art. 19 (5) of the Constitution, it can issue a direction upon the State Government prohibiting it and its officers from taking any action for the enforcement of any order under that law. Brijnandan Sharma v. State of Bihar, I L R 29 Pat 461 : 1952 Cri L J 610 : AIR 1950 Pat 322 (325) (Pt G) (Pr 11) (FB).

38. Discriminatory and mala fide orders.

See Notes 42 and 50.

39. Discretionary remedy.

(a) Dismissal of civil servant.

(b) Habeas Corpus.

See Note 195.

(c) Prohibition, writ of.

See also Note 279.

(d) Mandamums.

See Note 236.

(e) Certiorari.

See also Note 185.

39. Discretionary remedy.

● —Art. 32 — Relief under — If discretionary — Right of citizen.

The granting of an appropriate relief under Art. 32 of the Constitution is not discretionary. The citizens are ordinarily entitled to appropriate relief under Art. 32 once it is shown that their fundamental rights have been illegally or unconstitutionally violated. AIR 1959 S C 149, Rel. on. Observations in AIR 1955 S C 3 and AIR 1955 S C 1, held obiter. Daryao v. State of U. P., 1961 S C D 836 : (1961) 2 S C A 591 : (1962) 1 S C J 702 : (1962) 2 Andh W R (S C) 16 : (1962) 2 Mad L J (S C) 16 : (1962) 1 S C R 574 : AIR 1961 S C 1457 (1460, 1461) (Pt A) (Pr 6).

● ——Art. 32—Proper writ not asked for — Effect.

Article 32 gives the Courts very wide discretion in the matter of framing their writs to suit the exigencies of particular cases, and an application cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for. Charanjit Lal Chowdhury v. Union of India. 1951 S C J 29: 1951 Mad W N 111 : (1951) 21 Comp Cas 33 : 1950 S C R 869 : 53 Bom L R 499 : ILR (1951) Hyd 461 : 64 M L W 47 : AIR 1951 S C 41 (53) (Pt F) (Pr 45).

——Art. 226—Another remedy open —[Land Acquisition Act (1894), S. 9 (3)].

Award given by Collector under Land Acquisition Act — Person interested challenging its validity and applying under Art. 226 for writ on ground that no proper notice was given to them under S. 9 (3), Land Acquisition Act — Subsequent to proceedings under S. 9 (3) persons interested held could only agitate question of compensation payable to them — No useful purpose held would be served by quashing proceedings already taken. **1953 A M L J 84 : AIR 1954 Ajmer 71 (73) (Pt B) (Pr 11).**

——Art. 226 — Writ of quo warranto — Issue of, be vexatious — Writ can be refused in Court's discretion.

Article 226 of the Constitution is discretionary in nature, and the petitioner is not necessarily entitled to the issue of a writ. Where a person was holding a post for a long time, and there was no complaint against him, and the issue of writ of quo warranto would have been vexatious, the High Court refused to issue a writ of quo warranto. **AIR 1965 All 151 (154) (Pt E) (Pr 10).**

— Art. 226 – Income-tax Act (1961), Sch. II, Rr. 2 and 86—Notice under Sch. II, R. 2 — But 15 days notice not specifically given — No prejudice caused to petitioner by having more than 15 days to arrange for payment — Writ jurisdiction will not be exercised.

Where there is any lacuna in the notice under Sch. II, R. 2 inasmuch as fifteen days notice for compliance is not specifically given but the petitioner has much more than the requisite 15 days notice in which to arrange for the payment of the demand made and no prejudice is shown to have been caused, the High Court would decline to exercise the extraordinary writ jurisdiction in favour of the petitioner. There is also an alternate remedy available in the shape of an appeal under R. 86 of Sch. II. **(1965) 2 I T J 704 (All).**

——Art. 226 — Interference—Grounds— Nyaya Panchayat empowered under Panchayat Act to try abetment of offence as well as primary offence recording conviction under S. 426 instead of under Ss. 426/109 or Ss. 426/114 of Penal Code, when accused had only abetted offence—It is mere irregularity — High Court did not interfere as no prejudice was caused — U. P. Panchayat Raj Act (26 of 1947), S. 52. 1964 All W R (H C) 689 : 1964 All Cr R 532 : 1964 All L J 989.

——Art. 226—Equitable jurisdiction — Accommodation vacated by sub-tenant — Order of allotment — Rent Control Officer held had no jurisdiction to make such order under U. P. Act 3 of 1947 — Officer taking proceedings under S. 7-A of Act for eviction —Equitable jurisdiction under Art. 226 held could not be invoked to quash proceedings. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7 (1). 1964 All W R (H C) 260.

——Art. 226 — Writ jurisdiction of High Court — Limit within which it is exercised.

The writ jurisdiction of a High Court under Art. 226 of the Constitution is an extraordinary one and can be exercised only in cases where any improper exercise or non-exercise of jurisdiction has caused manifest, i. e., substantial, injustice to the party. Where no injustice is caused, the High Court can refuse to exercise the jurisdiction under Art. 226 even though some irregularity is committed by the respondent. **AIR 1963 All 415 (417) (Pt A) (Pr 8).**

——Art. 226 —Petitioner must come with clean hands —Petitioner found guilty of copying at examination —Disciplinary action by Board of High School and Intermediate Education — Even though there are irregularities or errors in exercise of disciplinary jurisdiction, High Court will not exercise its writ jurisdiction. AIR 1961 All 290 (292) (Pt C) (Pr 8).

——Art. 226—Power of High Court.

Article 226 of the Constitution is not addressed to the Court in the language of an inexorable command. Of necessity it does not enjoin upon the Court to issue writs, orders and directions as a matter of course for the asking. **1960 Cr L J 1176 : AIR 1960 All 559 (561) (Pt C, (Pr 18).**

——Art. 226– Exercise of discretion of High Court.

The discretion of the High Court under Art. 226 of the Constitution should not ordinarily be exercised simply to enable a petitioner to make a claim for money in other proceedings. **AIR 1960 All 209 (210, 211) (Pt C) (Pr 8).**

——Art. 226—Interference—Grounds.

It is open to the High Court to refuse to interfere in its jurisdiction under Art. 226 where by setting aside an order it might be perpetuating an injustice which has been done to the respondents by an incorrect ex parte order passed against them. AIR 1957 S C 227 and AIR 1957 All 276, Rel. on. **1959 All L J 611 : 1959 All W R (H C) 432 : I L R (1959) 2 All 173 : AIR 1960 All 93 (96) Pt F) (Pr 12) (DB).**

——Art. 226 — Industrial dispute — Reference to Adjudicator — Periods of unemployment wrongly described in order of reference — Employees not prejudiced High Court will not interfere — (Industrial Disputes Act 1947, S. 10 (1)). AIR 1959 All 639 (641) (Pt B) (Pr 14).

——Art. 226—Scope—Exercise of—When refused.

If the effect of order of the High Court under Art. 226 would effectuate an injustice, the Court would refuse to grant any relief to the petitioner. 1957 A L J 193, Rel. on. **1957 All L J 891 : 1957 All W R (HC) 820.**

——Art 226—Certiorari — Writ of — Discretionary remedy—Submission to jurisdiction.

In deciding whether or not a particular remedy shall be granted, the Court is entitled to enquire into the conduct of the applicant and the circumstances of the case, in order to ascertain whether it is proper or not proper to grant the remedy sought. (1940) 2 K B 33, Rel. on.

Where the party applying for a writ of certiorari was guilty of great laches which was not explained and had also submitted to the jurisdiction of the authority, whose order was sought to be quashed, nor was an appeal filed against the order though permitted under the law Held, that on account of the conduct of the party the High Court in its discretion should not interfere under Art 226. (1940) 2 K B 33, Rel. on. **1957 All L J 509 : 1957 All W R (HC) 573 : A I R 1957 All 561 (575) (Pt P) (Pr 29) (DB).**

——Art. 226 Interference—Grounds—Proof of prejudice—Resolution of non-confidence against Chair-

man of Town Area Committee — Petition against — Maintainability.

The High Court will not interfere in the exercise of its powers under Art. 226 of the Constitution with the resolution of non-confidence against the Chairman of the Town Area Committee passed at the meeting unless the defects pointed out have prejudiced the case of the petitioner in any manner. 1956 All L J 58, Foll. 1957 All W R (HC) 335 : 1957 All L J 345 : A I R 1957 All 366 (369) (Pt C) (Pr 10).

——Art. 226—Powers of High Court — Writ—Issue of—Grounds.

The powers conferred by Art. 226 of the Constitution on the High Courts are certainly very wide and confer on them a discretion of a most extensive nature. That discretion, however, must necessarily be exercised in accordance with judicial considerations and well established principles. A I R 1951 All 746 (FB), Rel. on.

Thus the mere fact that an order is without jurisdiction or that there is an error apparent on the face of the record is not sufficient to justify the issue of a writ. In addition to that it must be established that the order has resulted in manifest injustice. A I R 1954 S C 207 and A I R 1952 S C 192, Rel. on. **1957 All L J 193 : ILR (1957) 1 All 189 : A I R 1957 All 276 (278) (Prs 7, 8, 10) (DB).**

——Art. 226—Writ, a discretionary remedy.

The Additional Commissioner against whom a writ is sought to be issued in an appeal pending before him is a Court subordinate to the Board of Revenue; his decisions can be and are made the subject-matter of an appeal to the Board of Revenue. The Board of Revenue which is no party to this petition will not be bound by any direction or order embodied in a writ issued by the High Court to the Additional Commissioner, and in deciding an appeal from the judgment of the Additional Commissioner it might express an opinion which is in conflict with the decision of the High Court. In such a case it is desirable that the possibility of any such difference of opinion should be avoided. Hence, the High Court will, in its discretion, refuse to issue any writ. **1955 All L J 211 : A I R 1955 All 422 (423) (Pt B) (Pr 11) (DB).**

——Art. 226—Question of general importance.

Where a large number of persons were involved and the question was of general importance, it would be proper exercise of the discretion of the High Court to decide the petition under Art. 226 on the merits. A I R 1952 All 753 (FB). Ref. **1954 All L J 405 : A I R 1954 All 675 (677, 678) (Pt B) (Prs 11, 12).**

——Art. 226—Relief when may be refused.

Costs of liquidation—Proceedings for realisation—See Co-operative Societies — Co operative Societies Act (1912), S. 42. **1954 All L J 305 : A I R 1954 All 646.**

● **——Art. 226 — Scope — Quo warranto, writ of — Delay in applying.**

Per Full Bench :—The powers which the High Court enjoys under Art. 226 are of a discretionary nature, though that discretion has to be exercised in accordance with judicial principles. Hence the High Court is not bound to interfere when the application for the issue of a writ of quo warranto is a belated one.

In this case the High Court refused to interfere as the application was filed nearly one year after the proceeding before the Election Tribunal had commenced and when almost all the evidence had been adduced. Hari Shankar Prasad Gupta v. Sukhdeo Prasad, **ILR (1954) 1 All 447 : 1953 All W R (HC) 684 : 1953 All L J 678 : AIR 1954 All 227 (228, 230) (Pt B) (Prs 4, 15) (FB).**

——Art. 226—Exercise of discretion.

In exercising its discretion the Court must have regard to the general rule that the Court will normally require the applicant to have recourse to his ordinary remedies : ILR 62 Cal 1011, A I R 1942 Mad 348; A I R 1947 Bom 46, Rel. on. **ILR (1952) 1 All 880 : A I R 1953 All 739 (741) (Pt E) (Pr 4) (DB).**

● **——Art. 226—Remedy of revision open.**

Article 226 of the Constitution makes the issue of directions, orders or writs discretionary and it cannot be urged that any party has a right to any form of order as a matter of course The discretion is a judicial discretion to be exercised according to judicial principles. The principle governing writs of certiorari and prohibition should be that Courts should refuse, normally speaking, to entertain applications for writs directions or orders for certiorari or prohibition where the ordinary remedy of approaching the High Court by an application in revision is available to the party concerned. Case Law referred. Asiatic Engineering Co. v Achhru Ram, **1951 R D (HC) 241 : 1951 All L J 576 : I L R (1952) 2 All 838 : A I R 1951 All 746 (769) (Pt G) (Pr 62) (FB).**

——Art. 226 — Article confers very wide discretion on High Court in granting relief appropriate to case irrespective of relief sought for.

Article 226 vests the High Court with a very wide discretion in the matter of framing its writs to suit the exigencies of particular cases. There is no justification for splitting up the jurisdiction of the High Court under Art. 226 into three distinct categories, namely, orders, directions and writs. The Constitution empowers a person aggrieved to invoke the jurisdiction of the High Court and it is for the High Court to grant the relief which is appropriate to the case. **(1964) 2 Andh W R 290.**

——Art. 226 — Unauthorised order by Municipal Commissioner — Disobedience of order by person concerned — Conduct does not disentitle person to claim relief under Article—(Municipalities—Hyderabad Municipal Corporation Act (2 of 1956), S. 450).

Where overstepping the statutory limits the Commissioner, issues an order cancelling the permission previously granted by him to the petitioner for constructing a house, the conduct of the petitioner in proceeding with the construction despite the order is not such as to disentitle him to the discretionary relief under Art. 226. **(1960) 1 Andh W R 113 : AIR 1960 Andh Pra 603 (605) (Pt D) (Pr 5).**

——Arts. 226, 227 — Decision of Labour Court — Dismissal of employee held wrongful—Interference by High Court—Principles (Industrial Disputes Act (1947), S. 10 (1)).

Interference under Art. 226 of the Constitution is discretionary and the High Court will not normally interfere with the decision of the Labour Court or other similar Tribunals, unless there has been a clear want of jurisdiction or manifest error and injustice.

Thus the question whether the dismissal of an employee was wrongful or justified is primarily for the Tribunal to decide It is not for the High Court under Arts. 226 and 227 of the Constitution to interfere. A I R 1953 S C 58, Rel. on. **(1959) 2 Lab L J 717 : (1960) 1 Andh W R 133 : (1960) Mad L J (Cr) 165 : A I R 1960 Andh Pra 526 (535) (Pt F) (Prs 48, 49) (DB).**

——Art. 226 — Interference — Grounds — Order of statutory tribunal.

Interference under Art. 226 of the Constitution is discretionary. The High Court does not interfere with the orders of the statutory authorities unless it is satisfied that there has been a patent lack of jurisdiction, or an error of law apparent on the face of record, or that some principle of natural justice has been violated. It would not also interfere to correct errors of law, which do not occasion injustice in a broad and general sense. A I R 1955 S C 425, Rel. on. **1960 Cri L J 1061 : A I R 1960 Andh Pra 384 (386, 387) (Pt E) (Pr 15).**

——Art. 226 — Inferference—Grounds — No writ in furtherance of dishonesty.

Even if any error of law is commited by the tribunal against whose decision a writ petition has been filed that would not be a ground for invoking the extraordinary jurisdiction of the High Court under Art. 226, when it is not in furtherance of justice but tends to encourage dishonesty. **(1960) 1 Andh W R 57 : 1960 Andh L T 102 : I L R (1960) 2 Andh Pra 298.**

——Art. 226—Right to relief — Fraud by petitioner to secure admission in medical course—Effect.

Held, on facts that the Rules framed by the Government for selection of candidates for the Pre-professional course contemplated decision by the Selection Committee as to whether a particular candidate belongs to a scheduled caste or a Scheduled Tribe and that there was no warrant for the assumption that the Selection Committee was bound to act on the social status certificate produced by a candidate. AIR 1958 Andh Pra 470: (1958) 1 Andh W R 280, Disting. (2) that the extraordinary jurisdiction conferred on the High Court under Art. 226 of the Constitution was to be exercised only in furtherance of justice and where the petitioner had not suffered any injustice as a result of an order of any Tribunal, the Court would be reluctant to interfere, even assuming that there was some infraction of certain rules. (3) that no relief would be afforded, if fraud is resorted to, to obtain an advantage. **A I R 1959 Andh Pra 426 (427, 428) (Prs 7, 10) (DB).**

——Art. 226 —Powers of High Court.

The High Courts do not, and should not act as Courts of appeal under Art. 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. (1952) 2 Mad L J 16, Foll. **(1957) 2 Andh W R 106 : I L R (1956) Andh Pra 1101.**

——Art. 226—Other remedy—Existence of per se no bar.

The issue of various writs or directions is in the discretion of the Court and the Court while exercising its discretion may take into consideration the existence of the alternative remedy as a matter of policy, but the existence of the alternative remedy is not per se a bar to the issue of a writ of certiorari. AIR 1958 S C 86 and AIR 1959 Bom 372, Foll. **(1960) 1 Assam L R 35 : (1961) 43 I T R 562 : I L R (1960) 12 Assam 104 : A I R 1960 Assam 162 (165) (Pt A) (Pr 7) (DB).**

——Art. 226 — Powers of High Court — Notification under Assam State Road Transport Act—Omission of name of person affected by scheme — No prejudice—Interference — See Assam State Road Transport Act (30 of 1954), S. 5. A I R 1957 Assam 139 (DB).

——Art. 226 — Right to relief under — Party, if has legal right.

Relief under Art. 226 of the Constitution is discretionary for the Court to grant. The petitioners cannot insist on it as though they had a legal right to it. **ILR (1956) 8 Assam 160.**

——Art. 226—Jurisdiction of High Court—Extent of —Failure to comply with provisions of Motor Vehicles Act—(Motor Vehicles Act (1939), S. 38)—(Assam Motor Vehicles Rules (1940), R. 84),

The power of issuing a high prerogative writ is enjoyed by the High Court only to be used in circumstances that necessitate issuing of such writs for meeting the ends of justice and where the objection is only technical and as a matter of fact, the petitioner, is at fault, the High Court enjoys the discretion to refuse the writs under such circumstances.

Thus where there was a failure on the part of an owner of a bus to obtain a certificate of fitness as prescribed by S. 38, Motor Vehicles Act, 1939, and the Secretary to the Regional Transport Authority passed an order under R. 84(b) of the Assam Motor Vehicles Rules assessing the composition fee which order was subsequently approved by the Authority:

Held, that the objection to the order passed by the Secretary was only technical and no writ under Art. 226 could be passed. A I R 1953 Assam 199, Ref. **1954 Cri L J 1180 : A I R 1954 Assam 155 (155, 156) (Pr 5) (DB).**

——Art. 226—Quo warranto.

The writ of quo warranto is not issued as a matter of right. It is a discretionary relief and the Court has always to ask itself whether under the circumstances of each case the petitioner should be given the relief in the nature of quo warranto which he seeks. **55 Bom L R 882 : I L R (1954) Bom 104 : AIR 1954 Bom 116 (121) (Pt D) (Pr 9) (DB).**

——Art. 226 —Relief under is discretionary—Protective assessment against firm—Protective recovery—Notices under S. 46 (5-A), Income-tax Act issued to debtors of assessee firm to withhold payment to assessee firm — Assessee firm if entitled to relief — (Income-tax Act (1922), S. 46 (5-A)).

Held, on facts that relief under Art. 226 is discretionary and it ought not to be exercised so as to defeat a lawful claim, particularly that of the State's revenue. Though protective recovery is not permissible in law, and though the notices were defective, on the facts and circumstances of this case the High Court ought not to come to the aid of the petitioner under Art. 226. **(1957) 31 I T R 603 : I L R (1957) 3 Cal 496 : AIR 1957 Cal 1 (3) (Pt B) (Pr 11).**

——Art. 226—Discretion of Court — Duty of petitioner—Plea of natural justice when available.

The remedy under Art. 226 is purely discretionary and the High Court is not bound to grant the application of a person who does not come with a clean hand. Where in a case of smuggling of gold the petitioner was heard at length he appeared through counsel, produced witnesses and even got his goldsmith to examine the gold, the contention that there has been any violation of the rules of natural justice was held untenable. **AIR 1956 Cal 621 (623) (Pt B) (Pr 6).**

——Art. 226—Jurisdiction under—Abstract relief.

The jurisdiction under Art. 226 was not given to the High Court for the purpose of its declaring, at the instance of petitioners under the Article, that certain proceedings which they themselves had initiated

were grounded in a void law and for quashing all orders passed in the proceedings whether against them or in their favour The jurisdiction can properly be invoked only for the purpose of obtaining relief and not for the purpose of having the validity of Acts adjudged in the abstract. Abindra Kumar Maity v. A. K. Majumdar, 60 Cal W N 299 : A I R 1956 Cal 273 (275) (Pt B) (Pr 10) (FB).

——Art. 226—Exercise of discretion.

A Court exercising the equitable and discretionary jurisdiction under Art. 226 cannot ignore a fact which has come to its notice and if such fact makes the grant of relief by way of a writ inappropriate, it should desist from granting such relief. A I R 1955 Cal 541 (543) (Pt C) (Pr 6) (DB).

——Art. 226 Question requiring further evidence.

Order for requisition of property of petitioner under S. 3 (1) of West Bengal Act 2 of 1948 — Order challenged by petitioner — Settlement of record of rights standing in the name of the vendor of the petitioner — Prima facie, therefore, the petitioner had title — It could not therefore be held that the title of the (petitioner) was disputed and that there was no sufficient evidence before the Court in support of that title - It could not be said that this was not a proper case where the Court should exercise its powers under Art. 226 because the question of title might require further evidence. 58 Cal W N 203 : A I R 1954 Cal 394 (394, 395) (Pt B) (Prs 2, 4) (DB).

——Art 226—Scope.

Applications under Art 226 of the Constitution invoke the equitable jurisdiction of the Court and it is entirely discretionary as to whether the Court should grant any relief.

Order by District Magistrate in appeal under S. 529-A, Bengal Municipal Act, for removal of certain persons from the Final Electoral Roll — Order passed against such persons ex parte — Application under Art 226 for direction to the registering authority to amend and republish the Final Electoral Roll in accordance with that order without making those persons parties to the application — Held, that the High Court ought not to exercise its discretion in support of such action which sought to uphold the order which had been passed without giving those persons an opportunity of being heard. AIR 1954 Cal 285 (288) (Pt B) (Pr 10)

——Art. 226 Petition for writ under—Existence of alternative remedy—Effect.

Alternative remedies are factors which are taken into consideration in the exercise of Court's discretion in issuing Prerogative Writs. But the remedies must be adequate. 87 Cal L J 391: 1953 Cri L J 1745: AIR 1953 Cal 753 (754) (Pt C) (Pr 16).

—Art. 226—Exercise of discretion—(Punjab Land Revenue Act (17 of 1887), S. 16).

Article 226 of the Constitution makes the issue of directions, orders or writs discretionary and it cannot be urged that any party has a right to any form of order as a matter of course. The discretion is a judicial one to be exercised according to judicial principles. AIR 1951 All 746 (FB), Rel. on.

The exercise of that jurisdiction would be definitely refused where the petitioner has admittedly no right in the property in respect of which the extraordinary legal remedy is sought. A I R 1953 Him Pra 74 (75) (Pr 5).

—— Art 226—Successive grant of temporary permits—High Court should not interfere under Article if no injustice to petitioner is done—Motor Vehiches Act (1939), S. 62.

Where there is a successive grant of temporary permits in violation of S. 62, Motor Vehicles Act, the High Court should not interfere in exercise of its extraordinary powers under Art. 226 at the instance of the petitioner who has not suffered any wrong or injustice so as to compel the Court's discretion under Art. 226, but on the contrary has obtained the advantage of illegal grant of permit. 1964 Ker L J 784 : 1964 Ker L T 613.

——Art. 226—Nature and scope of jurisdiction of High Court—Bona fide closure of section of industry—Tribunal holding it as retrenchment and awarding retrenchment compensation — Order in excess of jurisdiction—High Court refused to interfere in exercise of its discretion as there was no manifest injustice.

Article 226 does not make any distinction between writs of course and writs of right on the one hand and discretionary writs on the other. The powers of the High Court under Art. 226 of the Constitution appear to be quite wide and the said powers confer on it an extensive discretion, with the possible limitation that the discretion has to be exercised in accordance with well-established judicial principles and not arbitrarily. AIR 1952 S C 192 and A I R 1953 S C 58 and AIR 1955 S C 425 and AIR 1957 SC 227 and AIR 1960 S C 407 and AIR 1960 S C 1292, Foll.

Where the tribunal recorded a finding that the closure of certain sections of the Mills amounted to retrenchment and, therefore the workers were entitled to retrenchment compensation under S. 23-F, Industrial Disputes Act, the order directing payment of retrenchment compensation though in excess of the jurisdiction of the Tribunal would not be interfered with in the exercise of discretionary powers under Art. 226 when it has not resulted in substantial miscarriage of justice. 1961 Ker L J 613 : 1961 Ker L T 589 : (1962-63) 22 F J R 147 : (1962) 2 Lab L J 84 : AIR 1962 Ker 11 (13, 14) (Prs 7, 8) (DB).

—Art. 226 — Discretion of High Court under Art. 226—Petitioner after enjoying right to vend meat under auction (of such right by local body) for full term challenging validity of auction under Art. 19(1)(g) in writ petition—High Court not justified in exercising its discretion under Art. 226 in petitioner's favour. See Ibid, Art. 19 (1) (g). AIR 1961 Ker 289.

—Art. 226—Writs under Art. 226 are discretionary writs. There is no such thing in Art 226 as writ of right or writ of course. 1952-3 S T C 77 : AIR 1952 Mad 814 (816, 817) (Pt B) (Pr 7).

—Art. 226—In exercising discretionary powers under Art. 226, High Court is right to follow generally principles on which prerogative writs are issued in England. ILR (1952) Madh Bha 231: AIR 1950 Madh B 46 (51) (Pt G (Pr 13).

—Art. 226 — Interference — Grounds — (Municipalities—C. P and Berar Municipalities Act (2 of 1922), S. 173 (2)).

A suit filed by certain firms for injunction against the municipality to prohibit from demanding the octroi duty having been dismissed they paid the octroi duty and pressed for the refund of a part of that duty. The Additional Deputy Commissioner ordered on appeal refund of the octroi duty. The Municipality agitated the matter under Art. 226 and subsequently under Cl. 15, L. P.

Held that the highest authority appointed under the municipal law to decide the appeals having given its verdict in favour of the firms, if the High Court were to interfere, it would be using the technicalities of the

law to cause an unjust enrichment to the municipal committee, which the policy of law is to avoid. Held, further that the Additional Deputy Commissioner having extended the period for filing appeals under S. 173 (2) of the Municipalities Act and that extension of time having been approved by the Board of Revenue, no interference was necessary in the circumstances of the case 1957 M P C 701 : 1957 M P L J 823 : ILR (1957) Madh Pra 622 : 1957 Jab L J 1069 : AIR 1958 Madh Pra 308 (309, 310) (Prs 8, 9) (DB).

——Art. 226—Mala fides—Issue of writ—Right to relief.

When the petitioner's application challenging the validity of an order does not appear to have been made in good faith and indicates his mala fides, he is not entitled to any relief in exercise of the discretionary power vested in the High Court by Art. 226. 1957 Jab L J 38 : (1957) 8 S T C 313 : 1957 M P C 55 : 1957 M P L J 283 : ILR (1957) Madh Pra 92 : AIR 1957 Madh Pra 12 (17) (Pt C) (Pr 42) (DB).

——Art. 226—Madras Village Panchayats Act (10 of 1950), S 152 (4)—Provisions are mandatory—Meeting of Panchayat to express non-confidence in President should be held at Panchayat office—Meeting held elsewhere—President not objecting—He cannot object in writ petition, granting of writ being discretionary. See Panchayats — Madras Village Panchayats Act (10 of 1950), S. 152 (4). AIR 1965 Mad 78.

——Art. 226—Decision of Supreme Court holding that G. O. No. 1298 (under) Motor Vehicles Act, of Madras Government is invalid—Effect of, on decisions of statutory bodies under Motor Vehicles Act given prior to the above decision on the assumption that the G. O. is valid—If can be struck down by issue of writ—Invalidity of G. O. No. 1298 — If can be raisd for the first time in writ appeal.

In (1994) 2 S C J 570 : (1964) 2 M L J (S C) 131 : (1964) 2 Andh W R (S C) 131, the Supreme Court has held that G. O. No 1293 of the Government of Madras, dated 28th April, 1956; is outside the scope of S. 43-A of the Motor Vehicles Act to the extent to which it seeks to issue directions to quasi judicial Tribunals which might fetter their discretion in the grant of stage carriage permits. The effect of this on pending writ appeals against the decisions of statutory bodies given prior to the aforesaid decision of the Supreme Court, when the G. O. was taken as valid by all authorities concerned is this. Where G. O. No 1298 has been directly or indirectly the basis of or one important factor of those decisions there is a manifest error of law which justifies the issue of a writ. If those decisions have been wholly uninfluenced by the G. O., the issue of a writ would be inappropriate. But outside all such cases it will be a matter of fact upon the merits of each case whether the G. O. has been an important operative influence. If such is the case it will certainly be sufficient to vitiate the decisions though they are not entirely and exclusively based upon the directions of the G. O The fact that the party laboured under ignorance of law regarding the validity of the G O. and even invoked the erroneous application of the law cannot preclude him from obtaining relief under Art. 226. This is because the discretion under Art. 226 is not merely the individual right of any party. It can be exercised in public interest, in appropriate proceedings as where the quasi-judicial functions of a statutory body have been affected by an improper invasion of executive directions. The fact that the objection to the invalidity of the G O. was not raised at an earlier stage will not preclude a party from raising it as an additional ground in a pending Writ Appeal. Such a ground could not have been raised at an earlier stage when the parties, statutory bodies and the Courts alike were under a misconception that the G. O. was valid. (1965) 1 M L J 302 : ILR (1965) 2 Mad 62.

——Art. 226—Cashier des Charges—Art. 4 — Scope — Party to auction improperly excluded from auction — Detriment to public revenue - Interference under Art. 226 is imperative—Natural justice.

Article 4 of the Cashier des Charges provides that the person in whose favour the auction was decided, should immediately produce a solvent and well-known surety. This makes it clear that the highest bid has to be settled, before the surety can be demanded by the party holding the auction. The petitioner had no doubt made a bid, but that was not settled as the highest bid, nor was the auction then closed. The auction was in progress, and further bids might well have been made, when the surety was demanded by the Mayor. This the Mayor had really no jurisdiction to do, under the terms governing the auction. Hence, it can be said that the principles of natural justice were contravened in the manner in which the petitioner was excluded from further participation in the auction, and that one of the terms of the auction was definitely infringed because the Mayor demanded the security, not after settling the highest bid, but while bids were still in progress. Even so, it may not at all be clear that the High Court would be justified in interference by virtue of its powers under Art. 226 of the Constitution, for it is well known that in such matters the party does not claim relief from the Court ex debito justitiae; it is not every irregularity which will be set right by the High Court; and the power is discretionary one vested in Court, not a right to be invariably invoked by a party at his own instance. But interference was necessary upon one important canon of propriety, where the Court is satisfied, not merely that a party to an auction has been improperly excluded, but that conceivably there has been a detriment to public revenue by this act. In the instant case, if the petitioner had not been improperly excluded from the auction, the bids would have gone far higher, and there had been a detriment to public revenue by the exclusion of the petitioner at a stage which was not a final stage of the auction, but a transitional stage. AIR 1958 Mad 572 and A I R 1954 S C 592, Rel. on. (1965) 1 Mad L J 210 : 78 Mad L W 211 : 1965 Mad W N 134 : I L R (1964) 1 Mad 918 : A I R 1964 Mad 437 (438, 439) (Pt B) (Prs 5, 6) (DB).

——Art. 226 — Exercise of discretionary powers by High Court — Claim by workman of 50 nP. for good attendance bonus made under S. 33 (c), Industrial Disputes Act — Industrial Tribunal wrongly refusing to entertain claim on ground that remedy lay in ordinary Courts — High Court having decided the question of principle refused to send back the case for investigation of the trifling claim on the principle De minimis non curat lex—Maxims - De minimis non curat lex. (1964-65) 27 F J R 476 : (1963) 2 Mad L J 557 : (1964) 1 Lab L J 207 : AIR 1964 Mad 242 (243) (Pt B) (Prs 5, 6) (DB).

——Art. 226 — Writs not issued as matter of course — Issue of Writs depends on facts and circumstances of the case and Courts cannot act on mere will.

Ordinarily and normally, in the absence of special facts or extraordinary circumstances, the discretion of the High Court under Art. 226 should not be exercised in granting writs before the special remedies have been availed of and exhausted by the applicant.

The exercise of jurisdiction of High Court under Art. 226 of the Constitution in granting writs, is purely discretionary and seldom can an applicant ask for it as of right. Prerogative writs are not issued as a matter of course. An arbitrary exercise of power is the very negation of exercise of discretion and therefore what is plainly arbitrary cannot be accepted to be the result of exercise of discretion. 1962 Mad W N 245 : A I R 1962 Mad 372 (376) (Pt A) (Pr 10).

——Arts. 226, 311—Exercise of discretion.

It is not for the High Court to substitute its opinion, rule out what was not necessary and decide on the balance of the material available whether the punishment actually awarded by the Government was appropriate.

Held, that the error apparent on the face of the record was only a technical one, and in the circumstances of the case, the High Court was not justified in using its discretion in favour of the petitioner to set aside the order as one vitiated as a whole. (1956) 1 Lab L J 516 : (1956 2 Mad L J 145.

——Art. 226 - Powers of High Court — Government rules of service—Violation of—Issue of writ.

A mere violation of a statutory rule in relation to conditions of service cannot give rise to a claim for redress by the issue of a prerogative right. (1958) 1 M L J 38 : 70 Mad L W 553 : ILR (1958) Mad 158 : AIR 1958 Mad 53 (69) (Pt I) (Pr 58).

——Art. 226 — Bar to issue of writ—Conduct of disentitling party.

The order issuing a writ of certiorari though discretionary, is granted ex debito justitiae, to quash proceedings which the Court has power to quash, where it is shown that the Court below has acted without jurisdiction or in excess of jurisdiction.

Whether the conduct of the party making the application does disentitle him to the relief would depend upon the facts and circumstances of each case. Where the petitioner does not raise the objection before the lower tribunal whose decision he is challenging by the writ proceeding and sits on fence taking chance of its decision in his favour and files the petition only when the order turns out to be unfavourable to him, it is not open to him thereafter to ask for a writ as his conduct disentitles him to the relief. A I R 1954 Bom 202, Rel. on. 38 Mys L J 631 : ILR (1959) Mys 735 : AIR 1960 Mys 281 (282) (Prs 2, 3, 4) (DB).

——Art. 226 — Discretion of Court — Granting of partial relief.

Article 226 provides for making orders suited to the circumstances of a case and there is nothing against the grant of partial relief. The principle of separability applied to provisions of statutes found to be invalid may be adopted in petition under Art. 226 if petitioners are not prejudiced thereby. ILR (1956) Mys 299 : 35 Mys L J 88 : AIR 1957 Mys 48 (49) (Prs 2, 3, 4) (DB).

——Art. 226 — Discretion of High Court — Issue of writ — Statements made by Prime Minister in individual capacity.

Statements made by the Prime Minister of India, who is also the head of a political organization in the country, at public meetings in connection with elections, are made by him not as the Prime Minister of the country but as the head of the political organization. Even assuming that the High Court has jurisdiction under Art. 226 of the Constitution to issue directions, orders or writs even to a private individual, the High Court will not exercise its discretion to issue a direction, order or writ to him in connection with what he may have done or said in his individual capacity. For, the power conferred by the Article ought not, ordinarily, to be exercised where other means of redress are available to a party. This provision is not to be so construed as, virtually, to take away the jurisdiction of the ordinary Courts of the land. 1954 Nag L J 327 : I L R (1952) Nag 331 : A I R 1952 Nag 301 (302) (Pt B) (Prs 6, 7) (DB).

——Art. 226 — Power of Court — Exercise of—Conduct of applicant—If relevant.

The power which the High Court has under Art. 226 of the Constitution is a discretionary one, and when the question before the Court is whether it should exercise its discretion in favour of a party or not, it would certainly bear in mind the conduct of that party. It would refuse to exercise its discretion in his favour, if he makes false statements or suppresses facts in his application to the Court. ILR (1951) Nag 523 : 1951 Nag L J 304 : A I R 1951 Nag 38 (43) (Pt H) (Prs 34, 35) (DB).

——Art. 226 - Powers of High Court—Orissa Service Code (Vol. 1), R. 71 (b) — Nature of right under — Employee must continue to be efficient — Decision as to efficiency—Power of High Court to interfere with. See Ibid, Art. 311. AIR 1958 Orissa 202 (DB).

——Art. 226—Discretion of High Court.

In exercise of its extraordinary jurisdiction under Art. 226 the High Court cannot sit in judgment over the finding of the Tribunal constituted under Disciplinary Proceedings (Administrative Tribunal) Rules (1951) like an appellate Court where there was some evidence to support the finding. I L R (1958) Cut 11 : AIR 1958 Orissa 96 (97) (Pt A) (Pr 3) (DB).

——Art. 226 — Allegation that officers working under Commissioner of Commercial Taxes, Bihar, have been acting illegally and arbitrarily causing hardship to petitioner — Application for issue of writ for directing officers to act according to law — Held, relief sought was too vague — Writ refused. 1962 B L J R 712.

——Arts. 226 and 133 (1) (c) — Grant of writ — Discretion of Court — Refusal to exercise discretion — Leave to appeal to Supreme Court See Ibid, Art. 133 (1) (c). AIR 1952 Pat 463 (DB).

——Art. 226 — Remedy under — Grant of writ — Conditions — High Court if bound imperatively to issue writ when called for — Discretion of High Court.

There is nothing in the language or purpose of Art. 226 of the Constitution which shows that the words were intended to be imperative in every case, that is, as imposing a duty on the High Court when its exercise is called for. The Constitution-makers never intended that the High Court should issue the writ even if the petitioner had an alternative legal remedy which was equally adequate. The remedy given by the Article is an extraordinary one and can be invoked only in exceptional circumstances by those who have no alternative remedy by way of suit or otherwise, or where the alternative remedy, if any, is not equally appropriate, beneficial or convenient. The High Court has a discretion.

Per Sarjoo Prasad J.—There can be no doubt on the clear provision of Art. 226 that the High Court has

power to issue writs not only for the enforcement of fundamental rights but "for any other purpose". The words "any other purpose" must mean the enforcement of any legal right and the performance of any legal duty. Although the powers of the High Courts to issue writs under the Constitution are very wide, the remedy provided by the Article must remain an extraordinary remedy to be used where ordinary legal process cannot give adequate and prompt relief. It is always for the Court to find out whether in the circumstances of a particular case the failure to exercise the power would amount to a dereliction of duty. In other words, it would depend upon the facts and incidents of the case under consideration to couple the power with a duty upon the Court to issue the writ prayed for. 50 I A 227; 29 Pat 491, Ref. **30 Pat 735 : AIR 1951 Pat 570 (572, 576) (Pt A) (Prs 5, 6, 32) (DB).**

——Art. 226—Power of High Court—Discretionary relief when to be refused.

The powers under Art. 226 of the Constitution are of an extraordinary nature, to be resorted to in exceptional cases of an urgent nature and where adequate relief cannot be got otherwise. The discretionary relief can and ought to be refused if the defect is only a technical one and has not resulted in any clear injustice or real injury to the petitioner. **ILR (1956) Patiala 234 : AIR 1955 Pepsu 133 (136) (Pt E) (Pr 15) (DB).**

——Art. 226—Nature of jurisdiction under.

The principles which must govern petitions under Art. 226 for issue of writs are that the powers given to the High Courts by the Article vest these Courts with an extraordinary jurisdiction of a summary but coercive nature, that the relief under the Article is discretionary with the Court, that even if the proceedings which give rise to an application for writ in some respects are not in accord with law, if no injustice has been done, no writ or direction should be issued, that the powers should be exercised very sparingly and only in cases where refusal to grant any relief would cause great hardship, and that where any specific and adequate legal remedy is open to the applicant, application for a writ should not be entertained. AIR 1953 Pepsu 58, Rel. on. **ILR (1953) Patiala 451 : AIR 1953 Pepsu 88 (96) (Pt F) (Pr 28) (DB).**

——Art. 226 — Pepsu Ordinance No. 10 of 1950 (2005), S. 60—Relief under—Nature.

The relief claimed under a petition under S. 60 of the Pepsu Ordinance No. 10 of 1950 and Art. 226 of the Constitution is descritionary and will not be granted where the order complained against is not unjust and no wrong has been done to the petitioner. **('51) 3 Pepsu L R 266.**

——Art. 226—Scope.

Interference by High Court — High Court would not interfere where no manifest injustice is done. **(1965) 2 Lab L J 331 : AIR 1965 Punj 159 (161) (Pt B) (Pr 6).**

——Arts. 226 and 227 — Mortgagees in possession claiming evacuee property under S. 10, Cl. (b) must also be sitting allottees — Scope of Cl. (a) of S. 10 — Competent officer on review refusing to order transfer of evacuee property to mortgagees in possession on ground that mortgagees were not sitting allottees — Mortgagees moving High Court under Arts. 226 and 227 of Constitution — Principles relating to issue of writs under Arts. 226, 227 — Petitioners held not entitled to claim property simply on payment of difference between assessed price and mortgage money, not being sitting allottees—Case held not fit for interference under Art. 226 or 227. See Evacuee Interest (Separation) Act (1951), S. 10, Cl. (b). ('63) 65 Punj L R 1093.

——Art. 226—Displaced Persons (Compensation and Rehabilitation) Rules (1955), R. 31 — Order of allotment of property—No injustice seen to have resulted to writ petitioner — Petition held could not succeed even if the Settlement Commissioner had acted in violation of the Rules or had exceeded his jurisdiction in passing the order. (1962) 64 Punj L R 755.

[Overruled on another point in AIR 1963 Punj 246].

——Art. 226 — Rolls for Panchayat elections — Basis of—Writ petition under Art. 226 to set aside election on ground of invalidity of roll—Held, frivolous. See Panchayats—Punjab Gram Panchayat Act (4 of 1953), S. 5 (3). ('61) 63 Punj L R 840.

——Art. 226—Interference—Grounds—No injustice caused—High Court will not interfere.:

It is well settled that the High Court will only interfere under Art. 226 of the Constitution, if there is any injustice caused to the petitioner.

Where therefore, the allotment of a house to A was justified under the rules framed under Displaced Persons (Compensation and Rehabilitation) Act, 1954, the High Court refused to interfere on a petition filed by B under Art. 226, though he was entitled to the reliefs prayed for, on the ground that no injustice was caused to him. **ILR (1960) 2 Punj 34.**

——Art. 226 — Interference — Grounds — Order technically defective but eminently just — Interference.

Grave miscarriage of justice or flagrant violation of law is an essential pre-requisite to justify intervention by the High Court under Art. 226: AIR 1953 S C 58 and AIR 1952 S C 192, Rel. on.

Where in spite of technical defects in the impugned order cancelling conferment of proprietary rights under Displaced Persons (Compensation and Rehabilitation) Act (1954) it is found to be eminently just, there is no ground for justifying interference under Art. 226 which is after all discretionary. AIR 1957 All 561, Rel. on. **AIR 1959 Punj 575 (577, 578) (Pt B) (Pr 6).**

——Art. 226—Discretion of High Court.

The petitioner waited to receive the award of the Collector and also initiated a reference under S. 18 of the Land Acquisition Act before coming to the High Court, and this reference, in which it was possible that the price already fixed might be increased, was still pending.

Held, that the present petition was in fact no more than a second string to the bow of the petitioners. In the circumstances it would certainly appear to be justified to refuse the petitioners the discretionary relief of an order under the extraordinary powers of the Court conferred by Art. 226 of the Constitution. 60 Punj L R 302 : **ILR (1958) Punj 1104 : AIR 1959 Punj 479 (480, 481) (Pt B) (Pr 8).**

——Art. 226 — Quo-warranto — Discretion —(Election)—(Municipalities—Punjab Municipal Act (3 of 1911), S. 240).

Writ of quo-warranto is not a writ which the petitioners are entitled to as a matter of right.

Where the Court was convinced that the residents as a whole in a municipal town were not able to express their opinion properly and it appeared that a considerable number of them had been disenfranchised and the defect as to absence of valid delimitation of constituencies was brought to the notice of the election authorities concerned before the elections were held but the objection was ignored:

Held, that the election must be set aside. The objection to the absence of valid delimitation of constituencies was not merely of a technical nature but was of substance. **AIR 1958 Punj 128 (132) (Pt F) (Pr 13).**

——Arts. 226 and 227—Discretion of High Court.

No party is entitled to claim an order under Art. 226 or 227 of the Constitution as a matter of course. An order under these provisions of the Constitution may be made only to advance justice. It cannot be made on a technical ground which may have the effect to perpetuate a wrong done to the opposite party. **ILR (1957) Punj 1682.**

—— Art. 226- Powers under—Nature of.

The powers conferred on the High Court under Art. 226 are discretionary and of an equitable nature. Even where a petitioner succeeds in a petition under this Article in showing that his legal right has been infringed, High Court is not bound to grant the petition and may reject it in the exercise of its discretion on various grounds which have nothing to do with the merits of the case. **57 Punj L R 332 : I L R (1955) Punj 1345 : AIR 1956 Punj 1 (3) (Pt D) (Pr 6) (DB).**

——Art 226 — Order of allotment of land in possession of lessee from evacuee — Petitioner lessee guilty of abuse of process of Court—No manifest injustice caused — Petitioner held not entitled to any relief—(East Punjab Displaced Persons (Land Resettlement) Act (1949), S. 9)—Effect of. AIR 1955 N U C (Punj) 4962.

——Art. 226—Discretion of High Court—Determination of questions relating to rights based on allegations requiring thorough examination after taking full evidence spread over 400 years — It would be proper for High Court to leave petitioner to seek his remedy in competent Court of law and refuse to determine those questions in writ petition. 1962 Raj L W 317 : I L R (1962) 12 Raj 406 : A I R 1962 Raj 196 (203) (Pt B) (Pr 31) (DB).

[Reversed on another point in AIR 1963 S C 1638].

——Art. 226 — Income-Tax Act (1922), S. 46 (2)—Recovery of arrears of tax — Procedure applicable—Provisions of Rajasthan Public Demands Recovery Act, 1952 and not of Rajasthan Land Revenue Act 1956 apply — Absence of notice under S. 6 of former Act—No prejudice caused to assessee — High Court need not interfere under Art. 226 — Rajasthan Public Demands Recovery Act (5 of 1952), Ss. 4, 6, 13. ILR (1961) 11 Raj 584.

——Art 226—Right to apply—Applicant must come with clean hands.

The High Court will refuse to interfere even in cases where it recognises his right unless the conduct of the petitioner has been fair and honest and free from any fraud. The High Court cannot help those persons who are guilty of practising deceitful means on any person or authority. **1956 Raj L W 384 : ILR (1956) 6 Raj 445 : AIR 1957 Raj 167 (171) (Pt E) (Pr 17) (DB).**

——Art. 226 — Rajasthan Public Demands Recovery Act (5 of 1952), Ss. 8, 13—Workman's compensation —Realization of — Objection — Collector following wrong procedure — High Court refused to interfere under Art. 226 since objection was dishonest—(Workmen's Compensation Act (1923), S. 31)—Qanoon Mal Mewar Act (5 of 1947), S. 84) — See Rajasthan Public Demands Recovery Act (5 of 1952), S. 8. A I R 1955 N U C (Raj) 2538.

——Art. 226 — Scope — Powers under, when to be exercised.

The extraordinary powers conferred on the High Court under Art. 226 of the Constitution are not to be ordinarily exercised unless there is no other remedy open to an applicant, or if any remedy is open at all, it is not as convenient, beneficial and effective as the remedy under Art. 226. **1951 Raj L W 389 : ILR (1951) 1 Raj 361 : AIR 1951 Raj 161 (162) (Pt A) (Pr 4) (DB).**

——Art. 226 — Nature and Scope of High Court's power — Saurashtra Land Reforms Act (25 of 1951), S. 13 — Non-payment of arrears within 15 days—Mamlatdar not making order of ejectment—Appeal —Arrears of rent paid during pendency of appeal—Appeal dismissed and decision confirmed by Revenue Tribunal—Interference by High Court.

Held, on facts that there was no manifest injustice by reason of the Mamlatdar or the higher tribunal not having passed the order of termination of tenancy and the consequent order of ejectment, as the legislature had made manifest its intention underlying S. 13 by enacting S. 13-A which contemplates relief against termination of tenancy when the matter is pending in appeal or even in revision. The amount of rent had been admittedly paid up and therefore, it was not proper in the interest of justice, to interfere with the orders of the Revenue Tribunal in an application for writ under Art. 226. **9 Sau L R 126 : AIR 1956 Sau 44 (46) (Pt D) (Pr 4) (DB).**

——Art. 226—Discretion how to be exercised.

The jurisdiction of High Courts under Art. 226 is essentially one of equity, and by its very nature discretionary. When the jurisdiction is discretionary and equitable, courts are bound to consider whether the applicant has himself been acting in a fair and straightforward manner. When he acts in a patently dishonourable and unjust manner, Courts should refuse to give him any assistance.

Where the applicant was under an obligation to provide maintenance grants to the junior branches, as long ago as 1948 he invited the decision of Maharaja of Panna, and, at all events, tacitly acquiesced in it, and did not question it for nearly 4 years but later wanted to go back on the decision in the hope that because of the political and administrative changes he would be able to show that the revenue Courts under the present set up could not execute an order by Maharaja of Panna in his capacity of highest revenue authority, the Judicial Commissioner's Court will refuse to exercise its equitable jurisdiction to assist the applicant in practising inequity. **AIR 1952 Vindh Pra 65 (66) (Pt B) (Pr 4).**

——Art. 226 — Applicability—Right to relief under —Conditions of—Application by debtor in bad faith to defeat claims of creditor—Competency.

Art. 226 of the Constitution is intended for the redress of grievances for which either there is no other remedy or the alternative remedy is too slow, costly and uncertain. It is an execptional, equitable relief which can be granted only on very good grounds. Where an applicant comes to the Court in

bad faith in order to defeat the legitimate claims of a creditor, the relief has to be refused. A I R 1952 Vindh Pra 18 (19) (Pt C) (Pr 8)

39 (a). Dismissal of civil servant.

——Art. 226—Exercise of discretion—Principles.

The High Court should not interfere in a matter relating to discipline concerning the State Police. But the High Court has not been prevented by considerations of discipline to interfere, in suitable cases, with orders passed by the Police authorities in the exercise of disciplinary powers. AIR 1960 All 304 (321, 322, 323) (Pt L) (Prs 73, 77).

——Art. 226—Exercise of discretion.

Issuance of writs or orders under Art. 226 is a matter for the discretion of the Court, so that no one can claim the grant of a prerogative writ as a matter of right. Where the right of the party applying for the writ is not clear, judicial discretion is exercised against the grant of prerogative writs even though the alternative remedy is less convenient, beneficial and effective.

Held, that having in view at least the charge of insubordination, the right of reinstatement claimed by the petitioner was not at all clear. AIR 1950 Pat 387, AIR 1952 Pat 23, Rel. on. AIR 1954 Him Pra 1 (4) (Pt A) (Pr 11).

39 (b). Habeas Corpus.

See Note 195.

39 (c). Prohibition, writ of.

See also Note 279.

——Art. 226—Termination of lease—State entitled to resume land—Tenant refusing delivery of possession —Use of force—How far justified—Remedy of lessee—Prohibitory order against Government—Discretion of High Court — See Crown Grants Act (1895), S. 3. AIR 1955 Cal 601.

39 (d). Mandamus.

See also Note 236.

——Art. 226 — Delay in filing writ petitions—U. P. Land Utilisation Act (5 of 1948), S. 3 — If petition is filed after undue delay, without good reason for the delay, it will be dismissed—Since petition was filed within 90 days of the order which was the time for filing revision petitions before High Court, it could not be said that it was belated. See U. P. Land Utilisation Act (5 of 1948), S. 3. AIR 1955 N U C (All) 2755.

39 (e). Certiorari.

See also Note 185.

——Art. 226 – Allotment in favour of petitioner cancelled—Person in possession without allotment order is liable to ejectment—Order cancelling allotment in favour of petitioner fair and just—High Court would decline to exercise jurisdiction under Art. 226 of Constitution. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7F. 1965 All W R (HC) 736.

——Art. 226—Certiorari— Inconsistent pleas — Sustainability.

The grant of the writ of certiorari is discretionary and is generally not issued in favour of a person who has not maintained consistent position. Where the petitioner had all along taken one position in his representations to the authorities against the orders, he will not be allowed to take an inconsistent stand in his petition for a writ. 1957 Andh L T 655 : (1957) 2 Andh W R 362 : I L R (1957) Andh Pra 780 : AIR 1958 Andh Pra 269 (271, 272) (Pt A) (Pr 7) (DB).

——Art. 226—Import and Export Control Act (1947), S. 3 — Statutory Notification referred to in Appendix H (i) and Appendix H (ii)—Notification No. 2 ITC/478 of Ministry of Commerce, D/- 6-3-1948, setting out conditions and circumstances under which import licence may be refused—Notification does not provide for refusal of license on the ground that the applicant has been declared an evacuee — Such a refusal is bad and in excess of jurisdiction — The matter however being in the discretion of the authority, the Court refused to grant relief under Art. 226. AIR 1953 Cal 591 (593, 594) (Pt B) (Pr 6).

——Art. 226—Certiorari — Discretionary remedy — Conduct of applicant—Submission to or acquiescence in jurisdiction.

Certiorari, as is well known, goes to the jurisdiction of the authority determining the case. Different considerations would arise where a party seeks to attack the validity of an order on the ground of want of jurisdiction in proceedings under Art. 226 of the Constitution where he had submitted to the jurisdiction of the tribunal. The jurisdiction conferred on the High Court by Art. 226 of the Constitution is a limited jurisdiction and the power exercisable by the High Court under the above Article is an entirely discretionary one and when the question arises as to whether the Court should exercise the discretion in favour of the applicant the Court would take into consideration among other circumstances the conduct of the party applying.

Hence where the petitioner had actually invited the jurisdiction of the arbitrator under S. 42-A, Hyderabad Co-operative Societies Act and had competely acquiesced in the jurisdiction of the arbitrator he cannot subsequently when the decision goes against him challenge the validity of the award of the arbitrator on ground of want of jurisdiction by an application under Art. 226. ILR (1956) Hyd 368 : AIR 1956 Hyd 129 (130) (Pt D) (Pr 8) (DB).

——Art. 226—Writ of certiorari.

The grant of a writ of certiorari is discretionary in nature. It is refused if the proceedings appear to be vexatious and the applicant is not bona fide interested in the subject-matter of the application. I.L R (1953) Hyd 412: AIR 1953 Hyd 235 (236, 237) (Pt C) (Pr 9) (DB).

——Art. 226—Writ of certiorari.

Power to issue is discretionary — Order of lower tribunal doing substantial justice — Writ need not be issued AIR 1960 J & K 25 (FB), A I R 1957 S C 227 and AIR 1955 S C 425, Rel. on. 1963 Kash L J 234 : AIR 1964 J & K 32 (34) (Pt B) (Prs 5, 6) (DB).

——Art. 226 — Proceedings by way of certiorari are not of course and the High Court should not interfere when the justice of the case does not require it. 1965 Jab L J 1087 : 1965 M P L J 990.

——Art. 226 –Wrong decision—Issue of certiorari.

The issue of a writ of certiorari is entirely a discretionary matter, it is used only in cases where it is shown that there has been a failure to exercise jurisdiction vested in a tribunal or an illegal assumption of the jurisdiction not vested in it. The High

Court is not sitting as a Court of Appeal against the order of the lower tribunals to test the legality thereof with a view to reach a different conclusion. An error of law does not constitute an error of jurisdiction and a wrong decision on facts or law cannot be questioned by way of a writ of certiorari. The decisions of the Labour Commissioner in Mysore on appeal from the order of the House Rent Controller and of the Government on revision from the order of the Labour Commissioner though erroneous held could not be interfered with by way of writ of certiorari. Case law discussed. 32 Mys L J 152 : ILR (1953) Mys 58 : AIR 1953 Mys 8 (10, 11) (Prs 8, 11) (DB).

—— Art. 226 — Certiorari — Exercise of discretion. AIR 1955 N U C (Pepsu) 6024.

——Art. 226—Certiorari—Issue of—Grounds—(Estate Duty Act (1953), S. 5).

A writ of certiorari, indisputably, cannot be granted as a matter of course and merely because the amount of estate duty payable is large is by itself, hardly a valid ground to permit the petitioners to bypass the usual statutory provision and to invoke the High Court's extraordinary jurisdiction of granting prerogative writs. (1960) 40 I T R (ED) 26 : A I R 1960 Punj 288 (290, 291) (Pt B) (Pr 3).

——Art. 226—Writ of certiorari when to be issued.

The High Court does not ordinarily issue a writ of certiorari except in special cases. AIR 1952 S C 192, Foll. ('56) 58 Pun L R 564.

40. Discretionary orders.

See Note 79.

41. Dismissal, removal, discharge or reduction in rank.

See also Note 23 and Ibid, Arts. 310 and 311.

——Art. 226 —University of Saugor Act (16 of 1946), S. 14 (4) — Termination of employee's services by Vice-Chancellor acting under S. 14 (4) without reference to Executive Council — Court cannot enquire into propriety of action. See University of Saugor Act (16 of 1946), S. 14 (4). AIR 1960 Madh Pra 208.

——Art. 226 — Deputy Commissioner of Municipal Corporation passing order of suspension of an employee pending enquiry against him— Order of suspension which is not passed as measure of punishment cannot be called in question in proceedings under Article. (1964) 66 P L R 1227, Foll. 1965 Cur L J 380 (Punj).

——Art, 226—Enquiry into misconduct of servant—Previous misconduct for which no action was taken can be enquired into.

Any one incident may not by itself be enough for the purpose of taking a serious notice thereof but the cumulative effect of many matters may amount to a serious misconduct on the part of the servant. The management have a right to enquire into these matters with a view to determine the quantum of punishment to be imposed on the employee in respect of his subsequent misconduct. (1961.62) 21 F J R 93 : AIR 1961 Punj 515 (519, 520) (Pt D) (Pr 11).

42. Domestic tribunals.

(a) Absence of legal evidence.
(b) Mala fides.
(c) Bias.
(d) Enquiry by.
(e) Principles applicable to.
(f) Validity of proceeding.

42. Domestic tribunals.

——Art. 226 — Domestic tribunals — High Court though reluctant to interfere with the autonomy of domestic tribunal and eductional institutions which have to maintain standards, held that it could understand the misgivings regarding what the body would do when his case came up before it for consideration and that this aspect of the matter could not be ignored by the High Court. ILR (1954) 2 All 335: A I R 1953 All 580 (583) (Pt B) (Pr 11) (DB).

——Art. 226 – Domestic tribunal — Jurisdiction of High Court to interfere.

It cannot be contended that merely because the disciplinary proceedings are by a domestic tribunal, the High Court has no jurisdiction to interfere under Art 226. 1958 Ker L T 48 : 1958 Ker L J 538 : AIR 1958 Ker 164 (165) (Pt D) (Pr 3) (DB).

——Art. 226 –Domestic Tribunals– Calcutta University School Code, R. 4—Medical practitioner—Meaning—Requirements of rule stated. A I R 1955 N U C (Cal) 5618 (DB).

——Art. 226—Certiorari against domestic tribunal.

The interpretation of Art. 226 must be considered in the background of English law and so interpreted, it is obvious that the remedy provided under Art. 226 is a remedy for the vindication of a public right. Hence, where the jurisdiction of a domestic tribunal is founded not upon any statutory obligation but upon rules which constitute the contract, implied or expressed, between the members of an association the proper procedure for the party aggrieved is to file a suit and not to apply for a writ under Art. 226 of the Constitution of India. Thus, in such a case a writ of certiorari does not lie to domestic tribunals. (1952) 2 Q B 329, Rel. on. 33 Pat 157 : A I R 1954 Pat 297 (298) (Pt A) (Prs 6, 7) (DB).

——Arts. 226 and 367 (1) — Domestic tribunal — If person—Issue of writ—Ad hoc managing committee of school whether domestic tribunal — (General Clauses Act (1897), S. 3 (39)).

The position of an ad hoc committee which supersedes the managing committee of a school is that of a domestic tribunal. The definition of person in the General Clauses Act will cover such a domestic tribunal and that definition will apply to the word 'person' used in Art. 226 by virtue of Art. 367 (1). AIR 1959 Tripura 27 (32, 33) (Pt G) (Prs 33, 35).

42 (a). Absence of legal evidence.

——Art. 226—Court's powers to interfere under—Extent and scope—If can interfere with orders of Domestic Tribunals appointed by Board of Education.

Where the students against whom charges are framed are given adequate opportunities to defend themselves, Courts should be slow to interfere with the decisions of domestic tribunals appointed by educational bodies like the Board of Education or University. In dealing with the validity of the impugned orders passed by the Board under Art. 226 of the Constitution of India (1950) the High Court is not sitting in appeal over the decision in question and its jurisdiction is limited. Though, if the im-

pugned order is not supported by any evidence at all, the High Court would be justified to quash that order, the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. The Board of High School and Intermediate Education, U. P. v. Bagleshwar Prasad, (1963) 2 S C J 651 : (1963) 1 S C W R 1 : 1963 S C D 584 : 1963 All L J 676 : (1963) 2 Andh L T 119 : I L R (1963) 2 All 499 : (1963) 3 S C R 767 : AIR 1966 S C 875 (876, 878) (Prs 4, 12).

——Art. 226 — Departmental enquiry — Conclusions recorded in the enquiry based on some legal evidence —High Court cannot interfere with findings under Art. 226. AIR 1963 S C 1723 Ref. 1964 M P L J 432.

42 (b). Mala fides.

——Art. 226—Mala fides — Erroneous conclusion, does not show mala fide.

Even if a Judge or Tribunal may reach an erroneous conclusion either of fact or of law, the mere error of the conclusion does not make the conclusion mala fide. Tata Oil Mills Co., Ltd. v. The Workmen, (1964) 2 Lab L J 113; (1964-65) 26 F J R 199: (1964) 9 Fac L R 142: AIR 1965 S C 155 (159) (Pt D) (Pr 7).

——Art. 226 — Evidence Act (1872), Ss. 114 and 101 to 104—Malice in law — Not to be easily presumed —Party alleging must prove that there are circumstances on which malice or mala fide could legitimately be found—Non-adherence in departmental inquiry to strict procedure followed by judicial tribunal does not amount to either acting mala fide or acting contrary to law. (Railway Establishment Code, Vol. 1 R. 1707 (c)). See Evidence Act (1872), S. 114. **AIR 1957 All 671.**

——Art. 226 — Dismissal of workman for misconduct — Finality of inquiry by domestic tribunal — Jurisdiction of labour Court to interfere — Scope of.

In cases of dismissal for misconduct, the scope of the jurisdiction of an Industrial Tribunal to interfere with the decision of a domestic tribunal or an action taken by the management is confined to four aspects. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) where on the materials the finding is completely baseless or perverse. If the case did not fall within one or the other of them, any interference by the Labour Court would be without jurisdiction and would necessarily justify and require the intervention by the High Court in the exercise of its power under Art. 226 of the Constitution. AIR 1958 S C 130, Foll. **AIR 1963 Assam 155.**

——Arts. 226, 311—Administrative tribunal—Powers and duties of — Must act bona fide and with sense of responsibility.

An administrative tribunal must act in good faith, must have regard to relevant considerations only, must disregard all irrelevant considerations, must not seek to promote purposes alien to the letter or the spirit of legislation that gives it power to act and must not act arbitrarily or capriciously. In other words, an administrative tribunal must act bona fide on relevant considerations and must also act with a sense of responsibility in discharge of its duties. L R (1918) A C 120, L R (1925) A C 578, A I R 1959 S C 308, Rel. on. **(1964) 8 Fac L R 31 : (1964) 1 Lab L J 462 : 68 Cal W N 215 : A I R 1964 Cal 503 (510) (Pt A) (Pr 20).**

——Art. 226—Domestic Tribunal — State Medical Council—Jurisdiction to cancel examination of candidates found using unfair means —Must act in good faith and fairly—Mandamus, when can issue.

When the Governing Body of the State Medical Faculty decides that some candidates had used unfair means in answering questions and that the proper punishment was that the examination should be cancelled, it acts within jurisdiction.

The law requires that the State Medical Faculty or the Governing Body, in performing its duty of deciding whether the candidates have been guilty of unfair means and what punishment should be inflicted, must not only act in good faith, but also fairly and reasonably and without violation of the principles of natural justice.

Where the Governing Body gave no notice at all to the candidates of the charges against them and no opportunity whatsoever of showing that the allegation was not true or that even if the allegation was true, the punishment should not be what the Governing Body proposed, and there was not a fair consideration of the cases, as the cases of the different candidates were not individually considered :

Held, that the order cancelling their examination was bad in law. 56 C W N 861 : I L R (1963) 2 Cal 107 : AIR 1953 Cal 212 (214, 215) (Pt C) (Prs 18, 30, 31, 32) (DB).

——Art. 226 — Municipal servant — Misconduct — Servant already punished — Second inquiry and punishment for same charge—Sustainability—Malice —Issue of writ to quash proceedings.

Where a Municipality after an inquiry into the conduct of a municipal employee for having used a service stamp of one and half anna for private purposes punishes him by dismissal from service but he is again re-instated after depriving him of his salary for four and half months, it is outside the competence of the Municipality, when the matter was once closed to conduct another enquiry into the same charges, after about seven years and subject the employee to another penalty for the same act of misconduct for which he had already been punished. High Court has jurisdiction to quash the proceedings of the Domestic Tribunal conducted in violation of the principles of natural justice. AIR 1961 Mys 181 (185, 186) (Pt A) (Prs 23, 24, 32) (DB).

——Art. 226—Criminal charge against public servant —Acquittal on basis of benefit of doubt—Departmental inquiry in respect of same charge is not against natural justice—Standard of proof in criminal case and departmental inquiry. See Ibid, Art. 311 (2). **A I R 1963 Orissa 73 (DB).**

——Art. 226—Tribunal holding order of dismissal to be mala fide — High Court cannot reverse finding under Art. 226 of the Constitution. See Industrial Disputes Act (1947), S. 33 (2) (b). **A I R 1962 Punj 505 (DB).**

42 (c). Bias.

——Arts. 226 and 228—Domestic tribunals.

Though the High Court was reluctant to interfere with the autonomy of domestic tribunals and educational institutions which have to maintain standards, held, the High Court could understand the applicant's misgivings regarding what the body would do when his case came up before it for consideration and this aspect of the matter could not be ignored by the High Court. **1953 All L J 518 : ILR (1954) 2 All 335 : AIR 1953 All 580 (583) (Pt B) (Pr 11) (DB).**

——Art. 226 — Domestic Tribunal — Inquiry — Bias —Effect of. See Madras Shops and Establishments Act (36 of 1947), S. 41 (1). **(1965) 1 Mad L J 453 : (1964) 1 Lab L J 221.**

——Arts. 226 and 311—Interference—Grounds.

Managing Committee of school granting compulsory leave to teacher and debarring him from coming to school pending decision of committee—Committee superseded by ad hoc committee—Order of termination of service passed by ad hoc committee — No inference held could be drawn that ad hoc committee was actuated by malice. AIR 1959 Tripura 27 (32) (Pt F) (Pr 29).

42 (d). Enquiry by.

● —Art. 226 — Order by quasi-judicial tribunal based on no evidence — High Court will interfere— Enquiry Committee of University cancelling examination result of student — Nature of evidence — Duty of High Court in writ petition — Educational institutions.

An order passed by a Tribunal holding a quasi-judicial enquiry which is not supported by any evidence, is an order which is erroneous on the face of it and as such, is liable to be quashed by the High Court in exercise of its high prerogative jurisdiction to issue a writ under Art. 226.

In dealing with writ petitions against the orders of the Universities or Education Boards cancelling the examination result of candidates who were declared to have been passed, it is necessary to bear in mind that educational institutions like the Universities or the Board set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. Courts should be slow to interfere with the decisions of Domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Art. 226, the High Court is not sitting in appeal over the decision in question, its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law.

Where no animus is suggested and no mala fides have been pleaded and the enquiry has been fair and the student has had an opportunity of making his defence:

Held, that the High Court was not justified in interfering with the order passed against the student cancelling his examination result by which he was declared to have passed the examination. Board of High School and Intermediate Education, U. P. v Bagleshwar Prasad, 1963 All L J 676 : (1963) 2 Andh L T 119 : 1963 S C D 584: (1963) 2 S C J 651: ILR (1963) 2 All 499 : (1963) 3 S C R 767 : (1963) 1 S C W R 1: AIR 1966 S C 875 (876, 878) (Prs 4, 12).

● ——Art. 226—Domestic Tribunal Finding of fact —Dismissal of workman Misconduct — Standing Order including fighting outside factory as misconduct — Fighting must have rational connection with employment of assailant and victim — Finding of domestic tribunal is binding. Tata Oil Mills v. Workmen (1964) 2 Lab L J 113: 26 F J R 199: (1964) 9 Fac L R 142 : 1965 Ker L J 90 : (1965) 1 S C W R 204 : (1965) 1 S C J 281 : (1964) 7 S C R 555 : AIR 1965 S C 155 (157, 158) (Pt A) (Prs 2, 3).

● —Art. 226—Domestic Tribunal — Inquiry held before — Rules of natural justice — Bombay Police Manual, S. 545, Cl (8) — Statements of witnesses recorded in absence of defaulter — Witnesses called and their statements read out in defaulter's presence —Opportunity to cross-examine witnesses given — Rules of natural justice are not violated — S. 545 (8) held did not contravene such rules.

Domestic Tribunals exercising quasi-judicial functions are not Courts and therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they give him a fair opportunity to explain it.

In respect of taking the evidence in an inquiry before such Tribunal, the person against whom a charge is made should know the evidence which is given against him so that he might be in a position to give his explanation. Rules of natural justice are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them. (1911) A C 179 (182) and (1915) A C 120 and AIR 1957 S C 232, Rel. on.; AIR 1954 Bom 351 impliedly overruled; W. P. No. 41 of 1958, D/ 26-3-1959 (Mys), Reversed.

Held, that Cl (8) of S. 545 of the Bombay Police Manual cannot be held to be bad as contravening the rules of natural justice. State of Mysore v. Shivabasappa Shivappa Makapur, (1964) 1 Lab L J 24: 1963 Mah L J 284 : 1963 M P L J 236 : (1963) 2 S C J 104 : (1963) 2 S C R 943 : AIR 1963 S C 375 (377, 378, 379) (Prs 3, 6, 9).

● ——Art. 226 — Departmental Enquiry — Proceedings quashed by civil Court on ground of irregularity in procedure— Fresh departmental enquiry can be held on same facts.

After an order passed in an enquiry against a public servant imposing a penalty is quashed by a civil Court, a further proceeding can be commenced against him if in the proceeding in which the order quashing the enquiry was passed, the merits of the charge against the public servant concerned were never investigated. Where the High Court decreed the suit of the public servant on the ground that the procedure for imposing the penalty was irregular, such a decision cannot prevent the State from commencing another enquiry in respect of the same subject-matter consistently with the provisions of Arts. 310 and 311 of the Constitution. If the State Government is competent to order a fresh enquiry, it would be competent to direct suspension of the public servant during the pendency of the enquiry. AIR 1958 Raj 38; AIR 1955 Assam 240 and AIR 1959 Punj 87, Distinguished. Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh, 1962 Supp (1) S C R 315 : (1962) 1 Lab L J 266 : 1962 All L J 437: ILR (1962) 1 All 636 : (1962) 2 S C J 282 : AIR 1962 S C 1334 (1336) (Pt A) (Prs 8, 9).

—— Art. 226— Principles of natural justice—Duty of domestic tribunals to observe — Chancellor hearing reference under S. 39, Lucknow University Act—

Person affected by decision not given opportunity of being heard—Order is vitiated.

The order of the Chancellor made in a reference under S. 39 of the Lucknow University Act, setting aside the decision of the Executive Committee appointing a professor, on the ground that it was based on the recommendations of the Selection Committee which was not validly appointed, is vitiated by the non-observance of the principles of natural justice where it was passed without giving an opportunity of being heard to the appointee.

It is true that the Chancellor is a domestic tribunal while performing his functions under S. 39 of the University Act. But even a domestic tribunal is also bound to conform to the principles of natural justice. A I R 1961 Cal 31, 1924 A C 764 and 67 Ind App 222, Rel. on.

It cannot be denied that the principle that no one should be condemned unheard and that no decision should be arrived at behind his back without giving him the chance of having his say is an elementary principle of natural justice. The maxim audi alteram partem is a well-known maxim of law.

No doubt the rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Act under which they act; and the question whether or not any rules of natural justice had been contravened should be decided not under any preconceived notions, but in the light of the statutory provisions and rules. A I R 1957 S C 232 and A I R 1958 S C 398, Rel. on.

There is nothing in S. 39 of the University Act itself or the statute framed thereunder on the basis of which it can be said that the Chancellor could disregard the rule of natural justice.

It becomes especially necessary, in fairness, to hear the person who has been appointed when the Chancellor has actually given a hearing to the person who was only a candidate for the post and therefore was not interested to the same extent in the reference.

No valid plea can be put forward in extenuation of the failure to hear the person appointed on the ground of any inherent difficulties in such proceedings of ascertaining the interested persons whose number may be large. Apart from the fact that it is not difficult to know that the appointee was an interested person, the Chancellor acting as he does as a judicial or quasi-judicial body is not entitled to ignore any of those fundamental rules which form the foundation of the judicial character of such bodies and get the respect and confidence of the persons whose affairs are dealt with by him. 1961 Andh L T 371, Ref. to.

The fact that the Vice-Chancellor who was heard in the reference took a stand similar to that of the appointed candidate is entirely immaterial when neither the Vice-Chancellor nor the University represented him or held any brief for him. If there are more defendants than one in a suit having similar defences one of them cannot be shut out and put out of Court simply on the ground that the other defendant is raising the same pleas. **I L R (1961) 2 All 634 : 1962 All L J 289**

——**Art. 226**—University—Disciplinary action against student on charge of indiscipline—Substance of accusation sufficient — Accusation relating to incidents spreading over months forming parts of same transaction—Reference to incidents not necessary—Reference to transaction enough. **A I R 1960 All 579 (582) (Pt A) (Pr 11).**

——**Art. 226**—Domestic tribunals—Rules of evidence and procedure. See Government of India Act (1935), S. 240 (3) **A I R 1954 Bom 351 (DB).**

——**Art. 226**—Domestic tribunal—Industrial Disputes Act (1947), S. 33 (2) (b)—Nature of tribunal's jurisdiction — Workers found guilty by domestic tribunal—Statements of witnesses read over and explained in Hindi to workers — Witnesses produced and questioned by enquiry officer and their answers explained to workers — Opportunity to cross-examine witnesses given — Principles of natural justice not violated—Tribunal does not sit as Court of appeal over domestic tribunal—Circumstances under which tribunal may interfere with penalty imposed stated. A I R 1963 S C 375, Foll. **(1965) 1 Lab L J 628 (Cal).**

——**Art. 226**—Dismissal for misconduct of workmen—Powers of Labour Courts and Tribunals — Extent of—Works manager could not act both as judge and as witness — Decision by such process and order on such decision was not valid and binding—Introduction of personal knowledge by members — Effect of—Held there was violation of fundamentals of fair play and justice.

Labour Courts and Tribunals can interfere only, (i) when there is want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of basic error or violation of principles of natural justice and (iv) when on the materials the finding is completely baseless or perverse. A I R 1958 S C 130 and (1961) 1 Lab L J 511 Rel. on.

Held, on facts that the works manager could not act, both as a judge and as a witness and that the decision arrived at by such process and the order passed on such a decision could not be regarded as valid and binding. A I R 1958 S C 86, Rel. on. **Held further**, that in such enquiry the introduction of personal knowledge by the members of the enquiry committee of the nature of which nothing was known and about the correctness of which there was no material to test, made their finding against the workman unworthy of acceptance. Hence, there was violation of "fundamentals of fair play and justice" in the domestic enquiry **(1961) 3 Fac L R 119 ; (1962) 1 Lab L J 324 (Cal).**

——**Art 226** — Departmental enquiry against workman for misconduct — Labour Officer conducting enquiry—Presence of Works manager does not vitiate enquiry. **(1962) 2 Lab L J 52 : (1962) 4 Fac L R 307 (Cal).**

——**Art. 226**—Dismissal of workmen — Principles of natural justice — Admission by workmen to be taken into consideration — Ignoring of admission goes to root of finding of tribunal. See Industrial Disputes Act (1947), S. 15. **A I R 1960 Ker 103.**

——**Art. 226** — Departmental enquiry — Denial of reasonable opportunity and impartiality of enquiry officer is vitiated by disregard of principles of natural justice. See Ibid, Art. 311 (2) **1965 M P L J 699 ; 1965 Lab L J 875 ; A I R 1966 Madh Pra 58 (DB).**

——**Art. 226 — Enquiry by domestic tribunal—Dismissal of employee — Violation of principles of natural justice - What amounts to — Examining witnesses out of order — If opposed to natural justice—Tribunal taking into consideration the earlier findings of a quasi-judicial authority on the same charge—If improper — Power of Court to interfere with findings—Scope of.**

Where an order of dismissal in pursuance of a departmental enquiry against an individual is based on several charges even if one or more of those charges are found to be not sustainable, the order of punishment might be supported on the findings on the rest of the charges if they are held to be proved. In such a case it will not be open to the High Court in a writ proceeding to quash the order of punishment. There is no rule prescribing the order in which witnesses should be examined in a domestic enquiry. All that is necessary is that the Domestic Tribunal should consider only relevant evidence and give an

opportunity to the person proceeded against for rebutting it.

Where a driver of a vehicle is charged with being guilty of over-speeding, the Domestic Tribunal holding an enquiry will be justified in taking into account the fact that the driver concerned was punished by a quasi-judicial authority after inquiry and determination of the very same issue. Where a Regional Transport Authority has passed an order suspending the driver's licence for the offence of over speeding and the order has become final against him, it will be a relevant piece of evidence which a tribunal conducting a domestic enquiry against the driver on the self-same charge of over-speeding on the same occasion. It will not be a case of the Domestic Tribunal basing its findings on the findings of a different tribunal. When a competent tribunal has adjudicated over the same matter and it has become final, there is no violation of the principles of natural justice if the Domestic Tribunal takes note of such adjudication in respect of an inquiry regarding the same charge against the same persons. (1965) 2 M L J 364.

——Art. 226—Municipal servant—Domestic inquiry—Natural justice—Principles of—Rule as to recording of oral evidence — Copies of depositions already recorded read over and got verified by witnesses in presence of person charged — Witnesses cross-examined—Held there was substantial compliance with rule—There was no violation of principles of natural justice

It is not necessary that in a domestic enquiry the entire oral evidence of the witnesses should be recorded in the presence of the person charged There will be no violation of the principles of natural justice if the copies of statements of witnesses recorded in the absence of the person charged are given to him and the witnesses were also tendered for his cross-examination.

Where the rules relating to the appointment and punishment of the servants of Municipal Committee required that the oral evidence (in case of oral inquiry) should be recorded in the presence of the person charged, but at the enquiry, statements were taken from some of the witnesses, and later on those statements were read over and got verified by those witnesses in presence of the servant charged and the witnesses were cross-examined :

Held, that the procedure adopted by the Municipality was in substantial compliance with the rules and the servant had been given adequate and ample opportunity to meet the charges. No doubt, it would have been better if, as provided for in the rule, the witnesses had been examined in the presence of the person charged. But that omission did not go to the root of the matter. A I R 1957 S C 882 and A I R 1963 S C 375, Rel. on. **A I R 1964 Mad 491 (492) (Pr 8) (DB).**

——**Art. 226**—Domestic Tribunal — Procedure — Industrial dispute—Misconduct of workman—Enquiry by officer on behalf of management—Personal knowledge of alleged misconduct imported—Misconduct not connected with pending industrial dispute—Post facto approval of dismissal under S. 33 (2) Industrial Disputes Act cannot be refused — Domestic tribunal cannot be prevented, irrespective of circumstances from acting upon facts within personal knowledge of tribunal — Officer holding enquiry into alleged misconduct not connected with pending industrial dispute is a domestic tribunal not governed by strict rules of procedure applicable to judicial bodies. **AIR 1963 Mad 315 (DB).**

——**Art. 226**—Industrial dispute—Domestic enquiry—Procedure — Record of evidence — Finding on all charges not necessary. **(1961) 1 M L J 366 : A I R 1961 Mad 359 (361, 362) (Prs 4, 5).**

——**Arts. 226, 311 — Departmental inquiry against delinquent public servant — Rules of natural justice to be followed—Requirements of the rule.**

Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice to be followed in departmental inquiry against a delinquent public servant require that a party should have an opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given an opportunity of cross-examining the witnesses examined by that party and that no material should be relied on against him, without his being given an opportunity of explaining them.

If these rules are satisfied the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act, for taking evidence was not strictly followed. A I R 1957 S C 882 and A I R 1961 S C 1623, **Foll. ILR (1962) Cut 125 : A I R 1963 Orissa 73 (78) (Pt C) (Pr 8) (DB).**

42 (e). Principles, applicable to.

——Art. 226 — Domestic tribunals — Racing club—Decision by stewards on evidence collected by stipendiary steward — Rules of evidence do not apply — Natural justice — Opportunity to plaintiff of answering charges given—Prayer for interlocutory injunction can be granted when plaintiff made out prima facie case — (Civil P. C. (1908), S. 9 and O. 39, R. 1), (Evidence Act (1872), Preamble) — (Racing — Royal Calcutta Racing Club Rules, Rr. 12, 26 and 49). **A I R 1955 N U C (Cal) 752.**

——Art. 226—Domestic tribunal—Disciplinary action against member—Charge and demand for explanation from subordinate authority. **1958 Ker L T 48 : 1958 Ker L J 538 : A I R 1958 Ker 164 (165) (Pt C) (Pr 4) (DB).**

42 (f). Validity of proceeding.

——Art 226 — Civil P. C. (1908), S. 9 — Decision of domestic tribunal — Jurisdiction of civil Court to set aside.— Principles. See Civil P. C. (1908), S. 9. **A I R 1961 Cal 31.**

——Art. 226—Domestic tribunals — Calcutta University School Code, Rr. 3, 4 and 6—Election of member to School Managing Committee — Election approved by University Syndicate — Defect, if any, in election must, in view of R. 6, be taken to have been cured. **A I R 1955 N U C (Cal) 5618 (DB).**

——**Art. 226 — Dismissal of workmen in pursuance of findings in a domestic inquiry — Jurisdiction of Labour Court to interfere.**

It is now well settled that the power of the Labour Court to interfere with the findings of management in a domestic inquiry against an employee regarding displicinary action, etc., is limited to see if the management acted mala fide or whether there was victimisation or unfair labour practice or violation of natural justice. Though a Labour Court may not be justified in looking into the sufficiency of the evidence in such inquiries it can certainly interfere if it finds that there is no evidence whatsoever to support the findings. Where, however, the Labour Court feels that the domestic inquiry was unfair in the sense that leading questions were put to the witnesses and the answers required by the management were obtained, the Court can examine the evidence itself and come to its own conclusion. **(1963) 1 M L J 330 : (1963) 6 Fac L R 334 : (1963) 1 Lab L J 797.**

——**Art. 226—Domestic Tribunal—Managing Committee of private school getting grant-in-aid from Government—Decision of—Interference—Grounds.**

The Managing Committee of a private School aided by Government Grant-in-aid is in the posi-

tion of a 'domestic' tribunal. The decision of a 'domestic' tribunal can be interfered with by the Court under Art. 226 only when tribunal had no jurisdiction, or it did not follow the principles of natural justice, or did not act in good faith or did not act according to its own rules.

Domestic tribunals differ from the Courts of justice in some important respects. The decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence nor are legal objections permissable, which can be raised against decisions of Courts of justice, when a decision of a 'domestic' tribunal comes before a Court of justice the latter cannot sit over it as a Court of appeal, either as regards the finding or the sentence. **AIR 1959 Manipur 1 (7) (Pt A) (Prs 29, 30, 32).**

——Art. 226 — Jurisdiction — Domestic Tribunal — Interference by Court.

Speaking generally, it is useful to bear in mind that the principles applieable to Courts of Justice are not applicable to domestic tribunals. The jurisdiction of Courts in regard to tribunals is of an extremely limited nature. The only grounds on which the Court may interfere are : (1) lack of jurisdiction, (2) absence of good faith and (3) disregard of principles of natural justice. **AIR 1952 Orissa 359 (382, 383) (Pt C) (Pr 63) (DB).**

——Art. 226—Award of compensation for loss caused by strike—Arbitrators not considering dominant purpose of Trade Unions combining to strike—Award must be quashed. See Industrial Disputes Act (1947), S. 10-A. **AIR 1963 Pat 170 (DB).**

——Art. 226- Domestic tribunal—Proceedings of — Quashing of—Issue of writ—When will issue—Validity of proceedings—Conditions.

The conditions required to validate the proceedings of a domestic tribunal are that the tribunal must not act beyond or exceed its jurisdiction and that the proceedings should not offend against the rules of natural justice. If these conditions are satisfied and are not violated its decisions cannot be held to be ultra vires or illegal and no writ of certiorari will issue to quash the same. **1951 K L T 701 : AIR 1953 T C 26 (30, 31) (Pt E) (Pr 16).**

——Arts. 226 and 311 — Discretionary orders — Domestic tribunal functioning within letter and spirit of law—Interference with its decision.

Where it is open to the Managing Committee of a school to terminate a teacher's service, only subject to this that the Appeal Committee could set aside that order or award gratuity if it found the grounds of termination to be unsatisfactory or insufficient and R. 32 in Chapter I of the Revised School Code of the Calcutta University, which applies to the case, permits such a termination if the pay of the post is raised with a view to attract a better qualified teacher, the High Court will not examine that order of the Domestic Tribunal in a proceeding under Art. 226. The question whether a trained teacher should be engaged to fill up this post is a question purely within the discretion of the Managing Committee. **AIR 1959 Tripura 27 (32) (Pt E) (Pr 28).**

——Art. 226—Grounds of interference — Decision of domestic tribunal.

The grounds upon which the decision of a domestic tribunal will be interfered with by a Court of law by certiorari or otherwise are : (1) that the tribunal had no jurisdiction, (2) that it did not follow the principles of natural justice, (3) that it did not act in good faith, and (4) that it did not act in accordance with its own rules, or in other words, that its act was ultra vires. **AIR 1959 Tripura 27 (33) (Pt I) (Pr 38).**

43. Effect of issue of writ.

——Art. 226—Law declared by High Court—It is binding on lower Courts and Tribunals. See Ibid, Art. 227. **AIR 1962 S C 1893.**

——Art. 226 (1)—Effect of writ—Order of subordinate Court or Tribunal quashed — Such Court or Tribunal, if has jurisdiction to further deal with matter.

It cannot be held that once an order of a subordinate Court or Tribunal has been quashed by a writ of certiorari that Court or Tribunal has no jurisdiction to deal further with the matter. If the order is quashed the inferior Court or Tribunal is left at large to pass any proper order in the light of the decision of the High Court if, on the other hand, the High Court refuses to interfere on a writ of certiorari and discharges the rule and dismisses the petition, then the order of an inferior Court or Tribunal stands and assumes the necessary finality.

Where an order granting an application by a company for retrenchment of its workmen was quashed by the High Court, held that Labour Appellate Tribunal had jurisdiction to further hear and consider the application by the company on a request made therefor. **57 Bom L R 1148 : (1956) 1 Lab L J 246 : I L R (1956) Bom 37 : AIR 1957 Bom 46 (47, 48) (Pt A) (Prs 2, 4, 5) (DB).**

——Art. 228—Contempt-proceedings for breach of writ order—Contemner is entitled to contend that writ is not in conformity with judgment—Contempt is not committed when judgment is complied with. **1965 (2) Cri L J 471 : AIR 1965 Cal 484 (487, 488) (Pt A) (Prs 11, 12, 16, 17).**

——Art. 226—Rule issued under Article—Trial Court cannot overlook or ignore terms of rule.

Where a rule issued by the High Court under Art. 226 indicated that the Customs Authorities were to show cause why they should not proceed according to law :

Held, that the trial Court could not stop further proceedings by the Customs Authorities in terms of the rule. The trial Court in disposing of the matter cannot overlook or ignore the terms of a rule. If the rule is to be made absolute a fresh adjudication by the authorities should be directed. **('65) 69 Cal W N 439.**

——Art. 226—High Court quashing orders of Tribunal in writ appeal confirming order in writ petition—Reference in appeal that all appeals before Tribunal will get revived—Effect — Directions are extraneous to the subject matter of writ petitions and relate to consequences of the quashing—Decree in appeal is not made one of variance with that of first Court as required by Art. 133 (1) (c). See Ibid, Art. 133. **AIR 1965 Mad 478.**

——Art. 226—Writ of mandamus—Transfer of suit to tribunal under Madras Act 30 of 1956 in violation of writ—(Tenancy Laws—Madras Estates Abolition and Conversion into Ryotwari Act (26 of 1948), S. 9) —(Tenancy Laws—Madras Estates (Supplementrary) Act (30 of 1956), S. 10).

Where under the order of the High Court in a petition under Art. 226 the Sub-Court has to determine the issue raised in the suit instituted by the petitioner and the Assistant Settlement Officer is prohibited by a writ of mandamus from proceeding with the enquiry under S. 9 of the Madras Act, 26 of 1948, the order of the Sub-Court transferring the suit to the tribunal under Madras Act 30 of 1956 is a clear violation of the order passed in the writ application and the order is not well conceived. **('59) 72 Mad L W 249 : 1959 Mad W N 273.**

——Art. 226 — Order of eviction passed by High Court in Writ petition—Execution—See Houses and

Rents—Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 9. AIR 1955 NUC (Mad) 3207.

——Art. 226—Order of removal of copyist — Quashing of — Effect of writ of certiorari — (High Court Rules and Orders — Patna High Court's General Rules and Circular Orders, Civil, Vol. I, Part II, Chap. II, R. 8).

Where the order of the District Judge removing a copyist is quashed, it must follow as a matter of law that all consequential action in pursuance of that illegal order must stand vacated. The effect of the writ of the certiorari would therefore, be that the name of the petitioner would stand automatically restored to its previous position. I L R 35 Pat 312 : 1956 Pat L R 261 : AIR 1956 Pat 257 (268) (Pt E) (Pr 33) (DB).

44. Election dispute.

See also Note 77.

(a) Election to legislature.
(b) Jurisdiction of High Court.
(c) Rejection or acceptance of nomination.
(d) Municipal election.
(e) Panchayat election.
(f) Right of electors.
(g) Rejection of ballot paper.
(h) Interlocutory orders.
(i) Order without jurisdiction or illegal orders.
(j) Miscellaneous.

44. Election dispute.

See also Note 77.

—— Art. 226—Inferior tribunal.

The election tribunal set up under the Representation of the People Act has a limited jurisdiction and authority and as such it is a tribunal inferior to a Court of general jurisdiction, viz., the High Court.

The expression inferior tribunal is now used to denote Courts of special or limited authority constituted "on such principles that their proceedings must show jurisdiction." The inferior or superior character of a Court or tribunal is not determined by the position or the status of the persons constituting it. It depends on the powers and jurisdiction conferred on the tribunal or the Court by the statute establishing it. (1910) 2 K B 859, Rel. on ; A I R 1945 P C 83, Disting. **I L R (1954) Madh Bha 76 : A I R 1953 Madh Bha 197 (201) (Pt C) (Pr 9) (DB).**

——Art. 226—Nature of Election Tribunal—Jurisdiction to add parties — Necessary parties, addition to after limitation—Addition of proper parties—'Persons duly nominated at election' meaning of — Issue of Writ under Art. 226. See Representation of the People Act (1951), S. 86 (1). AIR 1954 Raj 145 (DB).

44 (a). Election to legislature.

——Arts. 226, 227 and 329 (b)—Election, meaning of —Petition under Arts. 226 and 227 challenging election on ground of illegality in counting votes—Maintainability — Proper remedy is by election petition—Representation of the People Act (1951), Ss. 81, 100 (2) (c) 1955 All L J 765 : 1955 All W R (HC) 691 : AIR 1955 All 536 (538) (Prs 7, 8, 10).

——Arts. 226, 329 (b) — "Election" — (Words and Phrases — Election) — (Representation of the People Act (1951), Ss. 39 (2), 151). A I R 1953 Pat 47 held overruled by AIR 1952 S C 64.

The issue of notifications under S. 151 and S. 39 (2) of the Representation of the People Act is a part of the process of election within the meaning of Art. 329(b) of the Constitution and Art. 329(b) excludes the jurisdiction of the High Court to issue a writ under Art. 226. **A I R 1953 Pat 293 (295) (Pt B) (Prs 15, 16) (DB).**

——Arts. 226, 227, 329(b)—'Election' — (Words and Phrases — Election) — (Representation of the People Act (1951), Ss. 105, 170).

The election is over as soon as the results are declared by the Returning Officer and the subsequent proceedings before the Tribunal and the conduct of those proceedings by the tribunal are not part of the election. The proceedings before the Election Tribunal and the Tribunal's verdict are matters falling outside the scope of 'election' as contemplated by Art. 329(b). The provisions of the Representation of the People Act are subject to the provisions of the Constitution and they do not override the powers of the High Court under Arts. 226 and 227. (Case law discussed.) 6 Sau L R 258 : A I R 1954 Sau 1 (3, 4) (Pt A) (Prs 6, 7) (DB).

——Arts. 226, 227 and 329 (b)—Decisions of election tribunal — (Representation of the People Act (1951), S. 105).

The constitutional remedies under Arts. 226 and 227 are not taken away by Art. 329(b) for a person who is aggrieved by any decision of the election tribunal. Section 105 of the Representation of the People Act, 1951, cannot be deemed to interfere with the supervisory jurisdiction given by Art. 227 or the writ-issuing power of Art. 226. A I R 1952 Madh Bha 29; A I R 1952 Bom 277, Ref. **A I R 1953 Vin Pra 51 (53) (Pt A) (Prs 8, 10).**

44 (b). Jurisdiction of High Court.

——Art. 226 — Scope of jurisdiction — Certiorari against election tribunal — Order allowing amendment of election petition — Representation of the People Act (1951), S. 83 (3).

The jurisdiction of the High Court under Art. 226 of the Constitution is discretionary and the High Court would not issue a writ of certiorari unless the Tribunal has acted without jurisdiction or the decision is palpably erroneous. The High Courts cannot constitute themselves Courts of appeal either on questions of fact or on question of law. A mere wrong decision cannot be corrected by a writ of certiorari. It must be a patent error before the High Court can interfere. AIR 1954 S C 440, Rel. on.

Where an application for amendment of an election petition is made under S. 83 (3) of the Representation of the People Act, the election tribunal has the right to decide whether it comes within S. 83(3). If the majority of the members of the tribunal hold that the petition should be allowed on the ground that it does not change the nature of the original petition but merely gives further particulars, the order even if wrong cannot be said to be without jurisdiction nor can it be said that it is such a patent error or the decision is so palpably erroneous as to justify interference under Art. 226 of the Constitution. **A I R 1955 All 74 (75) (Pt A) (Prs 7, 8) (DB).**

——Art 226—Election petition not claiming precise relief. See Representation of the People Act (1951), S. 90 (4). **AIR 1954 All 245 (DB).**

——Art. 226—Election dispute—Decision of Tribunal on question of fact - High Court will not embark upon assessment of evidence in light of probabilities and other factors—No interference except in cases where there is no evidence whatever to support finding of fact by Tribunal. (1965) 2 Andh W R 219 (DB).

——Art. 226 — Election — Writ petition by rate-payer — Failure to choose proper form of writ — If ground for rejection — Duty of Court — Writs of mandamus and certiorari—Distinction.

Writ petition by rate-payer is maintainable. Failure to choose appropriate writ in itself is not a ground for rejecting the petition. The form of the petition is not material but the substance matters. When the peti-

tioner prays for alternative reliefs, the Court will have to issue the writ which would fit in with the facts established. There is an essential distinction between a writ of certiorari and a writ of mandamus. A writ of certiorari is available for the removal of any judicial act or quasi-judicial act of an inferior Tribunal whereas a writ of mandamus is issued to compel the performance of duties of a public nature. The condition that the act complained of should be a judicial act applies to the former relief and not to the latter. (1958) 1 Andh W R 480 : I L R (1958) Andh Pra 466 : A I R 1958 Andh Pra 458 (460, 461) (Pt A) (Prs 7, 8) (DB).

——Arts. 226 and 329 — Power to entertain writ having effect of interfering with electoral process.

Article 329 provides a complete bar to the High Court entertaining any writ which has the effect of interfering with any part of the electoral process. There can be no doubt that the issue of a writ of mandamus would have the consequence of interfering with the election while it is in progress. Part 15 of the Constitution of India is headed 'Elections' and Arts. 324 to 329 of that part form a separate code by themselves. They create rights and provide for their enforcement through a special tribunal to the exclusion of all Courts including the High Court. The word 'notwithstanding anything in this Constitution' exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress. A I R 1952 S C 64, Foll. (1955) Andh W R 248 : 1955 A L T 203 : A I R 1955 Andh 180 (181) (Pr 9).

——Arts. 226, 227—Orders of Election Tribunal—Interference under Arts. 226 and 227—Question of applicability of S. 117, Representation of the People Act — Judgment of Election Tribunal involving not only finding of fact but also containing errors apparent on face of record—Case fit for interference.

The High Court can interfere with the orders of Election Tribunals though within the strict limits laid down by the High Courts for themselves in the exercise of their extraordinary jurisdiction under Arts. 226 and 227 of the Constitution and as laid down in several cases of the Supreme Court.

Where the judgment of the Election Tribunal on the applicability of S. 117 of the Representation of the People Act, 1951, shows that there is not only a finding of fact involved but there are patent errors on the face of the record (Tribunal insisting on strict compliance instead of substantial compliance with S. 117 as laid down by Supreme Court), it is preeminently a case where a Court exercising supervisory jurisdiction ought to interfere. I L R (1964) Bom 631: 65 Bom L R 612 : 1963 Mah L J 865 : A I R 1964 Bom 107 (108, 112, 113) (Pt A) (Prs 3, 24) (DB).

——Arts. 226, 329 (b) and Part 15 — Order rejecting nomination paper of a candidate for election — High Court has no jurisdiction to issue writ of mandamus — "Election" meaning of — Representation of the People Act (1951), Ss. 36 (2), 80 and 81.

The High Court has no jurisdiction to issue a writ under Art. 226 of the Constitution of India against an order of a Returning Officer rejecting a nomination paper of a candidate under S. 36 (2) of the Representation of the People Act, 1951.

The obvious object of enacting Art. 329 (b) was to exclude the jurisdiction of civil Courts with regard to matters enumerated in that sub clause, and the jurisdiction of Courts is excluded notwithstanding anything in the Constitution. Therefore, if the subject falls under Art. 329 (b), then the High Court would have no jurisdiction to issue a writ under Art. 226 with regard to that subject-matter, because Art. 226 is controlled by Art. 329, and to the extent that the Constituent Assembly has excluded the jurisdiction of Courts in election matters referred to in Art. 329 (b), the power of the High Court to issue writs has been taken away.

Reading the expression "election" in its context, both in Art. 329 and in juxta-position with Arts. 327 and 322 and in its setting in Part 15 "election" must bear a wider meaning than the very limited restricted meaning of the result of an election or the counting of votes. "Election" has the same meaning as the expression used in Arts. 327 and 328, viz., matters relating to or in connection with election. "Election" is not merely the ultimate decision or the ultimate result. "Election" is every stage from the time the notification is issued till the result is declared and even perhaps if there is an election petition, till the decision of the Election Tribunal. It is one whole continuous integrated proceeding and every aspect of it and every stage of it and every step taken in it is a part of the election, and what is prohibited by Art. 329 (b) is the calling in question and one aspect or stage of the election. The expression "except by an election petition" does not point to the period when it can be called in question; it rather points to the manner and the mode in which it can be called in question; and Art. 329 (b) provides that the only way any matter relating to or in connection with an election can be called in question is by an election petition, which could be presented to such authority and in such manner as may be provided for by law passed by the appropriate Legislature.

Whatever the case may be, when a nomination paper has been improperly accepted as far as wrongful rejection of a nomination paper is concerned, substantially the right of the petitioner is safeguarded under S. 81 of the Representation of the People Act.

The scheme of the Act is to give a sort of finality to different stages of the election and to provide that all matters arising during the election and all disputes relating to the election should be determined and adjudicated upon after the election is over by means of an election petition to be decided by an Election Tribunal.

The whole object of the Constituent Assembly in enacting Part 15 and the whole object of Parliament in putting on the statute book the Representation of the People Act was to set up a machinery whereby elections would take place as far as possible within the time schedule laid down and without interference or interruption by proceedings in a Court of law. I L R (1952) Bom 785 : 54 Bom L R 137 : AIR 1952 Bom 277 (278, 279, 280, 281) (Pt A) (Prs 2, 3, 4, 5, 8, 9) (DB).

——Art. 226 — One seat to be filled contested by two candidates – Election of successful candidate, declared void by Election Tribunal on ground that he was disqualified to be elected – Notification under S. 149, Representation of the People Act, 1951, issued by Election Commission for fresh bye-election — Unsuccessful candidate claiming that he should be declared elected in writ petition filed by him—S. 53 (2), Representation of the People Act, 1951 held inapplicable — Petitioner's claim held untenable on ground that he did not come within S. 101, Representation of the People Act, 1951. See Representation of the People Act (1951), S. 149. ('64) 68 Cal W N 270.

——Arts. 226, 225, 227 and 329 (b)—Proceedings disputing validity of election—Jurisdiction of High Court Representation of the People Act (1951), Ss. 80, 81 and 100. See Ibid, Art. 329 (b). AIR 1953 Cal 98.

——Art. 226—There is nothing in Art. 226 or in any other provision of the Constitution to show that the High Court has power expressly conferred on it to decide doubts and disputes concerning elections. See Representation of People Act (1951), S. 170. AIR 1953 Cal 98.

——Art. 226—Election — Procedure for election not laid down by statute — Court can examine whether procedure adopted is proper — Acquiescence cannot validate illegal procedure.

When procedure for a particular important purpose like an election is not found in the provisions of the statute, it is the Court which has to see whether the procedure adopted was proper and was properly followed and whether the elections reflected the will of the majority of those present and who voted at the elections. The Court, in election matters is jealous about the rights of a citizen in the matter of the exercise of the right of franchise and to see whether proper procedure that would reflect the correct wishes of the majority was followed or not. If the Court is of the view that the procedure adopted was anomalous as it did not properly elicit the view of the majority, the Court exercising jurisdiction under Art. 226 of the Constitution, would, for the protection of the right of franchise of a citizen, certainly interfere in the matter irrespective of the fact that the particular procedure has been adopted by the Presiding Officer. It is not for the Court to speculate what the result would have been had the proper procedure been followed. 61 Bom L R 1326, Rel. on.; AIR 1954 Mad 563; AIR 1956 Nag 278 and AIR 1954 S C 217, Dist. (1962) 3 Guj L R 682.

——Arts. 226, 227—Powers of High Court—Election disputes—Interference.

The intention of the Legislature in enacting S. 19 (1) of the Territorial Councils Act was that the order of the District Judge on an election petition should be final and it would be defeating that intention if an order of the District Judge on such a petition is interfered with lightly. In the exercise of the jurisdiction under Arts. 226 and 227 of the Constitution of India, a Court should not assume to itself appellate powers when the filing of an appeal has been barred: AIR 1960 S C 137, Ref. AIR 1961 Him Pra 2 (7) (Pt G) (Pr 19).

——Arts. 226, 227, 329 (b) — Representation of the People Act (1951), S. 105 — Order of Election Tribunal is final and conclusive—High Court has no jurisdiction even under Arts. 226 and 227— C. P. Code (1908), S. 9. AIR 1955 N U C (Madh-B) 2378 (DB).

——Art. 226 — Order of Election Tribunal adopted and notified by Election Commission—Writ Petition against Tribunal's order — Maintainability. See Representation of the People Act (1951), S. 105. AIR 1955 N U C (Madh-B) 2378 (DB).

——Arts. 226, 227 and 329 (b)—Jurisdiction of High Court to interfere with decision of Election Tribunal — (Representation of tae People Act (1951), S. 105).

Article 329 (b) of the Constitution excludes the jurisdiction of the Courts with regard to matters forming a part of the whole procedure whereby a candidate is returned to the legislature. But it does not take away the jurisdiction of the High Court in regard to proceedings before the Election Tribunal set up under the Representation of the People Act. The effect of Art. 329 (b) is that so far as calling in question any election is concerned, it can be done only "by an election petition" by presenting to "such authority" and "in the manner" prescribed by a law of the appropriate Legislature. AIR 1952 S C 64 and AIR 1952 Madh Bha 97, Ref. to.

Section 105, Representation of the People Act, which gives finality to every order of the Tribunal cannot be taken as preventing the High Court from setting aside a decision of the tribunal given without or in excess of its jurisdiction. (1951) All E R 268, L R 5 A C 47 and 67 I A 222, Ref. to. I L R (1954) M B 76 : A I R 1953 Madh Bha 197 (199, 200) (Pt A) (Pr 6) (DB).

——Arts. 226 and 227—High Court when can interfere with decision of election tribunal.

Though it is not open to the High Court to exercise its powers under Art. 226 or 227 so as to interfere with a decision of the election tribunal merely upon the ground that the decision is erroneous either in respect of facts or in point of law, it has the power to examine and correct any decision of the tribunal on the ground of jurisdiction, fraud or violation of the principles of natural justice. ILR (1954) Madh Bha 76: AIR 1953 Madh Bha 197 (200) (Pt B) (Pr 8) (DB).

——Arts. 226, 227—Writ petition — Powers of High Court—Not an appellate Court — Finding of fact, cannot be disturbed — Election challenged on the ground of disqualification under S. 14 (1) (i) read with S. 94 of M. B. Municipalities Act (1 of 1954)—Finding arrived at by the Election Tribunal — Interference with. 1963 Jab L J 795.

——Arts. 226, 329 (b)—Jurisdiction of High Court to interfere with elections. See Ibid, Art. 329 (b). A I R 1957 Madh Pra 142.

——Art. 226—Election — Jurisdiction of High Court to interfere with elections. See Ibid, Art. 329 (b). 1957 Cri L J 853 : AIR 1957 Madh Pra 93 (DB).

——Art. 226 and 329 (b) — Application for issue of writ of certiorari for quashing proceedings of Election Tribunal— Maintainability — Representation of the People Act (1951), Ss. 74, 98 and 105—AIR 1953 Nag 357, Dissented from.

An application for the issue of a writ under Article 226 for quashing the proceedings of an Election Tribunal which had declared the election to be void and set aside the election of the petitioner, is maintainable and is not barred either under Art. 329 (b) of the Constitution or S. 105, Representation of the People Act.

The words 'notwithstanding anything in this Constitution' in Art. 329 (b) make it quite clear that they can apply only to the limited purpose of calling in question the election to either House of Parliament or to the House of the State Legislature. It can have no application to or bearing on the proceedings after the completion of the election. Section 74, Representation of the People Act makes it clear that an election is completed before the Election Tribunal is set up. It does not continue until an Election Tribunal pronounces its order under S. 98 of the Representation of the People Act. Article 329 (b) does not specifically or expressely refer to the proceedings of the Election Tribunal which, come into being only after the completion of the elections. The powers conferred on Courts by Art. 226 are very extensive; there is no proviso to limit its jurisdiction such as the proviso to Art. 227 which excludes the superintendence of the High Courts over tribunals relating to Armed Forces. AIR 1952 S C 64, Rel. on ; AIR 1953 Nag 357, Discussed and dissented from.

The issue of a writ as prayed for by the petitioner may and will result in certain consequences just as an adjudication of a successful candidate in an election as an insolvent may and will produce the same or similar consequences. It does not however follow that because of the effect on the result of the elections the petition for the issue of a writ or the adjudication of the successful candidate as an insolvent can strictly be said to be petition which calls in question an election to a Legislature.

The contention that the Election Tribunal has become functus officio and that as such it cannot be made a party, even if accepted, does not in any way affect the effectiveness of a writ that may be issued to quash the proceedings of the Election Tribunal. The

records of the proceedings of the Election Tribunal are lodged before the District Judge of the Division in which the election has taken place and are at present before the High Court. There does not appear to be any specific provision in the Representation of the People Act to support the view that the Election Tribunal becomes functus officio after the pronouncement of the order. AIR 1953 S C 210, Distinguished and AIR 1953 Mys 59, Rel. on. **34 Mys L J 80 : I L R (1954) Mys 33 : AIR 1954 Mys 111 (112, 113) (Pt A) (Prs 6, 7, 8, 10, 11) (DB).**

——**Art. 226**—Article 329 (b) does not exclude petition under Art. 226—Writ can issue to quash proceedings of Election Tribunal. See Ibid, Art. 329 (b). **AIR 1954 Mys 102 (DB).**

● ——**Arts. 226, 227 and 329**—Writ against decision of Election Tribunal—Decision of Election Tribunal when writ be quashed fully discussed (Representation of the People Act (1951), Ss. 80, 100)—(Representation of the People (Conduct of Elections and Election Petitions) Rules (1951), R. 47 (1) (c). AIR 1951 Nag 58 (FB), Dissented from. Hari Vishnu v. Ahmad Syed, **ILR (1954) Nag 209 : AIR 1954 Nag 166 (171 to 189) (Pt A) (Prs 16 to 20, 28, 46 to 58, 73, 95, 102, 110 to 115) (FB).**

——Art. 226—Order of Election Tribunal—Jurisdiction of High Court to issue writ. See Ibid, Art. 329 (b). **AIR 1953 Nag 357 (DB).**

——**Art. 226 — Petition under — Questions to be considered.**

In a petition under Art. 226 challenging the jurisdiction of an Election Tribunal to deal with certain election petition pending before it, the High Court cannot go into a question which is raised in the election petition. **I L R (1953) Nag 863 : 1953 Nag L J 376 : AIR 1953 Nag 237 (238) (Pt A) (Pr 3) (DB).**

——**Art. 226 — Jurisdiction of Orissa High Court —** Writ by, even if could be issued, in spite of bar under Art. 329, cannot be issued against Election Commission because the Election Commission cannot be regarded as functioning within territorial limits of High Court. ILR (1953) Cut 659 : **AIR 1954 Orissa 87 (92) (Pt F) (Pr 18) (DB).**

——Art. 226—Power of superintendence of High Court over Election Tribunal. See Ibid, Art. 329. **AIR 1954 Pepsu 118 (DB).**

● ——**Art. 226—Representation of the People Act (1951), S. 116-A—Order setting aside election—Stay of—No general rule can be laid down — Each case to be decided on its own facts — General principles as to stay orders in election cases**—Election.

No general rule can be laid down in what cases the stay of an order setting aside an election should be granted and in what cases it should be refused. In each case, the question will have to be examined with reference to the facts of that case. However, there are certain general principles which the Court should keep in view while determining, in each particular case, the question of stay. Further, for the purpose of stay, it hardly matters whether the matter has come to the High Court in its appellate jurisdiction or in its extraordinary jurisdiction under Art. 226 of the Constitution. The general principles are: (1) That stay should not be granted as a matter of course, (2) that the right to get elected being merely a legal right, it is not a right to or in property which is protected by Art. 19 of the Constitution. Therefore, the consideration that status quo should not be disturbed during appeal or in proceedings under Art. 226 of the Constitution should not form the basis for the purpose of determining the question of stay. Har Govind v. Paloo Ram, **66 Pun L R 329 : 1965 Cur L J 17 : I L R (1965) 1 Punj 409 : A I R 1965 Punj 22 (23, 24) (Prs 4, 6, 7) (FB).**

——**Art. 226 — Election Petition dismissed under S. 90 (3)—Representation of the People Act, 1951 —** Writ petition challenging order. See Representation of the People Act (1951), S. 116-A. **AIR 1959 Raj 114 (DB).**

——**Arts. 226 and 329 (b)— Petition under Art. 226 against decision of Election Tribunal can be entertained.**

The power to issue a writ of certiorari can only be taken away by express negative words. The provisions of Art. 329 will override the provisions of other parts of the Constitution in matters about which Art. 329(b) provides. Under Art. 329 (b) no election to either House of Parliament or to either House of a legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. A writ under Art. 226 with respect to the decision of the tribunal appointed to try an election petition is not covered by the words of Art. 329 (b). The election must be deemed to be over with the declaration of the result by the Returning Officer as it is difficult to conceive that an election can be called in question by an election petition before it is over. What the Election Tribunal does in deciding the election petition is all after the election, and if the decision of the Election Tribunal is challenged under Art. 226 as beyond its jurisdiction or in excess of it, it cannot be said that the election is being called in question. What is really being called in question is the decision of the Tribunal. **1954 Raj L W 192 : ILR (1953) 3 Raj 891 : AIR 1954 Raj 145 (148) (Pt A) (Pr 7) (DB).**

——**Arts. 226, 227 and 329 (b)**—Decisions of election tribunal — (Representation of the People Act (1951), S. 105). A I R 1953 Vin Pra 51 (52, 55) (Pt A) (Prs 3, 12).

44 (c). Rejection or acceptance of nomination.

——**Art. 226 — Election — Candidate's nomination paper rejected —Right to vote —Petition to establish right —Maintainability—Failure to appeal against rejection —Effect.**

Where the nomination paper of a candidate is rejected, whatever might have been the reason for rejection in this case it was rejected on ground that he was not a voter, the decision only affects his right to stand as a candidate at the election and not his right to vote. He can therefore maintain a petition under Art. 226 in order to establish his right to vote and in that case his failure to appeal against the rejection of his nomination paper cannot be taken notice of. **AIR 1956 Ajmer 71 (72) (Pt B) (Pr 4).**

——**Arts. 226 and 329 (b)—Election— Acceptance or rejection of nomination paper —Proper remedy is to file election petition — Aggrieved party cannot invoke jurisdiction of High Court under Art. 226.**

In view of **Art. 329** of the Constitution, the High Courts in India should not in exercise of their powers under Art. 226 of the Constitution interfere with elections which term includes the rejection or acceptance of a nomination paper. If, therefore, the petitioner wants to question the correctness of the decision of the Returning Officer rejecting his nomination paper his only remedy lies in an election petition. He cannot invoke the jurisdiction of the High Court under Art. 226 of the Constitution. A I R 1952 S C 64 and AIR 1954 S C 520 and 1955 S C J 267 : A I R 1955 S C 233, Foll.

The ground on which the order rejecting the nomination paper is challenged is not material. Whatever may be the ground of challenge the challenge must be made in the way provided by the statute, i. e., in an election petition. **AIR 1963 All 363 (365) (Pt B) (Prs 7, 8).**

——Arts. 226 & 324 & 327 & 328 & 329 — Order rejecting nomination paper of a candidate— Jurisdiction of High Court to entertain petition under Art. 226— Election, meaning of — Representation of the People Act (1951), Ss 36 & 80.

The High Court has no jurisdiction to entertain a petition under Art. 226 of the Constitution of India against an order of the Returning Officer accepting or rejecting the nomination paper of a candidate under S. 36 of the Representation of the People Act 1951.

The general power to issue high prerogative writs conferred by Art. 226 of the Constitution can be controlled and limitations on its exercise can be imposed by a subsequent appropriate provision in the Constitution in that behalf.

Reading Arts. 329 and 324 together, it would seem reasonably clear that the expression "election" used in Cl. (b) of Art. 329 is intended to cover comprehensively the diverse steps involved in the process of selecting a representative from the issue of a notification calling upon all the constituencies (in a general election) or particular constituencies (in bye-elections) to elect their representatives upto the declaration of results.

The use of the words "with respect to all matters relating to, or in connection with" in Arts. 327 and 328 of the Constitution does not indicate that the words "election" does not cover every part of the process of the selection of representatives, A reference to the various provisions of the Representation of the People Act (43 of 1951) will show the wide range that has to be covered before election can actually take place. It was to enable Parliament and the State Legislatures to legislate with regard to all these matters that such a wide phraseology has been used in Arts. 327 and 328.

Art. 329 (b) is co-related to Art. 324. The same word 'election' is used and apart from the preparation of electoral rolls and the appointment of Election Tribunals, it is only the "conduct, of all elections" (and not of all matters relating to or in connection with elections) that is vested in the Election Commission. Art. 329 (b) only forbids that to be challenged, except by an election petition to be disposed of by Election Tribunals appointed by the Election Commission, the conduct of which has by Art. 324 been vested in the Election Tribunal.

It is therefore clear that the disputes relating to elections based upon antecedent happenings are as much included in the prohibition as the happenings on the polling day of which many of them may be the proximate cause. Hence the bar imposed by Cl. (b) of Art. 329 covers the entire field of election and includes the steps through which the final stage of polling is reached. 1952 All L J 270 : A I R 1952 All 511 (513, 514) (Prs 8, 9, 10, 11, 12, 13, 15) (DB).

——Arts. 226, 329 (b)—Improper acceptance of nomination —Remedy against —Writ petition—Not maintainable.

The rejection of a nomination and the acceptance of a nomination stand on the same footing and there is no difference in principle between the two cases. If the rejection of a nomination cannot be the subject-matter of a writ petition under Art. 226 the acceptance of a nomination cannot also be the subject matter of a writ petition under Art. 226. Having regard to the fact that the process of nomination is a part of the election, Art. 329 (b) of the Constitution provides a complete bar to Court entertaining a writ petition under Art. 226. Art. 329 (b) has provided this bar for a very good reason, that in a country with democratic Constitution in which the Legislatures have to play a very important role, it will lead to serious consequences if the elections are unduly protracted or obstructed. A I R 1952 S C 64, Rel. on. (1955) Andhra W R 193 : AIR 1955 Andhra 177 (178) (Prs 7, 8).

——Art. 226—Jurisdiction of High Court — Election —Wrongful rejection of nomination paper of candidate by Returning Officer— Application for writ of mandamus — Maintainability. See Ibid, Art. 329 (b). AIR 1952 Bom 277 (DB).

● ——Arts. 226, 329 (b) — Rejection of nomination paper — High Court has no jurisdiction to interfere under Art. 226 — Word "election" in Art. 329 (b) means the whole procedure of election, including filing of nomination paper — (Representation of People Act (1951), Ss. 105, 100 (1) (c)).

Where a statute creates a right and provides for the constitution of a special tribunal for determining questions as to that right and the special tribunal functions than except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive. (1859) 7 W R 484, Rel. on.

The right of being nominated to stand as a candidate for election to the Parliament or to the State Legislatures is a right conferred by the Constitution, and subject to its provisions. The Constitution, which creates this right, itself contains provisions for the setting up of a tribunal in Part 15 of the Constitution, for trying cases for the infringement of the right and for the exclusion of the High Court's jurisdiction to deal under Art. 226 with such an infringement.

Article 329 (b) of the Constitution prohibits an election being called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. The law contemplated by the clause is clearly the Representation of the People Act, 1951 enacted by the Parliament in the exercise of the power conferred under Art. 327. Part VI of this Act prescribes the procedure for the presentation of a petition challenging any election, for the constitution of a tribunal to try the petition and the procedure to be followed by the tribunal in the trial, and specifies the grounds on which the tribunal may declare the election to be wholly void, or declare the election of the returned candidate to be void. A remedy is provided to a person whose nomination paper has been improperly rejected, to have the election declared void by the special tribunal on the ground of the improper rejection of the nomination. The scheme of the Act is to set up a Special Tribunal for the trial of election disputes, confer a special jurisdiction upon that Tribunal and oust the jurisdiction of ordinary Civil Courts. It is quite true that Ss. 105 and 170 of the Representation of the People Act, 1951, or any other provisions of that Act cannot by themselves in any way affect the jurisdiction of the High Court to issue writs under Art. 226 of the Constitution. But the jurisdiction of the High Court to enquire under Art. 226 into the validity of any election is taken away not by the Representation of the People Act but by Art. 329 itself. Article 329 means that notwithstanding anything contained in Arts. 225, 226, 227 and 228 and other Articles of the Constitution, no election shall be called in question by invoking the powers of the High Court under those Articles.

The word "election" in Art. 329 (b) is not restricted to the result of an election or to the actual counting of votes. The meaning of the term must, be determined on a consideration of the whole procedure whereby a person is elected to the Parliament or to a State Legislature in accordance with the provisions of the Representation of the People Act, 1951. The election commences when a nomination paper of the person seeking election is presented to the Re-

turning Officer and ends when the Returning Officer declares the result of the election. The act of the Returning Officer, therefore, in refusing to receive a nomination paper, or in accepting or rejecting a nomination paper, after scrutiny is clearly a matter which forms a part of the election.

The question, in such a case, is not whether the Returning Officer has failed to exercise the jurisdiction vested in him by law or has erroneously exercised that jurisdiction. It is whether the High Court has the authority under Art. 226 to correct any action or decision of an erring Returning Officer who fails to carry out his statutory obligations, however, arbitrary and despotic the order or decision may be. As the Representation of the People Act, 1951, prescribes a procedure for the presentation of election petitions on the ground of improper rejection of nomination papers and their trial by a tribunal constituted thereunder, Art. 329 (b) completely shuts out the petitioners from challenging before the High Court by way of a petition under Art. 226, the orders of the Returning Officers rejecting the nomination papers.

Had it not been for the opening words of Art. 329 (b) excluding the jurisdiction of the High Court, the High Court could not have hesitated in exercising their powers under Art. 226, against the improper rejection of nomination papers and in giving the appropriate relief, on the ground that the petitioner had his remedy under the Representation of the People Act, 1951. It is no consolation and remedy to a person whose nomination paper has been improperly rejected to tell him that he must let the election go on and then have it set aside by an election petition and have a fresh election ordered. It is obvious that such a post-election remedy would be wholly inadequate in seeking the remedy under the Representation of the People Act. The person would necessarily be put to trouble and expense and if he succeeds he would be required to meet the prospect of a fresh election under altogether different conditions and with an array of fresh candidates.

Quaere. — Whether a decision of the election tribunal or any proceedings of the tribunal can be challenged before the High Court by way of a petition under Art. 226 or 227. Shankar Rao v. State, A I R 1952 Madh B 97 (100, 101, 102, 103) (Prs 25, 27, 29, 31, 33) (FB).

——Arts. 226 and 329 (b)—Election disputes—(Election — Representation of People Act (1950), Ss. 80 and 100).

It is not open to the High Court to exercise powers under Art. 226 in a matter of rejection of a nomination paper by the Returning Officer. AIR 1952 S C 64 and A I R 1954 S C 520 and A I R 1952 Bom 277, Foll. A I R 1955 S C 233; A I R 1954 S C 202; AIR 1956 Bom 530; ILR (1953) Nag 245; I L R (1955) Nag 879, A I R 1957 Hyd 27; A I R 1957 Mad 60, Disting. The contention that the petitioner would have no remedy after the election is unsustainable in view of S. 80 read with S. 100 (c) of the Representation of the People Act, 1951. 1957 M P C 254: ILR (1957) Madh Pra 322; 1957 Jab L J 529; 1957 M P L J 284 : A I R 1957 Madh Pra 122 (125) (Prs 13, 17, 18) (DB).

——Art. 226—Election proceedings—Issue of writ — Improper rejection of nomination. See Election — Representation of the People Act (1951), S. 100 (1). AIR 1958 Mad 198 (DB).

——Art. 226 — Writ petition praying to quash the order of the Election Tribunal (District Munsiff) — Election Officer rejecting nomination of respondent on the ground of his non residence in the village for the specified period — Election Tribunal setting aside the decision of Election Officer on the ground that respondent ordinarily resided in the village — But not deciding question of nomination of respondent invalid on the ground that proposer was not elector of the constituency — Writ petitions allowed — Order of Tribunal set aside and election petition returned to tribunal for being disposed of afresh.

The Election Officer rejected the nomination of the respondent on the ground that he did not reside in the village for a period of 180 days during the year of the election. The Tribunal allowed the election petition on the ground that it was enough if the respondent ordinarily resided in the village and it was not incumbent for a candidate to reside in the village during any specified period. But the tribunal did not record a finding whether the nomination of the respondent was invalid, since the person who proposed him was not an elector of the constituency for which respondent was a candidate. It was the clear duty of the tribunal before whom this contention was raised to decide this question. Since it did not do so, the order of the tribunal was set aside and the election petitions presented by the respondent were remitted to the Tribunal for being disposed of afresh. 1963 Mys L J (Supp) 230 (DB).

——Arts. 226, 329 (b)—'Election'—Meaning of—Rejection of nomination paper—Jurisdiction of High Court to issue writs — Representation of the People Act (1951), Ss. 100, 105.

The Constituent Assembly must be deemed to have used the term "election" in Art. 329 (b) in its comprehensive sense, embracing the whole procedure whereby an elected member is returned. The Returning Officer commences his election activities as soon as any person is nominated as a candidate for election and the nomination paper is delivered to him in the prescribed manner. He holds scrutiny to determine the validity or otherwise of the nominations; and when he rejects or accepts a nomination paper he takes a definite step towards the election of the candidate concerned and it cannot be said that such a step does not constitute election. The provision of Art. 329 (b) is mandatory. The petitioner whose nomination paper has been rejected has a remedy by an election petition which he may file, if he so chooses, in accordance with the rules prescribed in that behalf. He is, therefore, not entitled to seek a remedy by means of a writ for the purpose of doing that for which there is a remedy only by an election petition under the provisions of the Act of 1951. The High Court has no power under Art. 226 to issue a writ particularly in view of the fact that the same matter may be dealt with by an Election Tribunal whose order under S. 105 of the Act shall be final. Even if it be assumed that the jurisdiction of the High Court has not been abridged by Art. 329 it is not a case in which the High Court should issue a mandamus, or any other writ, in exercise of its power under Art. 226 of the Constitution, firstly because there is a possibility of a conflict of decisions between the Election Tribunal and the High Court, and secondly because there is another remedy open to the petitioner, Case law discussed. 31 Pat 145 : AIR 1953 Pat 47 (49, 50) (Pt B) (Prs 8, 10, 11, 14, 15) (DB).

——Art. 226—Other remedy — Election proceedings —Exercise of writ jurisdiction — Error of law in rejecting nomination paper and inordinate delay in supplying copies of rejection order — Remedy by way of election petition not availed of but Appellate Authority found to support rejection of nomination paper in written statement filed before Court— Respondent not raising objection based on existence of other remedy in preliminary hearing—Error of law on face of record and absence of equally speedy and efficacious remedy entitles High Court to exercise of writ jurisdiction — Punjab Panchayat Samitis and Zilla Parishads Act (3 of 1961), S. 121(3).

Held, on facts that the determination of the clear-cut question of law raised would be enough in this case to entitle the petitioner to the relief claimed. The grave error of law was apparent on the face of the record and no further enquiry into facts was necessary for redressing the petitioner's grievance. The circumstances of the case more than amply justified sustenance of the petitioner's claim to interference by High Court in its judicial discretion; as delay by resorting to election petition was likely to be inordinate as the appellate authority was busy officer and the case might not have got the priority it deserved. Section 121 (3) of the Act could not detain the Court because that provision however effective in excluding other proceedings could not affect High Court's jurisdiction under Art. 226, though of course, existence or remedy under S. 121 (3) deserved due notice in the exercise of discretion under Art. 226. ('64) 66 Pun L R 1185.

——Art. 226 — Punjab Panchayat Samitis and Zilla Parishads Act (3 of 1961), S. 121 read with S. 115 (2) (b)—Validity—Section not unconstitutional— 'Failure of justice'—Expression not vague or uncertain in view of R. 3—Punjab Panchayat Samitis and Zilla Parishads (Election Petition) Rules (1961)—It provides clear guidance in deciding election disputes under the Act — S. 121 (2) (a) is not void for uncertainty, vagueness or conferment of unguided or uncanalised power. See Panchayats—Punjab Panchayat Samitis and Zilla Parishads Act (3 of 1961), S. 121. ('62) 64 Pun LR 1110.

——Arts. 226, 227 — Interference with decision of Election Tribunal — [Representation of the People Act (1951), Ss. 33, 40].

Election Tribunal held that a candidate cannot appoint more than one election agent and whatever may be the number of the nomination papers one and the same person has to be appointed as an election agent in all of them. The Tribunal further held that the appointment of more than one election agent does not invalidate all the nomination papers. In the Tribunal's opinion the first nomination paper filed by the candidate in each case was in order, it being filed in the prescribed form, and that the second nomination paper in which a different election agent had been declared was invalid.

Held, that no writ could be issued under Art. 226 against the decision of the Tribunal, nor could it be interfered with under Art. 227. (Case law discussed.) 6 Sau L R 258 : AIR 1954 Sau 1 (5, 6) (Pt B) (Prs 10, 15, 16, 18) (DB).

——Art. 226 — Order of Returning Officer rejecting nomination paper of candidate—No petition lies—See Representation of the People Act (43 of 1951), S. 2 (d). AIR 1952 Trav-Co 1 (DB).

44 (d). Municipal election.

——Art. 226—Elections disputes.

If the State or the public officers concerned seek to hold an election contrary to the law, a voter has a right to come to the High Court for the issue of a writ in order to stop the same. AIR 1955 Cal 83, Rel. on. Hence where in the petition under Art. 226 the question is whether the whole election is void because the election officer took action to call upon the voters to elect members even before the Municipal Committee had been validly constituted and whether the elections are held in an illegal manner inasmuch as no separate rolls of Municipal voters had been prepared, these questions go to the very root of the matter and it is essential that the petition be heard on merits. A I R 1956 Ajmer 25 (28) (Pt E) (Prs 11, 13).

——Art. 226—Election Tribunal:— Powers of—Interference by High Court. See U. P. Municipalities Act (2 of 1916), S. 25. AIR 1957 All 729 (DB).

——Art. 226 — Interference under — Order without jurisdiction. See U. P. Municipalities Act (2 of 1916), S. 40 (3). (1957) All L J 166.

● ——Art. 226 — Election case — Municipalities — U. P. Town Areas Act (2 of 1914), S. 8-A — Chairman of Town Area Committee forwarding his resignation — Resignation withdrawn before its acceptance — Resignation still accepted and election ordered—Election held — Writ petition challenging order and election—Maintainability.

A bye election was held on a casual vacancy supposed to have been created by the acceptance of resignation of the former Chairman of a Town Area Committee. The Chairman had, however, before his resignation was accepted by the District Magistrate, withdrawn it. Writ petition was filed by the Chairman, questioning the order of the District Magistrate to hold the bye-election.

Held, that as upon the validity of the acceptance of resignation depended the validity of the order to hold the bye election and the bye-election itself, the petition was maintainable. Bahori Lal Paliwal v. District Magistrate Bulandshahr, 1956 All L J 421 : 1956 All W R (H C) 423 : ILR (1956) 2 All 593 : AIR 1956 All 511 (512, 514, 516) (Pt A) (Prs 1, 27, 32) (FB).

——Art. 226—Certiorari—Election petition—Objection to its maintainability disallowed—Order affects rights of elected candidate.

If the party filing an election petition has been able to establish that the petition was properly filed any decision on the objection raised by the successful candidate that the petition is not maintainable is a decision which affects the right of the successful candidate and consequently it is a decision which can be the subject-matter of a direction in the nature of a writ of certiorari by the High Court. AIR 1956 All 89 (92) (Pt B) (Pr 8).

——Art. 226—Powers under—Nature and scope of—Election Tribunal — Decision in exercise of jurisdiction—No error apparent on face of record—No interference — (Municipalities—U. P. Municipal Act (2 of 1916), S. 25 (2) (b) — (Municipalities — U. P. Municipalities (Conduct of Election of Members) Order (1953) R. 22 (4) (5)). AIR 1955 N U C (All) 3548.

——Art. 226 — Election Petition (President of Municipal Board) Rules (1949), R. 4 — Election petition addressed to Election Tribunal—Technical defect—Exercise of writ jurisdiction. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 43-B. AIR 1955 NUC (All) 2035.

——Art. 226 — U. P. Panchayat Raj Act (1947), S. 50 —Resignation of Sarpanch—Fresh election of member and new sarpanch—Removal of latter on application by former after 2 years without hearing latter is illegal — Order directing opposite party not to remove him passed. AIR 1955 NUC (All) 1731.

——Art. 226 — Rejection of nomination paper — Remedy under Art. 226 of Constitution. See Municipalities — U. P. Town Areas Act (2 of 1914) (as amended by U. P. Act 5 of 1953), S. 6-I (2). AIR 1954 All 234 (DB).

——Art. 226—Election dispute—Municipal elections —Objection that all persons qualified to vote were not entered in the electoral roll — Provision in the Municipal Act for settlement of such objections — High Court cannot enquire — Remedy by person aggrieved is under the Act — Hyderabad District Municipalities Act (18 of 1956), Ss. 10, 11, 12 and 13.

The Election Tribunal or the High Court in writ petitions have no jurisdiction to enquire whether all persons qualified to vote were entered in the rolls. Under the Hyderabad District Municipalities Act the jurisdiction to prepare the electoral rolls is vested in certain authorities under the Act and the Rules and the provisions of that Act and the Rules give finality to the decision of these authorities. It would be, therefore, futile to challenge the validity of the election in a writ petition on the ground that some persons qualified to vote were not included in the electoral rolls. AIR 1958 Andh Pra 458 and 1958 Andh L T 674; Rel. on; AIR 1957 S C 304 and AIR 1958 Pat 149, Explained and Dist. ILR (1964) Andh Pra 995 : AIR 1964 Andh Pra 421 (426, 427, 428, 429) (Pt E) (Prs 11, 14) (DB).

——Art. 226 — Election — Redistribution of wards—Grounds for challenging—Issue of writ. See Election —Madras District Municipalities Act (5 of 1920), S. 43. (1958) 1 Andh W R 480 : AIR 1958 Andh Pra 458 (DB).

——Art. 226—Municipalities—Assam Municipal Act (15 of 1957), S. 16—Election Petition—Order of the District Judge—Power of High Court under Art. 226 to examine the correctness of—When can be used. See Municipalities — Assam Municipal Act (15 of 1957), S. 16. (1960) 1 Assam L R 139.

——Art. 226 — Order rejecting nomination paper — If can be challenged by a writ petition, See Assam Local Self-Government Act (25 of 1953), S. 12. AIR 1955 NUC (Assam) 3633 (DB).

——Arts. 226, 227 — Wrong acceptance of nomination paper in an election to Municipal Corporation —Writ petition challenging the same — Alternative remedy open — No bar to issuance of a writ under the article.

Ordinarily the High Court will not stay an election or pass any order which will result in the election being postponed. Where, however, the matter is brought before the High Court sufficiently in advance and where the matter can be heard and disposed of before the polling is due to take place and where there is an error apparent on the face of the record, there is no reason why the High Court should not correct the error. If a Returning Officer accepts a nomination paper which has failed to comply with an essential requirement of the election rules it would save public time and money, as well as expense, inconvenience and hardships to the parties, if the Returning Officer's action is corrected before the election takes place. In such a case relief cannot be refused merely because the petitioner can pursue another remedy by filing an election petition, after the election is held.

Though no hard and fast rule can be laid down in this matter, each case should be considered on its own facts and where without staying or postponing the election it is possible to set matters right before the election takes place it would be appropriate and desirable to do so. AIR 1952 S C 64 and AIR 1952 Bom 277, Disting. 65 Bom L R 123 : 1963 Mah L J 351 : ILR (1962) Bom 810 : AIR 1963 Bom 183 (185, 186) (Pt A) (Prs 3, 5) (DB).

——Art. 226—Election disputes—Municipal election —Electoral rolls not prepared according to law—Elections held — Writ petition — Maintainability—Elections).

It is the duty of the registering authority in a municipality to draw up proper electoral rolls before holding a general election. Where it fails to do so, a writ can be issued compelling them to do so. Where the election has taken place but there has been a stay of the publication of the names of the successful candidates, the proper order will be that the rule is made absolute and a writ in the nature of certiorari be issued quashing the electoral rolls which have been published and a writ in the nature of mandamus directing municipal authorities not to give effect to the same and also an appropriate writ setting aside the election that has been held on the strength of those electoral rolls and also a writ in the nature of mandamus directing the authorities not to publish the names of the candidates who stood for and were elected in the last election on the strength of the defective electoral rolls. 1960 Cal L J 73.

——Art. 226 — Scope—"Fresh election", meaning of —Incomplete General Election—Supersession—Position of elected members — Election of vacant seats only — Legality. See Municipalities—Bengal Municipal Act (15 of 1932), S. 554. AIR 1955 NUC (Cal) 2899 (DB).

——Art. 226—Election disputes—Hyderabad Municipal Corporation Act (2 of 1956), Ss. 22 (1) (h), 42 (10), 79 (2) (c) — Nomination paper rejected — Remedy of aggrieved party—Issue of writ.

The provisions of S. 42 (10), Hyderabad Municipal Corporation Act, leave no room for interpreting S. 79 (2) (c) in a manner as to confer right to get the matter referred to a tribunal of a person whose nomination paper has been accepted or rejected. Section 42 (10) in express words bars such a remedy. Section 42 (10) though it ousts the jurisdiction of the Court cannot protect the decision of the Returning Officer or the Court of appeal from exercise of the extraordinary powers with which the High Court is invested under Art. 226 of the Constitution for issue of a writ. ILR (1956) Hyd 624 : AIR 1957 Hyd 27 (28) (Pt A) (Pr 2) (DB).

——Art. 226 — Declaration does not form part of nomination paper — Failure to specify symbols out of prescribed list in declaration is no ground for rejecting nomination paper — Defect in naming symbols is not a material defect. See Municipalities —M. B. Municipal Election Rules (1954), R. 28 (1). AIR 1955 NUC (Madh B) 3367 (DB).

——Art. 226 — M. P. Municipalities Act (1961), S. 20 and Rr. 15 and 51—Each candidate allotted a symbol—Symbol allotted to a candidate cannot be challenged on the ground that it was different from the recognised ones — Restriction could be made in allotting symbols only to the extent specified in R. 15—Election petition not filed to attack an election—Limitation for filing the same expired—High Court would not interfere in writ proceedings—Rate-payer cannot challenge validity of selection of members by elected councillors.

Held, on facts that R. 15 (1) merely authorised the supervising officer to allot a colour or symbol to each candidate subject to the restrictions embodied in the in the proviso to sub-r. (1). The choice of symbols to be made by candidates at an election under the Act was not restricted to those specified for a Parliamentary or Assembly election. As regards attack on selection of councillors, it was not open to a mere rate-payer to challenge the selection of councillors under R. 51 when S. 20 of the Act laid down that a selection of a councillor could be challenged only by a councillor by filing an election petition. Held, further that no election petition having been filed against any of the councillors under S. 20 of the Municipalities Act and time for that having been expired, their selection had become final. A I R 1954 S C 210, while saying that the statutory requirements of election law must be strictly observed, it had been emphasized that the success of a candidate who had

won at an election should not be lightly interfered with. 1965 M P L J (Notes) 127.

——Art 226— Jurisdiction — Petitioner's election to Municipal Board held invalid — Order assailed as being ultra vires. Contentions raised arguable under R. 136 (6) of the Rules framed under the M. B. Municipalities Act — Status-quo-ante maintained. A I R 1955 Andh 17, Rel on. I L R (1962) Madh Pra 490 : 1962 M P L J (Notes) 140 : 1961 M P L J 1004 : 1961 Jab L J 1228 : 1962 M P C 88 : AIR 1962 Madh Pra 47 (48) (Pr 10) (DB).

——Arts. 226, 227 — Election dispute — Issue of writ—(Elections—C P. and Berar Local Government Act (68 of 1948), Ss. 22 and 182 (2) (ix).)

(Per Bhutt C. J and Shrivastava, J., Tare J., contra). Where a candidate is elected a Vice Chairman of a Janapada Sabha on rejection of a vote of the rival candidate on the ground that the ballot paper had an imprint of the cross which could disclose the identity of the voter it is open to the aggrieved candidate to file an election petition under S. 22 of the C.P. and Berar Local Government Act. Such a case is not fit for the exercise of the writ jurisdiction of the High Court

(Tare J., Contra). Writs of quo-warranto and mandamus ought to be issued in the instant case. Consideration of an alternative remedy would not be so material. Hariprasad Khadak Singh v. State of Madhya Pradesh, 1959 M P C 355 : 1959 Jab L J 414 : ILR (1959) Madh Pra 154 : 1959 M P L J 669 : AIR 1959 Madh Pra 343 (345, 347) (Pt B) (Prs 14, 25) (FB).

——Art. 226—Election proceedings—Maintainability of writ petition — Art. 329 (b) — Municipalities — Madhya Bharat Municipalities Act (M. B Act I of 1954), Ss 14 (1) and 34)—(Elections).

The term 'election' embraces the whole process and generally speaking the law of election does not contemplate two attacks on election proceedings; but in the case of Municipal elections, the Madhya Bharat Legislature has broken that process, by providing an interim appeal against the rejection of nomination paper. Hence High Court can entertain a writ petition against an order passed in such an appeal AIR 1952 S C 64 Disting 1960 M P L J 1040 : 1958 M P C 44 : 1958 Jab L J 158 : A I R 1958 Madh Pra 181 (182) (Pt C) (Pr 11).

——Art. 226—Election dispute— Municipal elections —Power of Election Commissioner to determine by lot—Interference. See Madras District Municipalities Act (5 of 1920), S. 303 (2) (b). (1957) 1 Mad L J 247.

——Art. 226 - Certiorari—Order setting aside election. See Municipalities, Madras District Municipalities Act (5 of 1920), R. 10 of Election Rules Framed under Act—Election Rule. AIR 1958 Mad 969.

——Art. 226—Question of fact—Interference— Election—Vote challenged on ground that person who cast it was a minor — Judge on a consideration of all materials coming to contrary conclusion — Decision cannot be challenged in a writ petition. See Elections —Bombay District Municipal Act (3 of 1901), S. 22 (3). AIR 1958 Mys 184 (DB).

——Art. 226 — Disqualification of councillor — Dispute as to — Who can decide — Dispute if can be raised in writ petition. See Municipalities — City of Nagpur Corporation Act (2 of 1950), S. 19 (b). AIR 1956 Nag 278 (FB).

——Art. 226 — Disqualification of councillor — Councillor taking part in election meeting — Election if can be challenged on ground of disqualification. See Municipalities— City of Nagpur Corporation Act (2 of 1950) S. 15 (1) AIR 1956 Nag 278 (FB).

——Art. 226 - Election matters — Authority committing error of law—Subject is not as matter of course entitled to writ — Question depends on facts — C. P. and Berar Local Government Act providing remedy by election petition — Constitutional remedy is not excluded — Illegality patent — Election yet to take place — It is better that to avoid prolongation of process the High Court should declare correct position — Remedy under Act held not adequate or expeditious. AIR 1955 N U C (Nag) 1579 (DB).

——Art. 226 Election proceedings—Entire elections challenged as invalid—Application for 'writ' —Proper remedy—(Municipalities—Orissa Municipal Act (28 of 1950), Ss. 18 to 21)—(Elections).

Sections 18 to 21 deal with the questioning of the election of an individual Councillor by an election petition. But where the entire elections are challenged as invalid and there is no disputed question of fact to be ascertained by evidence and the only question is the legal effect of the admitted non compliance with the relevant provisions of the Orissa Municipal Act and the rules framed thereund r in such circumstances an application under Art. 226, affords a proper remedy. 25 Cut LT 42 : ILR (1959) Cut 189.

——Art. 226—Municipalities - Bihar Municipal Election and Election Petition Rules (1953), R. 7 — Preparation of Electoral Roll - Hearing objections — Time and place of hearing — (Elections). See Municipalities Bihar Municipal Elections and Election Petitions Rules (1955), R. 7. AIR 1959 Patna 409.

——Art. 226—Election proceedings — Irregularity in holding elections — Defeated candidate cannot challenge it — No writ can issue. See Municipalities— Bihar Municipal Elections and Election Petitions Rules (1953), R. 9. ('58) ILR 37 Pat 688.

——Art. 226 - Election proceedings — Writ Petition Art. 329 (b) — Municipal Elections and Election Petitions Rules (1953), R. 62 —(Election).

Where by a writ petition under Art 226 what is challenged is not the election of a particular candidate, but the validity of the entire municipal election because of the violation of the essential provisions of the Bihar Election Rules and the Act, the writ petition is competent. 1957 B L J R 672 : AIR 1958 Pat 149 (153) (Pt D) (Pr 14) (DB).

——Art. 226 — Pepsu Judicature Ordinance (Smt. 2005), S. 60 - Power given by S. 60 to High Court to issue direction or orders in the nature of writs of habeas corpus etc. for enforcement of any right given by any law for time being in force— Illegal order by Deputy Commissioner stopping the election sine die — High Court can issue writ for enforcing right under Municipal Act—Power is irrespective of power given by Art. 226. AIR 1951 Pepsu 141 (147) (Pt C) (Pr 14) (DB).

——Art. 226—Petitioner's election to Municipality set aside on ground that minors voted in election — Plea that minors voted for petitioner not raised in election petition—Yet Election Commissioner going into question whether election was materially affected by irregularities and setting aside election—Writ petition against order — Respondent's claim that fact finding was involved and case must be remitted back to Election Commissioner — Held, no fact finding was involved, but question was of excess of jurisdiction by Commissioner. A I R 1965 Punj 362 (365) (Pt A) (Pr 8) (DB).

——Art. 226 — Scope of article — Order by Government under S 236, Punjab Municipal Act setting aside the election of President - Order whether administrative or quasi-judicial can be quashed by the High Court.

The scope of Art. 226 of the Constitution is comprehensive enough to include challenge to administrative act as well, provided of course the necessary pre-requisites for interference are made out. The Article is not confined to the five categories of writs mentioned therein and the High Court can always in the interests of justice frame its orders and directions to suit the occasion and the contingencies of a given case.

Where the State Government passed an order under S. 236, Punjab Municipal Act setting aside the proceedings of a Municipal Committee in so far as it related to the election of the President:

Held, that the procedure for setting aside election was regulated by the Rules framed under the Act and that the Government had no power under S. 236 to set aside the election. Hence, whether the impugned order was described as an administrative or a quasi judicial order, the High Court had power to quash such an order, as it vitally affected the right of the elected candidate to the office of the President. 64 Punj L R 638 : I L R (1962) 2 Punj 512.

● ——**Art. 226—Election disputes — Election, setting aside of — Preliminary electoral roll prepared (in accordance with new rules already known) in anticipation of direction of State Government—Roll published after receipt of direction — Electoral roll not invalid and election held on its basis not liable to be struck down — Use of existing Assembly Roll as basis for preparation of new roll not objectionable.** See Municipalities — Punjab Municipal Election Rules (1952), Rules 8-A to 8-K. A I R 1961 Punj 429 (FB).

——**Art. 226 — Applicability of S. 19 — Absence of notification under S. 10 — Constitutes vital pre-election, deficiency — Election can be challenged by writ petition — Remedy under S. 19 no bar.** See Municipalities — Rajasthan Town Municipalities Act (23 of 1951), S. 19. 1962 Raj L W 57.

——**Art. 226 —Writ petition challenging validity of election of Municipal Board — Principles to be followed—Amendment raising new point based on subsequent decision—Amendment cannot be refused on ground of mere delay — Rajasthan Town Municipalities Act (23 of 1951), S. 10.**

The general principle is that an election must not be lightly set aside ; but at the same time it is equally important to remember that the purity and the regularity of the election process has to be safeguarded and flagrant breaches of the law relating to election cannot be allowed to go unnoticed or their inevitable consequences glossed over. A I R 1954 S C 210, Rel. on.

Thus where, in a writ petition under Art. 226, challenging the validity of the election of a municipality on various grounds the petitioner sought, by an application for amendment, to raise a new point relating to the failure of the Government to issue a notification under S. 10 of the Rajasthan Town Municipalities Act 1951 relying upon a Full Bench decision of the High Court given after the filing of the petition and the amendment was opposed on the ground of delay :

Held, that mere delay could not be valid ground for refusing an amendment irrespective of all other considerations, (ii) that since the question of the non-compliance with the provisions of S. 10 went to the root of the election and the Court was faced with a Division Bench decision delivered subsequently which in its turn was approved by a Full Bench of that very Court, it could not refuse permission to the petitioners to rely on that decision in support of the petition questioning the validity of the election The amendment was therefore allowed. A I R 1960 S C 1191, Rel. on. **1962 Raj L W 57 : I L R (1961) 11 Raj 1144.**

——**Art. 226—Quo warranto—Election held in breach of mandatory provisions fixing the total number of members of Municipal Board and delimiting constituencies — Breach not covered by S. 19 of Rajasthan Town Municipalities Act — Entire election is vitiated —Application under Art 226 for issue of writ of quo warranto — Cannot be refused on ground of acquiescence — Period of limitation not applicable to writs — Petition cannot be dismissed as time barred.** See Municipalities — Rajasthan Town Municipalities Act (23 of 1951), S. 10. **I L R (1961) 11 Raj 345.**

——Art. 226—Delimitation of constituencies — Questions relating to — Nature of — Factors taken into consideration — High Court will not interfere unless discrimination is proved. See Municipalities—Rajasthan Town Municipalities Act (23 of 1951), S. 10 (d). **I L R (1961) 11 Raj 322.**

●——**Art. 226—Election dispute — Municipal election — Other remedy open — Interference by High Court under Art. 226—Rajasthan Town Municipalities Act (23 of 1951), S. 19 (5)—Scope—Disregard of S. 7—Relief under Art. 226 can be granted.**

The High Court has wide powers under Art. 226 of the Constitution and the jurisdiction of the Court is not affected or reduced because the Court acts with certain amount of restraint, under Art. 226 of the Constitution and refuses to grant relief in cases regarding enforcement of rights created by a statute, which also provides a special remedy for enforcing them.

Section 19 (5) of the Rajasthan Town Municipalities Act affords a remedy for breaches of mandatory provisions of the Act or the rules as well. That however, does not mean that cases of disregard of mandatory provisions of the Act not covered by S. 19 of the Act, cannot be challenged by petitions under Art. 226 of the Constitution. I L R (1960) 10 Raj 540 **Overruled.** Jaiwant Rao v State of Rajasthan. **1960 Raj L W 687 : I L R (1960) 10 Raj 1 63 : A I R 1961 Raj 250 (266, 267, 268) (Pt E) Prs 52, 54, 55) (FB)**

——**Art. 226—Municipalities—Rajasthan Town Municipal Board Chairman Election Rules (1951), R. 14—Election—Meaning of Rejection of nomination paper —Remedy under R. 14 not availed of — Writ petition not maintainable—(Words and Phrases — Election)—(Elections).** See Municipalities — Rajasthan Town Municipal Boards Chairman Election Rules (1951), R. 14. **A I R 1960 Raj 86.**

——**Art 226 Setting aside of election without giving reasonable notice - Effect — Principles of natural justice.** See Municipalities—Rajasthan Town Municipalities Act (23 of 1951), S. 14. **I L R (1960) 10 Raj 69.**

——**Art. 226 Election disputes Election to municipal board in Rajasthan Election petition filed before election, challenging entire election — Disputed question of fact and question of territorial limits of municipality agitated — Remedy before Election Board under municipal law open — High Court would not interfere under Art 226 —(Municipalities—Rajasthan Town Municipalities Act (23 of 1951), Ss. 19 and 19A).**

Where the petitioner, who was one of the electors for a municipal board in Rajasthan, filed a writ petition even before the election was held, challenging the entire election raising questions that the electoral rolls were not properly prepared and published and raising a dispute about the territorial limits of the municipality :

Held, that S. 19A of the Rajasthan Town Municipalities Act, 1951, makes it quite clear that the election of the total number of the members of the municipal board could be challenged before the Election Tribunal. The election tribunal was not debarred by

any provision in the Rajasthan Town Municipalities Act, 1951 from making an enquiry into and giving its decision upon, the allegations relating to a fundamental deficiency in the election i.e. a deficiency which shakes the very foundation of the election. On the other hand the questions which have been raised by the petitioner can be decided properly by an Election Tribunal, because it can decide both questions of fact and of law.

Therefore it would not be proper for the High Court to decide those matters under Art. 226 at that stage. ILR 1955 Raj 827, Rel. on.

Further S. 19 of the Act provides an appeal to the High Court from the order of the Election Tribunal on a question of law. Once the facts are decided by the Election Tribunal, the High Court would be in a better position to deal with the questions of law and for this reason also, it is not proper to interfere in the matter at this stage in extraordinary jurisdiction.

So also, according to S. 19 one voter alone cannot be permitted to bring an election petition. If the present application is allowed, it would mean that a voter can circumvent the above provision of law and it would become nugatory. A I R 1957 Raj 293, Rel. on; A I R 1955 Raj 818, Disting.; A I R 1956 Raj 185, Ref. **1960 Raj L W 340 : ILR (1959) 9 Raj 1024.**

——Art. 226—Municipal election—Terms of office of members — Date of commencement — Government declaring term of municipality to have ended on certain date and ordering fresh election — Order illegal — Order must be set aside. See Municipalities — Rajasthan Town Municipalities Act (23 of 1951), S. 15. **A I R 1957 Raj 87 (DB).**

44 (e). Panchayat election.

——Art. 226:— Reviewing authority acting as appellate authority and restoring elections which had been set aside — Legality — Interference by High Court under Arts. 226 and 227, Constitution of India. See Panchayats—U. P. Panchayat Raj Rules (1947), R. 25 (1), Cl. (8). **1959 All L J 223.**

——Art. 226 — Election petition — Disposal of on grounds raised during arguments — Interference. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 12-C. **A I R 1958 All 511.**

——Art. 226 — Accepting nomination paper of person not attaining age 30—There is gross failure to comply with Act. See Election—U. P Panchayat Raj Act (26 of 1947), S. 12.C (1) (b) (iii). **1957 All W R (HC) 388.**

——**Art. 226 —Petition for writ—Alternative remedy —Effect—Setting aside election of sarpanch—Proper remedy — (Election — U. P. Panchayat Raj Rules (1947), Rr. 83B, 26) — (Panchayats — U. P. Panchayat Raj Rules (1947), Rr. 83B, 26).**

Under R. 83B of the U. P. Panchayat Raj Rules any dispute relating to the election of a person as Sarpanch or Sahayak Sarpanch has to be decided in a manner provided in R. 26 and the remedy of the applicant is by way of an election petition to the Sub-Divisional Officer of the division in which Sabha concerned was situated. Where no such petition has been filed, there being an alternative remedy open to the applicant, the application in writ jurisdiction is not entertainable. **1957 All L J 212 : ILR (1957) 1 All 70.**

——**Art. 226 — Election tribunal — Order of — Interference — (Election) — (Panchayats—U. P. Panchayat Raj Act (26 of 1947), S. 12 (c)).**

Where an election petition is filed it is within the jurisdiction of the Sub Divisional Officer as provided by S. 12 (c) of the U. P. Panchayat Raj Act to decide the question whether a candidate is disqualified being below thirty years and the finding cannot be disturbed by the High Court under Art. 226 of the Constitution in the absence of any manifest error of law or want of jurisdiction on the part of the subordinate tribunal. **1957 All L J 108.**

——**Art. 226—Petition challenging legality of election —Election held not illegal — Subject-matter being of election dispute, mandamus would not lie. See Panchayats — Andhra Pradesh Panchayat Samithis and Zilla Parishads Act (35 of 1959), S. 65 (3). AIR 1964 Andh Pra 433 (DB).**

——**Art. 226 — Mandamus — Who can apply for — Election of members to be co-opted to Panchayat Samithi — Ratepayer not competent to challenge its validity.**

(Obiter) A ratepayer in the Panchayat Samithi area who had nothing to do with the election under S. 6 (1) of the members to be co-opted as specified in S. 4 (1) (iii) by the President of the Panchayats in the Block, is not competent to seek the remedy by a writ of mandamus on the ground that the election was not valid. **(1964) 1 Andh W R 82 : ILR (1965) Andh Pra 147 : A I R 1964 Andh Pra 433 (436) (Pr B) (Pr 11) (DB).**

——**Art. 226 —Scope —Election challenged on ground of corrupt practice — Securing votes through bribery or improper inducement alleged — Offence under S. 171B of I. P. C. — Connection between the offence and the candidate or his agent must be established — Burden of proof — No finding given by the Tribunal about the existence of such connection — Effect — Setting aside of the elections, without such definite finding, is an error apparent on the face of the record —Certiorari issued — Constitution of India, Art. 226— Elections—See Panchayats—Madras Village Panchayats Act (10 of 1950), S. 112. (1962) 2 Andh L T 230.**

——**Art. 226 — Election disputes — Panchayat elections — Wrong allocation of seats by Panchayat officer—Issue of writ — Art. 14 —(Panchayats — Madras Village Panchayats Act (10 of 1950), (as amended by Andhra Amendment Act, 1955), S. 9 (2)).**

The mere fact that in panchayat election proceedings the District Panchayat Officer has made the allocation of seats contrary to the direction of the Government does not give the petitioner (a voter) legitimate cause for complaint before the High Court under Art. 226. If the allocation is not in conformity with Art. 14 of the Constitution, the matter may require consideration. **A I R 1958 Andh Pra 32 (33) (Pr 2) (DB).**

——**Art. 226 — Objections to nomination — Proceedings as to — Nature—Judicial acts—What are—Jurisdiction under Art. 226. See Madras Village Panchayats Act 1950 — Rules under R. 40 (1). A I R 1957 Andh Pra 539.**

——**Art. 226 — Absence of name in election roll — Nomination — Validity — Error apparent on face of record under Art. 226. See Madras Village Panchayats Act 1950, S. 12. A I R 1957 Andh Pra 539.**

——**Art. 226—Certiorari—Village Panchayat—Election of President—Flagrant breach of election law—Power of High Court to issue writ of certiorari against Election Officer — (Madras Village Panchayats Act (12 of 1948) — Rules for the Election of Presidents of Minor Panchayats, Part II, Rule 11.)**

While it is a sound principle of justice that the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law.

Where at an election by show of hands held for electing a President there is no counting at all by the Election Officer, the counting is neither proper nor correct and as the conclusion rests mainly on sur-

mises of the officer, it follows that there was in fact no election in the eye of law. In such a case the High Court has jurisdiction to issue a writ of certiorari to quash the order of the Election Officer. (1955) Andh W R 471 : 1955 ALT 393 (Cri) : AIR 1957 Andh Pra 339 (342) (Pt D) (Prs 21, 22).

——Art. 226—Certiorari — Village Panchayat—Election of President — Flagrant breach of Election Law —High Court has power to issue writ of Certiorari against Election Officer—(Madras Village Panchayats Act (10 of 1950)—Rules for the Election of Presidents of Minor Panchayats, Part II, R. 11). AIR 1955 N U C (Andh) 4812.

——Art. 226—Panchayats — Bombay Village Panchayats Act, S. 15—Nomination paper of candidate rejected —Mamlatdar rejecting appeal against order of rejection —Proper remedy is to file election petition challenging election of successful candidate — Writ petition challenging election not maintainable. 1964 Mah L J (Notes) 65.

——Art. 226—Panchayats — West Bengal Panchayat Act (1957), S. 117 — West Bengal Panchayat Rules (1958), R. 30 — A voter, who is not a candidate for office of Pradhan has no right to challenge election of Pradhan under the rule — He can challenge the same by writ petition, having no alternative remedy— Constitution of India, Art. 226—See Panchayats — West Bengal Panchayat Act (1 of 1957), S. 117. A I R 1964 Cal 340.

——Art. 226—Quo warranto — Bombay Village Panchayat Election Rules (1959), R. 7 (2) — Notice under not published one month prior to last date for filing nomination — Validity — Quo warranto — If can be issued. See Panchayats — Bombay Village Panchayats Election Rules (1959), R. 7 (2). (1963) 4 Guj L R 929.

——Art. 226—Village Panchayat elections — According to rules for the conduct of election under Bombay Village Panchayats Act it is the voters' list for each ward that plays an important part in the conduct of election — If elections are conducted in a manner which is contrary to law, a writ must issue. Panchayats —Bombay Village Panchayats Act (3 of 1959), S. 12. (1962) 3 Guj L R 56.

——Art. 226 — Election disputes — M. B. Panchayat Act (58 of 1949), S. 116—Rules under, M. B. Panchayat Rules (Smt 2008), Rr. 18, 41 — Order rejecting nomination paper — Writ petition challenging — Jurisdiction of High Court.

The Legislature in conferring finality upon the order of the election officer under R. 18 (1), intended that there should be no obstruction at the stage of scrutiny of nomination papers and that the validity of the elections, on the material grounds, should be challenged only by a petition under R. 41. This however does not mean that the High Court has no jurisdiction to entertain petitions under Art. 226 challenging the order of the Election Officer rejecting the nomination paper of the petitioner but it means that the Legislature did not intend that there should be any interruption in the election at an interlocutory stage and that the matter should be examined only after the election is over and proper proceedings are commenced for challenging its validity. In this view, the petitioner has an alternative remedy under R. 41 and that cannot be held to be either inadequate or inefficacious. He must pursue that remedy and approach the High Court if occasion arises after the remedy is exhausted. AIR 1952 S C 64, Rel. on ; AIR 1955 Madh Bha 179, Discussed. Madh Bha L R 1956 (Civ) 663 : 1957 Jab L J (MB) 19 : A I R 1957 Madh Bha 38 (40, 42) (Pt B) (Prs 17, 34, 34a) (DB).

——Art. 226—Parties — Election disputes — Petition challenging order of Election Officer rejecting nomination paper—State, if necessary party.

In a petition under Art. 226, challenging the order of the election officer rejecting the petitioner's nomination paper for election to the Gram Panchayat, passed under R. 18 of the M. B. Panchayat Rules, neither the State nor the Collector are interested in the controversy and there is no reason for impleading them to the petition. Madh B L R 1956 (Civ) 663 : 1957 Jab L J (MB) 19 : AIR 1957 Madh Bha 38 (42, 43) (Pt C) (Pr 37) (DB).

——Art. 226—Scope—Electoral roll—Publication of—Validity—Petitioner taking advantage of— Writ Petition against others — Delay in — Maintainability. See C. P. and Berar Panchayat Rules (1948), R. 2 (ix). 1959 Jab L J 665.

——Art. 226—Election—Objection about validity of electoral rolls—Petition lies — Omission to give profession of voters in electoral roll — Result not materially affected — (C. P. and Berar Panchayat Rules (1948), Cl. 8, R. 2).

Relief for grievance connected with the process of election starting from stage of nomination and continuing upto declaration of results can be sought by way of election petition but objection taken about the validity of electoral rolls can be considered in a petition under Art. 226 of the Constitution. The omission to give the profession of voters does not vitiate the rolls. At best it is an irregularity which cannot materially affect the result of the election. 1958 M P L J (Notes) 101.

——Art. 226—Madras Village Panchayats Act (10 of 1950), S. 112 — Election Rules under — Non-compliance—Setting aside of election—Result of election not materially affected — Order setting aside election — Quashing of. See Madras Village Panchayats Act (10 of 1950), S. 112. AIR 1956 Mad 512.

——Art. 226 — Mysore Panchayat and Taluk Boards Election Rules, R. 37 — Mysore Village Panchayats and Local Boards Act (10 of 1959), S. 13 — Publication of result of a Village Panchayat Election—Election officer declaring result of election without Election officer giving notice of date, time and place of counting to candidates—Procedure adopted by officer is in direct contravention of R. 37 of Mysore Panchayat and Taluq Boards Elections Rules—Munsiff Court in vacation at the time of declaration of result—Petition for mandamus to direct fresh election or a recount of vote after due notice filed in High Court without filing an election petition under S. 13 of the Mysore Village Panchayats and Local Boards Act, 1957 is maintainable. (1963) 1 Mys L J 358 (DB).

——Art. 226—Mysore Panchayats and Local Boards Act (10 of 1959), S. 13—Mysore Panchayat and Local Boards Election Rules (1959), R 12 (5) — Election Officer rejecting nomination paper of petitioner, after erroneously holding that he holds office of profit—Copy of order not granted in time—Election petition by petitioner dismissed by Munsif as time-barred — High Court would exercise its powers under Art. 226 to quash election.

Where an Election Officer rejects the nomination paper of the petitioner, a candidate for a Gram Panchayat election, after erroneously holding that the petitioner holds an office of profit and also subsequently declines to grant to the petitioner a copy of the order passed by him, although he is bound to do so under R. 12 (5), the conduct of the Election Officer is such as to convince the High Court that his conduct was mala fide and that he was actuated by collateral considerations. Where, therefore, as the result of the delay in supplying a copy of the order, the petitioner is unable to file his election petition within the prescribed period and the Munsiff, before whom the time barred petition is filed, is unable to pass any order in favour of the petitioner, although he holds

that the petitioner did not hold any office of profit, the jurisdiction of the High Court to quash the election in exercise of its powers under Art. 226 is still available for that purpose. The dismissal of the election petition by the Munsiff under S. 13 of the Village Panchayats and Local Boards Act cannot constitute any impediment to the exercise of that power. The interest of justice requires the exercise of that power for the preservation of the purity of election process. (1963) 1 Mys L J 288.

——Art. 226 — Certiorari — Panchayats — Mysore Village Panchayats (Election of the Chairman and the Vice-Chairman) Rules (1959), Rr. 10 (h), 10 (e) — Scope—Ballot paper—Validity of—Putting more than one mark against a candidate's name or affixing a mark dissimilar to one prescribed — Ballot paper not void —Rule 10 (e) directory—See Panchayats—Mysore Village Panchayats (Election of the Chairman and the Vice-Chairman) Rules (1959), R. 10 (h). ('62) 40 Mys L J 283 (DB).

——Arts. 226 and 227 — Writ Petition — Election officer rejecting nomination paper of petitioners on the ground of disqualification under S. 11 (1) (c) of Mysore Village Panchayats Act, 1959 - Deferring scrutiny of nomination paper beyond prescribed date—No ground for allowing the writ petition

Writ petition under Arts. 226 and 227 of the Constitution of India for quashing the order of the Election Officer rejecting the nomination paper of the petitioner on the ground that he was suffering from a disqualification under S. 11 (1) (c) of Mysore Village Panchayats Act, 1959:

Held a person who commits an offence under S. 409, I P. C. commits an offence involving moral turpitude and stands disqualified from membership—Election officer's order rejecting nomination on that ground cannot be quashed.

The mere fact that the Returning Officer deferred the scrutiny of the nomination papers beyond a day for which period alone under the Act he could have deferred is no ground for holding that the order of the officer is liable to be quashed. Writ petition is dismissed. ILR (1961) Mys 1053.

——Art. 226 — Nomination paper filed by A whose name was not on the Electoral Roll — Election officer including his name in the Roll at the time of scrutiny and accepting his nomination paper — B the other contesting candidate not objecting to A's nomination at the time of scrutiny as required by R. 9 of Gram Panchayat Rules —B having failed in the election challenging A's nomination by application under Art. 226—Held, the Court will not interfere with the order of the Election Officer as B who should have objected to A's nomination at the time of scrutiny itself had failed to do so. See Panchayats — Orissa Gram Panchayat Rules (1949), R. 9. ILR (1963) Cut 499.

——Arts. 226 and 227—Election of Mukhiya — Petitioner's nomination-paper wrongly refused—Election of Mukhiya over before representation of petition — Remedy is by way of filing election petition before Election Tribunal and not by writ application — Election. 1965 B L J R 787.

——Art. 226—Panchayat election — Entire election challenged - Election can be quashed by grant of Writ 1965 B L J R 344 : A I R 1965 Pat 459 (462) (Pt C) (Pr 12) (DB).

——Art. 226—Election proceedings — Issue of writ—Rejection of nomination paper for wrong dating — Error not material — Rejection illegal — Writ can be issued under Art. 226. See Panchayats — Bihar Panchayat Election Rules (1959), Rule 21 (3). 1961 B L J R 43.

——Art. 226 — Election dispute — Erroneous order rejecting nomination paper — Powers of High Court to quash — Error whether apparent on face of record.

Where the nomination paper of the petitioner for election to the office of a Mukhiya under the Bihar Panchayat Raj Act was rejected on the ground that he was "in the service of the State Government" within the meaning of S. 79 (b) of the Panchayat Raj Act, being interested in the fair price shop run by his relative under a licence granted by the State Government, the relationship not being that of master and servant, the order is erroneous, in law. The error being apparent on the face of the record, the High Court will in the exercise of its powers under Art. 226 of the Constitution, quash the order. The provisions of S. 84 B of the Act do not prevent such a course being taken. 1960 B L J R 503 : 1960 Pat L R 203 : AIR 1960 Pat 589 (590, 591) (Pt B) (Prs 2, 4, 5).

——Art. 226 — Writ against an order in election petition—Finding of fact by prescribed authority—Interference with — Finding based on no legal evidence—Finding is vitiated. 1965 Cur L J 815 (Punj).

——Art 226—Election of sarpanch — Disqualification for—Decision as to question of fact — No interference in writ petition. See Panchayats—Punjab Gram Panchayat Act (4 of 1953), S. 6. 67 Pun L R 161 : 1965 Cur L J 37.

——Art. 226 — Election of Chairman and Vice-Chairman—Notice to some members about election mentioning wrong place as venue of election—8 out of 23 members unable to participate in election on account of mistake - Election is initially void — Members are entitled to redress under Art. 226 of the Constitution. See Punjab Panchayat Samitis and Zilla Parishads Chairman and Vice-Chairman (Elections) Rules (1961), R. 3. 1963 Cur L J 251 (Punj).

——Art 226—Rajasthan Panchayat Samitis (Co-operation of Members) Rules (1959), R. 3 — Process of election by co-option — Returning Officer illegally preventing petitioners from casting votes — Petitioners have adequate remedy under R. 3.

The High Court is slow to interfere in the exercise of its jurisdiction under Art. 226 where the petitioners have an alternative remedy. The existence of an alternative remedy no doubt cannot oust the jurisdiction of the High Court under Art 226 but unless exceptional circumstances exist it is not the practice of the High Court to interfere till the alternative remedy is exhausted.

The process of election by co-option commences with the issue of a notice under S. 11 of the Act. Where it was during the process of election by co-option that the Returning Officer was alleged to have illegally prevented the petitioners from casting their votes.

Held, that the petitioners had adequate remedy by way of an election petition under R. 3 and there were no exceptional circumstances in the case which entitled them to relief under Art. 226 of the Constitution. 1962 Raj L W 197 : I L R (1961) 11 Raj 1214.

——Art. 226 —Rajasthan Panchayat and Nyaya Panchayat Election Rules (1960) Rr. 14 and 78 and 50—Process of Election when commences and when ends—Process of co-option is part of process of election—Breach of roles committed during course of co-option — Election petition under R. 78 lies — High Court would not interfere under Art. 226.

The process of co option is a part of the process of election and the process of election in the wider sense commences with the issue of a notification under Rule 14 and only ends with the publi-

cation of names of co-opted members in case where such co-option becomes necessary. An election petition under Rule 78 would therefore lie for any breach of the Rajasthan Panchayat Act or the rules committed during the course of co option proceedings including the non-compliance with rule 50. The petitioners thus have an alternative remedy by way of election petition under R. 78. The High Court, therefore, would not interfere in the exercise of its extra-ordinary jurisdiction under Art. 226. 1962 Raj L W 125 : ILR (1961) 11 Raj 1085.

——Art. 226—Notice calling upon Nyaya Panchayat to elect sarpanch – Deficiencies in election after issue of notice—Validity of election challenged by petition under Art. 226—Alternate remedy by way of election petition under R. 78 available to petitioner — High Court would not interfere in its extraordinary jurisdiction under Art. 226 — Panchayats — (Rajasthan) Panchayat and Nyaya Panchayat Election Rules (1960) R. 78. 1961 Raj L W 605.

——Art. 226 — Standard of literacy prescribed by section—Not vague — Does not violate Art. 14 of the Constitution of India – Election. See Panchayats—Rajasthan Panchayats Act (21 of 1953), S. 13 (1). I L R (1960) 10 Raj 1600.

——Art, 226—Writ petition for setting aside election of Sarpanch—Whole election set aside on ground of breach of mandatory provision — Failure to implead members of Panchayat as parties — Not an adequate ground for recalling writ — Rajasthan Panchayat (General) Rules (1954), R. 4. 1960 Raj L W 427 : I L R (1960) 10 Raj 845.

——Art. 226 — Tehsildar appointed as Returning Officer under Rajasthan Panchayat Election Rules — Whether can be replaced — No contravention of R. 3 —Writ petition whether maintainable. See Panchayats — Rajasthan Panchayat Election Rules (1954), R. 3. I L R (1959)9 Raj 461.

——Art. 226 — Election disputes — Panchayat elections — Issue of writ of certiorari — Rajasthan Panchayat Election Rules (1954), Rr. 19 and 40 — Defeated candidate — Meaning of — Right to file election petition — (Panchayats — Rajasthan Panchayat Election Rules (1954), Rr. 19 and 40).

Where a candidate was never given an opportunity of entering into a contest for election and solicit the votes of the voters, as his name was rejected by the Returning Officer, though he was a candidate at the election, he could not be called a defeated candidate, and it was not possibie for him to file an election petition under R. 19 read with R. 40 as a defeated candidate. Hence, where the applicant was a candidate for the election, but could not by himself file an election petition because he could not be called a 'defeated candidate.'

Held, that he was entitled to apply to the High Court for issue of a writ as it was not possible for him to file an election petition to safeguard his rights which had been invaded by the rejection of his nomination paper. 1957 Raj L W 306 : I L R (1957) 7 Raj 180 : AIR 1957 Raj 163 (164, 165) (Pt A) (Prs 6, 7) (DB).

——Art. 226—Application under, challenging decision of Returning Officer declaring candidate as disqualified—Maintainability.

An application under Art. 226 challenging the decision of the Returning Officer declaring that the applicant was disqualified under S. 11 (g), Rajasthan Panchayat Act to stand as a candidate for the election of sarpanch is maintainable as the applicant has no remedy under R. 19 of the Panchayat Election Rules since he is not a defeated candidate. 1957 Raj L W 118 : I L R (1956) 6 Raj 994 : AIR 1957 Raj 27 (28) (Pt A) (Pr 3) (DB).

——Art. 226 — Error in description—Rajasthan Panchayat Election Rules (1954), R. 20 — Election—Misdescription in notification about election being held in M instead of G — None misled—Technical mistake —Election is not invalid. 1956 Raj L W 311 : I L R (1956) 6 Raj 797 : AIR 1956 Raj 188 (190) (Pt D) (Pr 8) (DB).

44 (f). Right of electors.

——Art. 226 — Press Note issued inviting electorate to get themselves photographed for purposes of ensuing election, cannot be set aside without declaring rules under which they are issued ultra vires — Representation of the People Act (1950), S. 28— Representation of the People (Preparation of Electoral Rolls) Rules (1956), R. 27-A.

Orders or Press Notes inviting the electorates to get themselves photographed for purposes of identification as required by Rule 27-A of the Representation of the People (Preparation of Electoral Rolls) Rules, 1956, framed in exercise of powers under S. 28 of the Representation of the People Act, 1950 cannot be set aside and/or quashed, without declaring the provisions of the Act or the rules to be ultra vires. AIR 1961 Cal 289 (293, 294) (Pt A) (Pr 4).

——Art. 226 — Valid draft publications of Roll— Petitioner's name not included — His remedy. See Representation of the People Act (1950), S. 23. AIR 1954 Orissa 87 (DB).

44 (g). Rejection of ballot paper.

——Art. 226—Rejection of ballot paper on ground of wrong marking—Principles involved.

Where the only ground for rejection of ballot paper was that the cross mark was put by the voter not entirely in the column for voting against the name of the candidate but was put above the column, Held, that so long as it was wholly outside the column meant for the rival candidate the intention of the voter was clear. In such cases the principle to be followed by the Election Officer was to ascertain the true intention of the voter and so long as it could be unequivocally gathered, merely because the cross mark is not wholly in the proper place, the vote should not be rejected. I L R (1964) Cut 305.

——Art. 226—Election dispute — Rejection of ballot paper — Direction to voters not to put mark against name of more than one candidate—Ballot paper with two marks against name of one candidate or one mark in front of name of candidate instead of within space ruled for marks—Rejection illegal. (1875) L R 10 C P 733 and (1886) 17 Q B D 805 and (1907) 2 K B 313, Rel. on. AIR 1964 Pat 51 (52, 53) (Prs 5, 7) (DB).

——Art. 226 — Question about validity or otherwise of ballot paper — Is a question of law — High Court has therefore, power to go into the question in writ proceedings. 1964 Cur L J 293 : ('64) 66 Pun L R 681.

44 (h). Interlocutory orders.

——Art. 226—Election petition—Proceedings before tribunal — Interlocutory orders — Interference by High Court under Art. 226—When open.

The object of providing a right of appeal under S. 116-A of the Representation of the People Act is obviously that proceedings before the tribunal should go on with expedition and without interruption, and

that any error in its decision should be set right in an appeal under that section. Therefore, it would be proper exercise of discretion by High Court under Art. 226 to decline to interfere with interlocutory orders. But an error in a decision is not the same thing as a decision without jurisdiction. If an interlocutory order is shown to be without jurisdiction and the Court thinks that refusal to interfere will materially prejudice the aggrieved party to such an extent as to make the petition virtually infructuous, it may be necessary to interfere.

Where therefore, in writ petition arising from proceedings before tribunal in election petition the balance of convenience is in favour of interference because it will advance and not hinder the principle of expeditions disposal and where refusal may irretrievably prejudice the interests of the winning candidate and of the electorate, the rule of caution and self-restraint will not restrain the High Court from interfering with interlocutory orders clearly without jurisdiction where refusal will result in injustice. AIR 1965 All 450 (452) (Pt A) (Prs 6, 7) (DB).

——**Art. 226 — Election — Issue of writ — (Municipalities—U. P. Municipalities Act (2 of 1916), S. 19).**

Any election held to fill up an alleged casual vacancy in the municipal board which has not in fact arisen must be ignored as being void and of no effect. Therefore an election of the kind while the petition against the removal of the petitioner is pending cannot constitute a ground on which the petition should fail for the reason that as the person elected could be removed only by an election petition no effective relief could be given to the petitioner. 1957 All W R (H C) 864 : 1957 All L J 885 : AIR 1959 All 26 (28) (Pt C) (Pr 12) (DB).

——**Art. 226 – Interlocutory order — Interference by writ—Representation of the People Act (1951), S. 83).**

Whether the Election Tribunal rightly decided that certain paragraphs of the election petition failed to fulfil the requirements of S. 83 of the Representation of the People Act, or that certain paragraphs failed to disclose any ground upon which the election could be avoided are the questions which the Tribunal has jurisdiction to decide. If the petitioner considers the decision of the Tribunal to be wrong his remedy is to challenge the decision in appeal from the final order of the Tribunal. The High Court would not ordinarily be justified, in the exercise of its discretion under Art. 226 of the Constitution, in reviewing the grounds upon which the Tribunal's decision was founded, unless the decision is on the face of it capricious. The rule that High Court will not issue a writ in an interlocutory matter is, however, not absolute. Where a Tribunal has committed an error of procedure at a stage of the trial, interference is desirable. 1957 ALJ 930 : ILR (1957) 2 All 205 : (1957-58) 13 E L R 310 : AIR 1958 All 858 (860, 861) (Pt B) (Prs 6, 10, 11) (DB).

——**Art. 226 – Interlocutory orders — Order in election petitions – Issue of writ.**

The High Court will not ordinarily be justified in the exercise of its discretion under Art 226 in interfering with interlocutory orders save possibly in those cases in which the order is plainly arbitrary or capricious. It is of the first importance that election petitions should be disposed of speedily— the Representation of the People Act, 1951 itself requires it —and there is no greater obstacle to this end being achieved than by the Court entertaining petitions against interlocutory orders of Election Tribunal save in very exceptional circumstances. 1957 All L J 952 : AIR 1958 All 719 (720) (Prs 4, 5) (DB).

——**Art. 226 – Error of law in decision of Election Tribunal – Issue of writ — (Representation of the People Act (1951), S. 82).**

An error of law in the decision of the preliminary issue whether a candidate who withdrew his candidature was a necessary party to the election petition which the Eletion Tribunal was competent to determine is no ground for quashing the order of the Tribunal in the exercise of powers of issuing a writ of ceritorari. AIR 1952 S C 179, Foll. ILR (1954) 1 All 515 : 1953 All W R (H C) 216 : 1953 All L J 323: AIR 1953 All 633 (637) (Pt D) (Pr 23) (DB).

——**Art. 226 — Election petition—Preliminary objections regarding non-compliance of mandatory provisions relating to copies of election petition — Duty of Tribunal to decide — No decision—Writ under Art. 226 of Constitution should be issued. See Representation of the People Act (1951), S. 90 (3). AIR 1963 Andh Pra 14.**

——**Art. 226 – Election Tribunal holding petition not liable to be dismissed for non-compliance with Section 81 (3), Representation of the People Act — It commits error of law apparent on face of record— Writ under Art. 226 of Constitution is called for — Contention in writ merely seeking to restrict scope of trial of petition and objection based on non-compliance of S. 83 — Issue of writ under Art. 226 is not warranted. See Representation of the People Act (1951), S. 81 (3). AIR 1963 Andh Pra 14.**

——**Art. 226—Writ of certiorari—Election petition—Order allowing amendment of petition passed—Question as to propriety of order can be raised in appeal under S. 116-A, Representation of People Act from final decision—High Court will not interfere with interlocutory order allowing amendment. (1960) 1 Andh W R 166 : 1960 Andh L T 416 : AIR 1960 Andh Pra 421 (422) (Pr 5) (DB).**

——**Art. 226 — Interlocutory order in election petition—Interference.**

The High Court will not ordinarily interfere in writ petition under Art. 226 with an interlocutory order passed in the course of an enquiry before an Election Tribunal. Interference can be made against the decision on an interlocutory order, if the order goes to the very root of the case or a reversal of the order is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the case: AIR 1959 S C 422 and AIR 1960 Andh Pra 421 and AIR 1958 Bom 397 and AIR 1961 Kerala 183 Foll. 1960 Ker L T 1267 : 1961 Ker L J 16 : AIR 1961 Ker 188 (191) (Pt A) (Pr 32).

——**Art. 226 — Election petition — Interim order allowing recount—Interference.**

Where the recount ordered by the Election Tribunal is not such as can be said to go to the very root of the election proceeding, the High Court will not issue a writ under Art. 226. Moreover, a writ is generally not issued under Art. 226 where the orders asked to be vacated are on interlocutory applications before the lower tribunals. AIR 1959 S C 422 and AIR 1960 Andh Pra 421 and AIR 1958 Bom 397, Rel. on. 1960 Ker L T 1252 : 1960 Ker L J 1396 : AIR 1961 Ker 186 (187) (Pt A) (Pr 2) (DB).

——**Art 226—Interlocutory order—Election disputes—Interference—Representation of the People Act (1951), S. 92.**

Should the decision in the interlocutory order be such as to affect the very root of the case the powers under Art. 226 or 227 may well be exercised. Another exception is that should reversal of the interlocutory

order be necessary to prevent extra-ordinary inconvenience and embarrassment in the conduct of the case certiorari may be issued.

An order passed by an Election Tribunal rejecting an objection to the examination of a witness summoned by the election petitioner is not an order covered by the exceptions stated above, AIR 1959 S C 422 and AIR 1960 Andh Pra 421, Foll., AIR 1958 Bom 397 and AIR 1958 S C 687 and AIR 1958 S C 698 and (1892) 37 Law Ed. 486, Rel. on. That a party would be required to produce enormous evidence in rebuttal is not such a ground as would cause extra-ordinary inconvenience and embarrassment in the conduct of the case. 1960 Ker L T 1262 : 1960 Ker L J 1519 : AIR 1961 Ker 183 (185, 186) (Pt A) (Prs 4, 5, 6, 7).

——Art. 226 — Election disputes — Interlocutory order —Interference under Art. 226— Order of Election Tribunal rejecting petitioner's application asking for dismissal of election petition for non-compliance with S. 90 (3), Representation of the People Act, 1951 — Certiorari to quash order — Not proper —No error apparent on face of record.

Where an Election Tribunal dismisses on merits an application filed by the respondent asking for dismissal of the election petition for non-compliance with S. 90 (3) of the Representation of the People Act, 1951, and the respondent files an application under Art. 226 to quash the order, the order being interlocutory it would be a proper exercise of discretion under Art. 226 to decline to interfere with the order passed by the Tribunal. The petitioner can raise the question of the dismissal of the petition under S. 90 (3) of the Act if and when he is required to file an appeal against the order that may be passed by the Tribunal disposing of the election petition. AIR 1959 S C 422, Rel. on.

The fact that the matter decided by an interlocutory order of the Tribunal is such as to affect the very root of the case is not material. Apart from this, it is not a case in which the decision of the Election Tribunal can be quashed on the ground of there being errors of law apparent on the face of the record, since the questions raised by the application under S. 90 (3) of the Act were such on which there could conceivably be two opinions. An alleged error which can be established only by lengthy and complicated arguments and which is not self-evident is not an error apparent on the face of the record. AIR 1960 S C 137, Foll. **1962 Madh Pra L J 1112 : 1962 Jab L J 1026 : 1962 M. P. C 493 : A I R 1963 Madh Pra 140 (142, 143) (Prs 5, 6, 7) (DB).**

——Art. 226 — Election case - Interlocutory orders by Election Tribunal — Issue of writ—Representation of the People Act (1951), S. 116 A.

Respondent No. 2 filed an election petition under S. 81 of the Representation of the People Act challenging the return of the petitioner on several grounds. By an order the Election Tribunal permitted the respondent No. 2 to amend his election petition.

Held, that amended election law provided a right of appeal against a decision of the Tribunal to the High Court under section 116-A and its intention was obviously that any error in its decision should be set right in an appeal under that section. High Court, should therefore, decline to interfere with interlocutory orders while exercising discretion under Art. 226 of the Constitution. A I R 1959 S C 422, Rel. on. **(1960) M P L J (Notes) 209.**

——Art. 226 —Interlocutory orders —Interference— Powers of High Court — Election tribunal—Order allowing amendment—Election tribunal refusing to decide certain issues as preliminary issues —Interference by writ of prohibition—Principles—Existence of another remedy by way of appeal — If bar to interference by writ — Representation of the People Act (1951) (as amended in 1956), Ss. 81 and 90 (1).

The power and jurisdiction of the Election Tribunal constituted under the Representation of the People Act, 1951 (as amended by Act (27 of 1956), are not plenary but limited, and the tribunal has to function within the limits set out by the Act, it being a creation of the Act. The jurisdiction to allow amendment which it has, by reason of the application of the provisions of the Code of Civil Procedure, 1908, to the trial of election petitions, is by S. 90 (1) of the Act, as amended in 1956 "subject to the provisions of this Act," which includes S. 81, which prescribes the period of limitation within which an election petition has to be filed. The power of the Election Tribunal to order amendment by invoking the provisions of O. 6, R. 17, Civil Procedure Code, is, thus subject to this limitation prescribed by S. 81. Where therefore, by amendment, a party applying for it seeks to allege a new fact and not merely to explain or clarify a material fact already stated, as a ground for setting aside the election, the same cannot be allowed if the application is made after period prescribed by S. 81 for filing a petition had elapsed. An order allowing an amendment in such cases would be beyond the jurisdiction of the tribunal and is liable to be quashed by the High Court by a writ of certiorari especially where it is also vitiated by an apparent error. AIR 1957 S C 444, Applied.

The fact that the order is an interlocutory order and that there is another remedy open by way of appeal under S. 116-A of the Act would not be a bar to the issue of a writ.

Similarly where the High Court is satisfied that an order of the election tribunal as to the order in which the issues are to be tried and refusing to try certain issues as preliminary issues, is an erroneous order which, if allowed to continue in force, would enlarge the inquiry by evidence which at a later stage would have to be discarded, the High Court will interfere and issue a direction to the tribunal to try certain issues as preliminary issues before embarking upon an inquiry on the other issues and the merits. The policy of the Representation of the People Act, which is to have an expeditious disposal of election petitions would be frustrated if the erroneous order of the election tribunal in such a case is not set aside. The fact that the determination of the matter covered by the issues to be tried as preliminary issues involve difficulty can be no justification for the tribunal to put off this consideration. It would be improper and illegal for the tribunal to postpone the determination of those issues on such grounds. **71 M L W 25; (1958) 1 M L J 110 : I L R (1958) Mad 257 : A I R 1958 Mad 187 (196) (Pt C) (Prs 24, 25, 26) (DB).**

——Art. 226 — Election — Writs in pending cases— Order of Election Tribunal allowing amendment of election petition — Issue of writ. (1958) 1 Mad L J 110 : A I R 1958 Mad 187 (195, 197) (Pt B) (Prs 21, 28) (DB).

——Art. 226—Election Tribunal's amending election petition sent to it by election commission, acts without jurisdiction. See Representation of the People Act (1951), S. 83. AIR 1954 Mys 102 (DB).

——Art. 226 —Election case —Setting aside election— Interference under Art. 226. See Panchayats —C. P. and Berar Panchayats Act (1 of 1947), S. 14. 1958 Nag L J (Notes) 114.

——Art. 226 — Representation of the People Act (1951), S. 97—Election petition—Interlocutory order —Recriminatory petition—Writ against order holding recriminatory petition as time barred—High Court, after holding order of Tribunal as erroneous, cannot

refuse to interfere on ground of undue delay or existence of alternative remedy. 66 Pun L R 185, Reversed. AIR 1964 S C 1200, AIR 1959 S C 422 and AIR 1956 Punj 92, Rel. on. S. Gurmej Singh Hira Singh v. Election Tribunal, Gurdaspur, **ILR (1964) 2 Punj 243 : 66 Pun L R 589 : AIR 1964 Punj 337 (341, 343, 345, 346) (Pt A) (Prs 6, 7, 9, 10, 21, 22) (FB).**

——**Art. 226**—Election dispute — Other remedy open —Interlocutory orders—Interference. See Representation of the People Act (1951), S. 90 (3). **A I R 1963 Raj 157 (DB).**

44 (i). Order without jurisdiction or illegal orders.

——**Art. 226** — O. 9, R. 9, Civil P. C. applies to election petition — Election Tribunal does not become functus officio after dismissal of petition for default —High Court will not interfere with order setting aside dismissal for default. See Representation of the People Act (1951), S. 80. **1964 All L J 155.**

——**Art. 226**—Representation of the People Act (1951), S. 88 (1) — Election petition dismissed by Tribunal—Case remanded by High Court — Appointment of another Tribunal is not contemplated. See Representation of the People Act (1951), S. 86 (1). **AIR 1959 All 697.**

——**Art. 226—Certiorari—Election petition—Allegation of corrupt practice — Lists of particulars — Application for amendment —Rejection of—Interference by High Court—(Representation of the People Act (1951), Ss. 83 (2) and (3) and 123 (3).**

The petitioner filed an election petition challenging the validity of the election of the respondent. The corrupt practice alleged against the respondent was under S. 123 (3) of the Representation of the People Act (1951). By means of an application for amendment under S. 83 (3), the petitioner sought to add new instances by deleting certain instances already mentioned and by transposing the names given in one schedule into another schedule. The Election Tribunal dismissed the application:

Held, Even though some of the reasons given by the Tribunal for rejecting the application were erroneous, it could not be held that the Tribunal acted without jurisdiction or in excess of it or failed to exercise the jurisdiction vested in it by law. There was also no error apparent on the face of the record so as to call for interference under Art. 226. **(1956-57) 12 Ele. L R 156 (Andh Pra).**

——**Arts. 226, 227 — Powers of High Court under—Extent - Decision of Returning Officer—Interference with, in writ jurisdiction—Propriety.**

It is true that the High Court, while exercising its powers under Arts. 226 and 227 of the Constitution, does not act as a Court of Appeal. But this does not mean that it has no jurisdiction to correct the decision of an Officer, even when it is patently wrong. The powers of the High Court under these two articles are very wide and it is open to the High Court to set aside in appropriate cases the order of an Officer which is contrary to or not in accordance with law. The High Court's power under Art. 226 is not restricted to the writs specifically referred to in that article, but it has also power to issue to any person or authority, directions, orders or other writs for the enforcement of any of the fundamental rights and for any other purpose. The question whether the power should be exercised in any particular case must be decided having regard to the facts and circumstances of the case. Where, therefore, the decision of a Returning Officer in accepting the nomination paper is patently wrong being in express contravention of a statutory provision, the High Court has jurisdiction to correct it under Arts. 226 and 227. **65 Bom L R 123 : 1963 Mah L J 351 : ILR (1962) Bom 810 : A I R 1963 Bom 183 (186, 187) (Pt C) (Pr 9) (DB).**

——**Arts. 226 and 227—Election disputes—Issue of writ — (Representation of the People Act (1951), Ss. 82, 90 (3)).**

In an election petition filed by the respondent against the petitioner, the latter submitted that as the provisions of S 82, Representation of the People Act, 1951, were not complied with, the petition should be dismissed in limine under S. 90 (3) read with S. 82 (a). The Election Tribunal disallowed this objection holding that the provisions of S. 82 were complied with and the election petition could not be dismissed under S. 90 (3). The petitioner challenged the correctness of that order under Arts. 226 and 227, Constitution of India :

Held, that the objection raised by the petitioner went to the root of the matter, and the petition under under Art. 226 was maintainable. **ILR (1958) Bom 732 : 60 Bom L R 353 : AIR 1958 Bom 397 (398, 399) (Pt A) (Pr 6) (DB).**

——**Art 226 — Election — Holding of, contrary to law.**

If the States or the public officers concerned seek to hold an election contrary to the law, a voter has a right to come to the High Court for the issue of a writ in order to stop the same. **58 Cal W N 443 : AIR 1955 Cal 83 (85) (Pt A) (Pr 4).**

● ——**Art. 226** — Representation of the People Act (1951). S. 83—Election petition— Dismissal for non-appearance of petitioner is contrary to law — Subsequent order of restoration will not be quashed in exercise of discretion under Art. 226. See Representation of People Act (1951), S. 83. **AIR 1960 J & K 25 (FB).**

——**Art. 226**—Co-operative society of 33 members—Notice of general meeting for election of new members of managing committee not complying with period prescribed by bye-law — Three members remaining absent—Elections contested—Writ petition challenging elections held on ground of invalidity of meeting - Relief by way of quashing elections can be granted notwithstanding that term of old managing committee had already expired — Old committee can continue till fresh elections are held. **1962 M P C 487 : 1962 M P L J (Notes) 231 : 1963 M P L J 35 : 1963 Jab L J 193 : ILR (1963) Madh Pra 1007.**

——**Art 226 — Election dispute—Interference with interloeutory order of Election Tribunal — Scope of inquiry.**

If there is no charge at all in the election petition of the commission of the corrupt practice of bribery and there are no averments in the election petition from which such a charge can be spelled out, but the Tribunal decides to investigate the truth of an allegation advanced at the stage of the trial, that the returned candidate had committed the corrupt practice of bribery, the Tribunal would have no jurisdiction to embark on such an investigation, and on that basis a writ of prohibition can issue to restrain the Tribunal from exercising a jurisdiction it had no right at all to assume. Similarly, if facts are alleged in an election petition, but the facts, even if proved, can never amount to a charge of the corrupt practices of bribery, the Tribunal would have no jurisdiction to investigate the truth of those facts. It is for the Tribunal to decide in the first instance whether the averments are sufficient to disclose a triable issue. It has then to decide whether those averments have been proved. All these will be within the jurisdiction of the Tribunal. **71 Mad L W**

481 : (1958) 2 Mad L J 237 : ILR (1958) Mad 810 : AIR 1958 Mad 553 (554, 555) (Pt A) (Pr 5) (DB).

——Art. 226—Writ against Election Tribunal.

Where the Election Tribunal overrules an objection as to its jurisdiction to entertain an election petition but it is found by the High Court that the election petition is not maintainable against respondents 1 and 2 so far as a particular relief is concerned, the Election Tribunal will have no jurisdiction to proceed with the trial of the petition in respect of that relief and the proper order to be passed by the High Court under Art. 226 in such a case is not an order directing the issue of a writ of certiorari but really an order in the nature of a writ of prohibition prohibiting the Election Tribunal from proceeding with the trial of the election petition so far as that relief is concerned. 1955 Mad WN 741 : 69 Mad L W 481 : ILR (1956) Mad 390 : (1955) 2 Mad L J 629 : AIR 1956 Mad 85 (88) (Pt C) (Pr 14) (DB).

——Art. 226 — Election — Defect of unsubstantial character — Giving serial number from superseded electoral roll — Speaking judgment — Quashing of. See Representation of the People Act (1951), S. 36 (4). AIR 1957 Raj 189 (DB).

——Art. 226 — Election—Order of disqualification—Quashing of order. See Representation of the People Act (1951), S. 98. AIR 1957 Raj 189 (DB).

——Art. 226 — Withdrawal of election petition — Order allowing ex parte respondent to continue application—Legality. See Representation of the People Act (1951), S. 117. AIR 1954 Raj 158 (DB).

——Art. 226 — Representation of the People Act (1951), Ss. 83 (3) and 98—Election petition—Amendment—Setting aside of election—Decision erroneous on face of it. See Representation of the People Act (1951), S. 83 (3). AIR 1954 V P 44.

44 (j). Miscellaneous.

——Art. 226 — Election under S. 11 (4) (i) (a) of Allahabad University Act (3 of 1921) — Election not held according to system of proportional representation by means of single transferable vote is void and cannot be protected by doctrine of internal management. See Allahabad University Act (3 of 1921), S. 11 (4) (i) (a). AIR 1966 All 45.

——Art. 226 — Bye-law of society prescribing limit of at least 15 days notice for election meeting—Notice sent by post—Time required for posting to be considered while computing 15 days — Provision mandatory — Notice short of 15 days — Meeting vitiated. 1962 M P L J (Notes) 231.

——Art. 226 — Writ in election dispute—Exercise of jurisdiction by High Court — Punjab Agricultural Produce Markets Act (23 of 1961), Ss. 13, 37 and 40 —Punjab Agricultural Produce Markets (General) Rules (1962), R. 21—Rule is directory and not mandatory — Renewal of licence after prescribed period does not invalidate license — Writ petition against acceptance of nomination paper of a candidate on ground that he was not a valid license-holder — Interference by High Court. 1965 Cur L J 488 : ILR (1965) 2 Punj 65 : 67 Pun L R 665.

——Art. 226 — Petition under, for setting aside election to Market Committee under Punjab Agricultural Produce Markets Act (1961)—Grounds vague—Election will not be set aside. AIR 1954 Bom 116, Rel. on. ('64) 66 Pun L R 1000.

——Art. 226 — Writ petition challenging election proceeding—Proceeding stayed ad interim—Desirability of quick disposal of petition—Petition should not be kept pending for long time. 1963 Cur L J 321 (Punj).

——Art. 226 — Election dispute — Maintainability of writ petition — (Elections — Cantonments Electoral Rules (1945) (as amended in 1954), Rr. 42, 43, Proviso).

The Cantonment Electoral Rules, 1945, contemplate that finality would attach to the roll as prepared and published after following the machinery given in Rr. 6 to 13, and this seems to be particularly so in view of the proviso to R. 43. A voter would therefore be justified in agitating the question of defective and improper rolls even at a preliminary stage by a writ petition and there is no reason why he should wait till the entire election is over and then file an election petition in which he may be completely precluded from taking up the grounds.

Even though there is a provision that election can be challenged only by way of an election petition before a tribunal created by the Rules, the jurisdiction of the High Court which is derived from the Constitution can in no way be affected. The High Court can interfere in a suitable case in exercise of extraordinary jurisdiction conferred by Art. 226. AIR 1957 S C 694, Disting. 60 Punj L R 66 : ILR (1958) Punj 775 : AIR 1958 Punj 356 (360, 361) (Pt A) (Prs 10, 11, 12).

——Art. 226 — Applicability — Elected candidate under disqualification under T. C. Hindu Religious Institution Act on date of nomination and election —Application under Article if the proper remedy of aggrieved candidate. See T. C. Hindu Religious Institution Act (15 of 1950), S. 67 (2). AIR 1955 Trav Co 42 (DB).

45. Election tribunal, writ against.

See Note 5.

46. Eminent persons, writ against.

See Note 5.

47. English law, applicability.

——Art. 226—Powers under, how to be exercised.

The reference, in Art. 226, to English Common Law writs, seems to indicate that in exercising its discretionary powers under the Article, the High Court ought to follow generally the principles on which prerogative writs are issued in England. ILR (1952) Madh Bha 231 : A I R 1950 Madh B 46 (51) (Pt G) (Pr 13).

——Art. 226 — Power of High Court to issue writs under — Consideration of English principles and decisions.

Article 226 is not confined to the particular forms of writs obtained in England and mentioned in the Article but covers a much wider ground and jurisdiction. It will not, therefore, be proper to understand and interpret the scope and ambit of Art. 226 and the nature, width and content of the powers conferred by that article, in the light or by application of the English principles of the Court's jurisdiction either in actions or writs or other proceedings. Having regard to the language of Art. 226, and the variety of matters which it may comprehend and the purposes, which are not defined, for which directions can be given under the article, no question of maintainability of the petition as such under the article can normally arise and the grant or refusal of a petition under the article will largely be a matter of discretion which undoubtedly vested in the Court. (1963) 2 Lab L J 304 : A I R 1964 Mad 335 (338, 346) (Pt A) (Prs 4, 14).

——Art. 226—English precedents, value of.

In evolving their own case law under Art. 226 of the Constitution, which confers on High Courts far wider powers than those exercised by the King's Bench Division in England, it is neither necessary

nor is it possible for the Indian High Courts to follow the precedents in English prerogative writ and other writ case law, in particular the distinction between writs of course or ex debito justitiae and what are known as discretionary writs. The only broad criterion that the Courts in India can apply is whether in view of the nature of the case and the illegality alleged and the wrong complained of, a relief by way of writ is the correct and appropriate remedy. There is no such thing in Art. 226 as a writ of course or a writ by right. The writs which lie under Art. 226 (1) are all discretionary writs which are dependent on the facts of each case, and the nature of the illegality and wrong alleged. **1952 Mad W N 200 : 1952-1 Mad L J 401 : 1952-3 S T C 77 : A I R 1952 Mad 814 (816, 817) (Pt B) (Pr 7).**

——Art. 226 — Powers of High Court to issue writs —Nature and ambit of — Power of judicial review — Restrictions voluntarily imposed by High Court on the exercise of that power — Principles of English law in the matter of issue of writs how far applicable.

It is now well established that the essential purpose of Art. 226 as well as Art. 227 is to protect fundamental rights guaranteed by the Constitution, to correct legislative or executive excesses or abuse of power and generally to see that all persons exercising authority and all tribunals and authorities including in appropriate cases a Government are kept within the bounds of their jurisdiction or sphere of authority or power all of which ideas are compendiously expressed in the term 'judicial review'. That power of judicial review is therefore conferred upon Courts with a view to strike down the purported exercise of power which does not exist or to correct excessive exercise or abuse of power that actually exists and is not intended to enable or empower the Courts themselves to exercise that power.

The correct view to take in the matter of the exercise by High Courts of their power or jurisdiction under Art. 226 is that the restrictions that they voluntarily impose upon themselves in exercising that power or jurisdiction are not derived from the technicalities of English law which govern the issue of writs of a particular description but are those intended to maintain the character of that power as the power of judicial review. While guidance can be taken from the principles of English Law in the matter of issue of writs, recognition of any restriction which may conceivably render the Court helpless to interfere in a case which clearly calls for interference either for the protection of fundamental rights or for upholding the Constitution or to correct a clear or manifest injustice would be an abdication of power which it is not open to a High Court to do. In the last analysis, the discretion whether or not to interfere and if so, what the manner and extent of such interference should be must depend upon the facts and circumstances of each case, subject no doubt to principles and considerations appropriate to the idea of judicial review. **(1963) 2 Mys L J 383 : A I R 1964 Mys 159 (162, 163) (Pt A) (Prs 6, 7) (DB).**

——Art. 226, Preamble — Rules of natural justice — Precedents — American decisions on due process — Preference to English decisions in India. ILR (1953) Punj 140 : AIR 1953 Punj 3 (15) (Pt D) (Pr 47) (DB).

48. Estoppel against applying.

——Art. 32 — Madras Hereditary Village Offices Act (3 of 1895), S. 6 (1) — Person applying under for appointment to office — If can challenge its constitutionality on ground of violation of his fundamental right.

The petitioner had the right to make an application for the new village office and it was accepted by the Revenue Divisional Officer. Respondents 1 to 3, however, passed orders adverse to him and in favour of respondent 4 acting on the principle of discrimination on the ground of descent only as embodied in S. 6 (1) of the Act.

Held, that it was open to the petitioner to say that S. 6 (1) of the Act in so far as it violates his fundamental right guaranteed under Art. 16 of the Constitution is void and his application for appointment must, therefore, be decided on merits. A I R 1958 Andh Pra 322, Disting. Gazulal Dasaratha Rama Rao v. State of Andhra Pradesh, **(1961) 2 S C R 931 : 1961 Andh L T 107 : (1961) 1 Mad L J (SC) 63 : (1961) 1 Andh W R (SC) 63 : (1961) 1 S C J 310 : (1961) 2 S C A 410 : A I R 1961 S C 564 (572) (Pt D) (Pr 14).**

——Arts. 226 and 32 — Where the liability of the assessee to pay evaded tax arises under the settlement voluntarily entered into by him with the Central Government, such a settlement cannot be questioned by preferring a petition under Art 32 Baburao Narayanrao Sanas v. Union of India, (1954) 26 I T R 725 : AIR 1955 S C 257 (257, 258) (Pr 2).

——Arts. 226 and 32 — Article has no application to voluntary actions — Voluntary settlment under S. 8-A of the Taxation on Income (Investigation Commission) Act (1947) — Petitioner cannot assail the settlement on ground that certain provisions of the Act were void (Taxation on Income (Investigation Commission) Act (1947), S. 8-A).

Article 32 of the Constitution is not intended for relief against the voluntary actions of a person.

During the pendency of the investigation under Taxation on Income (Investigation Commission) Act, 1947, the petitioner applied for settlement under the provisions of S. 8-A. The Central Government accepted this proposal and the claim for evaded income-tax, was thus finally settled by mutual agreement. Part of this amount was paid in instalments as agreed. When a part remained unpaid, the petitioner preferred a petition under the provisions of Art. 32 of the Constitution alleging that he had been advised that the entire proceedings under the Act which has resulted in the imposition upon him of a liability and in the payment already made were wholly illegal and ultra vires. In the grounds of the petition it was stated that Ss. 5, 6, 7 and 8 of Act 30 of 1947 were invalid and ultra vires in so far as they contravene the provisions of Arts. 14, 19 (1) (f) and 31 of the Constitution. The petition was based on the ruling of the Supreme Court in A I R 1954 S C 545 which was in the meanwhile given:

Held, that the petition was misconceived. Whatever tax the petitioner had already paid, or whatever was still recoverable from him, was being recovered on the basis of the settlement proposed by him and accepted by the Central Government. In this situation unless and until the petitioner could establish that his consent was improperly procured and that he was not bound thereby he could not complain that any of his fundamental rights has been contravened for which he could claim relief under Art. 32 of the Constitution. Gopal Das v. Union of India, **1955 S C J 60 : (1954) 26 I T R 722 : (1955) 1 M L J (SC) 19 : 1955 Andh W R (SC) 19 : 1955 S C A 624 : 1955 S C R 773 : A I R 1955 S C 1 (2, 3) (Pr 5).**

——Art. 226—Estoppel — Admission by petitioner of certain property as waqf property — Subsequently petitioner claiming said property as exclusively his own — Conduct of petitioner disentitles him to any relief under Art. 226. AIR 1965 All 333 (337) (Pt C) (Pr 17).

——Art. 226—Estoppel—Conduct.

Where the petitioner's election was set aside and a fresh election was ordered by the Sub-Divisional

Officer and the petitioner took his chance at the second election without any objection having been filed in the High Court by means of writ petition before the second election took place, he is not entitled thereafter to present a writ petition to the High Court asking the first election to be restored by setting aside the order of the Sub Divisional Officer. If once a party acquiesces to the jurisdiction of an authority who may not have the jurisdiction, then thereafter he cannot be allowed to challenge the authority or otherwise of the proceedings to which he had acquiesced. A I R 1957 S C 397, Rel. on. AIR 1960 All 550 (550, 551) (Prs 1, 2).

——**Art. 226 — Estoppel — (U. P. District Board Manual, page 207, R. 1).**

A District Board invited applications for the appointment of a Secretary. The respondent was appointed as a Secretary of the Board. But before he was so appointed the Board referred the matter to the State Government because some difficulty was felt about the interpretation of R. 1 prescribing qualifications of District Board secretaries. One of the writ petitioners was a member of the Board and he was one of the members who voted for the resolution relating to the interpretation of the rule. The writ petition was supported on the ground that the Board had no jurisdiction to refer any matter regarding interpretation of the rules to the State Government.

Held, that inasmuch as one of the petitioners had himself invoked the jurisdiction of the Government to interpret the rule, it did not lie in his mouth to say that the reference was incompetent. **A I R 1959 All 589 (592, 593) (Pt B) (Pr 8).**

[Overruled on another point in AIR 1964 All 169.]

——**Art. 226 — Estoppel — Application to set aside decision of Election Tribunal — Party accepting decision of Tribunal and making good deficiency in court-fee — Later plea that court-fee originally paid by him was sufficient — If open by a writ.**

Held, that it was open to the respondent to contend that the petition which was presented to the State Government was a proper petition and was not deficiently stamped. The decision of the Tribunal being in his favour, it was not necessary for him to have come up to the High Court against the decision of the tribunal on one issue regarding the amount of court-fee paid. **A I R 1957 All 729 (731, 732) (Pt A) (Pr 3) (DB).**

——**Art. 226—Applicability—Estoppel — (Industrial Disputes Act (1947), Ss. 2 and 10).**

Where the petitioner itself applied under Cl. (29) of the U. P. Government Order No. 464 dated the 14th July, 1954 which provided that if a concern during the pendency of any dispute wished to retrench any workman it had to apply for permission to the proper authorities and retrench the employee after obtaining the permission :

Held, that it was not open to the employer to challenge the order by taking up the position that the employee was not a workman and therefore there was no industrial dispute which could be referred to an adjudicator. **(1957) 2 Lab L J 652 : A I R 1957 All 643 (643, 644) (Pt A) (Pr 3) (DB).**

——**Art. 226 — Conduct of petitioner — Failure to raise objection to jurisdiction of lower tribunal — Effect.**

In order that the Regional Transport Authority should constitute a valid Tribunal it should compose of three members as required by S. 44 (2), Motor Vehicles Act. In the absence of any provision prescribing a quorum, the matter should be heard by all the three members and it is not open to two only of them to deal with the matters. A I R 1953 Mad 129, Rel. on. Where the punishment of suspension of permit was imposed only by two of the members of the Regional Transport Authority and the petitioner had not raised any objection to the hearing of the matter by two only of the members, the conduct of the petitioner disentitles him to any relief under Art. 226 of the Constitution. AIR 1957 S C 397 and AIR 1927 Mad 130 (FB). Rel. on. AIR 1951 S C 230, Disting. In such case there is no question of want of inherent jurisdiction. A I R 1954 Mad 103 (FB), Expl and Disting. **A I R 1961 Andh Pra 344 (345) (Pt A) (Prs 7, 9) (DB).**

[Overruled in AIR 1964 Andh Pra 36 (FB).]

——**Art. 226 — Constructions within cantonment area — Powers of Secunderabad Cantonment Board — Extension to villages within its limits — Effect of various notifications - Petition under Art. 226 - Submission to jurisdiction — Effect. See Cantonments Act (2 of 1924), S. 181. A I R 1961 Andh Pra 113 (DB).**

——**Art. 226 — Bias — Rule that no man should be judge in his own cause — Exception to — Petitioner having knowledge of his complainant sitting as Tribunal - Plea of bias not raised — Waiver - It cannot be raised in writ petition.**

The principle enshrined in the maxim 'Nemo Debet Esse Judex In Casus Propria Sua' is of the highest importance and any infraction of it would render the proceedings wholly unsustainable. But this rule has certain exceptions such as (1) Necessity, (2) Statutory provision removing the disqualification or making the investigator himself the Judge, (3) Waiver.

Where the Police Officer who checked the petitioner's bus and made a complaint under Motor Vehicles Act was himself a member of the Tribunal which heard the petitioner's case and although the petitioner and his counsel knew that the same Police Officer was functioning as a Tribunal yet no objection was raised at that stage to his participation on the ground of bias.

Held, that the petitioner must be taken to have waived the objection as to the bias and he could not be allowed to raise the plea of bias in writ proceedings. A I R 1957 S C 425 and (1913) 108 L T 270 at p. 271 and (1953) 2 All E R 652, Rel. on. **1961 (1) Cri L J 619 (Andh Pra).**

——**Art. 226—Certiorari, writ of — Submission to or acquiescence in jurisdiction—Estoppel against applying for writ - Industrial Tribunal — Award — Objection to qualification of Tribunal not raised by petitioner before Tribunal — Petitioner arguing case on merits before Tribunal — Petitioner must be taken to have submitted to Tribunal's jurisdiction and cannot be allowed to repudiate it later by applying for writ of certiorari—Evidence Act (1872), S. 115. 1960 Lab L J 604 (A P).**

——**Art. 226—Estoppel—Acquiescence—Effect.**

When all through the pendency of land acquisition proceedings, the petitioners never questioned the validity of the notifications issued by the Government and the action taken by the Collector, but on the contrary, they acquiesced in the acquisition proceedings, such a course of conduct disentitles the petitioners to challenge the legality of the acquisition proceedings by invoking the special powers of the High Court under Art. 226 of the Constitution. (1959) 1 Andh W R 206 : A I R 1959 Andh Pra 444 (444, 445) (Pt A) (Pr 9) (DB).

——**Art. 226—Jurisdiction of High Court — Income-tax Act — Assessment proceedings — Issue of writ to quash — Interests of justice—Where the petitioner who was a partner in a firm has induced the Income-tax Officer to believe that he could make an assessment provisionally subject to it being reopened when the final assessment of the firm was made, and having succeeded in making the department act upon his**

assurance he wants to turn round and question under Art. 226 the legality of the order for which he was himself responsible, it would be a perverse exercise of jurisdiction under Art. 226 to quash the order of Income-tax Officer. See Income-tax Act, Ss. 3, 4 and 35 (1). **AIR 1959 Andh Pra 174 (DB).**

——Art. 226—Territorial jurisdiction—Waiver of.

There cannot be a waiver of objection to jurisdiction of the High Court, to issue a Writ for the doctrine of waiver cannot be invoked in a case where there is total want of jurisdiction, such as, when the Authority or Tribunal is beyond the territorial jurisdiction of the High Court. 1955 Andh W R 122, Foll. **1955 Andh L T (Civil) 117 : 1955 Andh W R 175 : A I R 1955 Andh 178 (179) (Pt B) (Prs 3, 4).**

——Art. 226 — Plier accepting further renewal of temporary permit granted to him for less than three years—Subsequent order cancelling temporary permit challenged by plier — He cannot ask High Court for mandamus directing authorities not to give effect to order cancelling temporary permit and to incorporate in it period of three years. See Motor Vehicles Act (1939), S. 56. **A I R 1963 Assam 182 (DB).**

——Art. 226—Question of law—(Industrial Disputes (Appellate Tribunal) Act (1950), S. 7).

The parties before the Labour Appellate Tribunal may be expected to assume that the Tribunal is conscious of the limits of its jurisdiction, and they will not be disabled from making a grievance in an application under Art. 226 of the Constitution that the Tribunal has entertained an appeal under S. 7, Industrial Disputes (Appellate Tribunal) Act, 1950, in a case which does not raise a substantial question of law. **A I R 1954 Bom 202, Disting. (1958-59) 14 F J R 114 : 59 Bom L R 413 : (1957) 2 Lab L J 37 : I L R (1958) Bom 49 : A I R 1957 Bom 188 (192) (Pt D) (Pr 10) (DB).**

——Art. 226 — Objection to jurisdiction of lower authority.

Before a question of jurisdiction of a tribunal is raised on a petition under Arts. 226 and 227, objection to jurisdiction must be taken before the tribunal whose order is being challenged. (Underlying principles stated). 1914 K B 608, Rel. on. **55 Bom L R 922 : I L R (1954) Bom 247 : A I R 1954 Bom 202 (203, 204) (Pt B) (Prs 4, 5) (DB).**

——Art. 226 — Who can apply — Right to challenge proceedings under Land Acquisition Act — Acceptance of award no bar to obtain relief under Art. 226 —Land Acquisition Act (1894), Ss. 11 and 12 —Evidence Act (1872), S. 115.

Mere withdrawal of the compensation awarded will not disentitle the awardee to relief if he is found otherwise entitled to it. Right to hold property is a fundamental right and there can be no waiver of such right. Acceptance of the award cannot be taken as amounting to such waiver as would disqualify the awardee to ask for relief and obtain it under Art. 226 in an appropriate case. ('66) 67 Cal W N 647.

——Arts. 226 and 311 — Estoppel — Life Insurance Corporation Act (31 of 1956), Ss. 11 and 49 — Life Insurance Corporation of India (Staff) Regulations, 1956 —Rules 9 (iii) (c), 20 (2) and 41 (1)—Servant of Corporation—Termination of service by payment of one month's notice pay in terms of contract for unsatisfactory work — Acceptance — Application for writ.

Held, on facts (i) that the petitioner was estopped from challenging the order of termination because he had accepted his dismissal by drawing two months' pay which was offered. After all, an appointment by the Corporation is primarily a matter of contract and if the termination of the contract is accepted by an employee. who takes the benefit offered, it is impossible for him afterwards to challenge the validity thereof.

(ii) That the petitioner's services were regulated by the (Staff) Regulations, 1956, and not by the Life Insurance Corporation Field Officers (Alteration of Remuneration and other Terms and Conditions of Services) Order, 1957. The petitioner's case was not governed by Rule 41 and his services were properly terminated under R. 20 (2) by serving one month's notice. The terms of service themselves contained a term empowering the Corporation to terminate the petitioner's services at any time, if the results were not satisfactory. Under the terms, even a notice of one month was not necessary. A I R 1960 Mad 333, Rel. on.

(iii) That as the Divisional Manager was the appointing authority under R. 9 he had power to terminate the services of the petitioner. **A I R 1961 Cal 108 (110, 111) (Prs 6, 7).**

——Art. 226 — Estoppel — Applicant taking part in proceedings without prejudice to right to challenge —Legality—If bar to application for writ.

Where the petitioner took part in the Land Acquisition proceedings after expressly reserving rights to challenge the legality of the acquisition in appropriate proceedings, the conduct of the petitioner is not such which disentitles him from obtaining any relief under Art. 226. ('58) 62 Cal W N 73.

——Art. 226—Benefit of to persons avoiding income-tax—(Income-tax Act (1922), S 34).

While being aware that assessment of taxes and impositions is not a pleasant affair, it would be a dangerous principle to extend the benefits of Art. 226 of the Constitution to those who have transgressed the law and yet are too faint-hearted to speak out the truth and confront the consequences. Under such circumstances, if the authorities and the assessee have come to a working arrangement, it is not for the High Court to interfere and re-open the same. A writ of mandamus or certiorari would be appropriate if the authorities had done something which infringes the law, but within the boundaries of law, the High Court is not called upon to disturb arrangements which parties may have come to with their eyes open and fully cognizant of the consequences of their acts. **A I R 1954 Cal 271 (277) (Pt B) (Pr 25).**

——Art. 226 — Civil P C. (1908), S. 80 — Scope and object—Notice issued under S. 80—Whether estopped from filing petition. See Civil P. C. (1908), S. 80. **A I R 1953 Him Pra 95.**

■ **——Art. 226 — Estoppel against application for writ—(Evidence Act (1872), S. 115)**

The question of estoppel or acquiescence is essentially a question of fact which has to be decided on proper materials before the Court and not in a writ proceeding.

Held, as the conditions for the applicability of the doctrine of acquiescence were not fulfilled in this case, that doctrine could not be invoked. (1880) 15 Ch D 96, Rel. on. Bhagat Rajinder Kumar Sawhney v. State of J. & K., **A I R 1960 J & K 50 (52) (Pt D) (Pr 4) (FB).**

——Art. 226—Estoppel — Acquiescence or submission — Refusal of temporary permit to applicant— Later temporary parmit granted to State Transport Authority — Writ petition to quash order — R. T. A. found to have disregarded provisions of M. V. Act— Applicant held not precluded from seeking to quash order — (Motor Vehicles Act (1939, S. 62). 1958 Ker L T 1034, Dist.; 1959 Ker L J 549; 1959 Ker L T 601; I L R (1959) Ker 1224 : A I R 1960 Ker 35 (38) (Pt B) (Pr 7).

——Art. 226—Bar to writ—Submission to jurisdiction of inferior tribunal — Right to apply for issue of writ.

Submission to jurisdiction of the inferior tribunal will foreclose an appeal to the writ jurisdiction of the High Court or Supreme Court. A I R 1957 S C 397, Foll. 1958 Ker LT 1034 : 1958 Ker L J 997.

——Art. 226 — Right to apply — Estoppel against— (Panchayats — T. C. Panchayats Act (2 of 1950), S. 69).

The petitioner purchased the right in an auction held by the Panchayat to vend beef in market for a year. When the period was about to expire the Panchayat held a public auction and sold the right to another. The petitioner challenged the validity of the auction by an application under Art. 226 on the ground that the auction was not warranted by S. 69, T. C. Panchayat Act, 1940, and that the Rules and Bye-laws which permitted the auction were invalid.

Held, that the petitioner was not estopped from questioning the validity of the auction by the fact of his having enjoyed the benefits of the rights by purchasing them at the previous auction in the absence of anything on record to show that he was one of the bidders at the impugned auction or that he had acquiesced in the proceedings or that he did anything in respect of the action. 1957 Ker L T 342 : I L R (1957) Ker 273 : 1957 Ker L J 207 : A I R 1957 Ker 85 (86) (Pt C) (Pr 7) (DB).

——Art. 226 — Estoppel — Petitioners agreeing to arrangement embodied in Government order—Legality of order cannot be questioned — (Evidence Act (1872), S 115).

Where the petitioners have agreed to the arrangement embodied in a Government order they cannot contend that the order is illegal or that it was passed in violation of the rules of natural justice, nor can they invoke the extraordinary jurisdiction of the High Court to quash that order by the issue of a writ of certiorari. 1957 Ker L J 217 : I L R (1957) Ker 59 : 1957 Ker L T 198 : A I R 1957 Ker 22 (24) (Pt A) (Pr 6) (DB).

——Art. 226 — Acquiescence — Effect — Bye-laws of co-operative society—Amendment of, by resolutions passed at meeting unanimously — Petitioner member present at meeting—Petition directed against validity of resolutions and their registration—Maintainability (Madras Co-operative Societies Act (6 of 1932), S. 12). 1957 Ker L J 199 : 1957 Ker L T 56 : A I R 1957 Ker 14 (15) (Pt A) (Pr 2).

——Arts. 226 and 227 — Appellate authority consisting of two members under relevant notification constituting it — Objection to appeal being heard by single member not raised at the time—Appellant will not be permitted to question the jurisdiction of the appellate authority when it has gone against him by invoking the jurisdiction of the High Court under Arts. 226 and 227. AIR 1957 Madh Pra 58 and AIR 1957 S C 397, Rel. on. 1964 M P L J 289 : 1964 Jab L J 359 : AIR 1965 Madh Pra 113 (114) (Pt B) (Pr 7) (DB).

——Art. 226 — Petitioner challenging validity of notification issued under S. 6 of the Land Acquisition Act (1894) nearly after five years — During all these years petitioner participating in acquisition proceedings throughout, including first appeal, in which remand order was made—He would not be entitled to any relief in writ proceedings. 1965 M P L J 208 : 1965 Jab L J 322.

——Arts. 226 and 227— Estoppel against applying — Objection to the jurisdiction of the Tribunal not raised before it—Person taking chance of obtaining favourable decision — He cannot later on urge want of jurisdiction by the Tribunal.

A person who does not raise before a tribunal the objection that it has no jurisdiction to deal with the matter and takes a chance of obtaining a favourable decision cannot be permitted, when the decision goes against him, to subsequently question the jurisdiction of the tribunal. By this conduct, he precludes himself from raising the objection about jurisdiction afterwards and the High Court which exercises a special jurisdiction under Arts. 226 and 227 of the Constitution will not assist him in claiming the writ. (1914) 1 K B 608 and A I R 1957 S C 397, Rel. on. 1961 M P L J (Notes) 270.

——Art. 226—Applicability— Foreigners Act (1946), S 3 (2) Cl. (c) — Citizenship Act (1955), S. 9 (2)— Citizenship Rules, R. 30—Petitioner coming to India on Pakistani passport and for several years overstaying term of his visa— Deportation imminent — —Petition under Art. 226—Maintainability.

Where a Muhammadan, who had come to India on a Pakistani passport and had for 5 years overstayed the terms of his visa, filed a petition under Art. 226, when his deportation was imminent, for a writ to the appropriate authorities not to deport him and at least to wait till he got an opportunity to move the Government of India under S 9 (2) of the Citizenship Act and R 30 of the Citizenship Rules and the latter disposed of his petition.

Held, dismissing the petition, that the petitioner, who had done nothing for 5 years to move the Government of India to clear the doubt about his citizenship, could not be permitted to stay on for another term just to move that Government on the mere chance of his getting a favourable order. Every State was entitled to protect itself and to turn out a person who had come on a foreign passport, issued for a limited period which he had overstayed. AIR 1959 Andh Pra 241 and AIR 1959 Punj 261. Disting. AIR 1960 Madh Pra 381 (381, 382) (Pr 3) (DB).

——Art. 226—Quo-warranto —Nature of writ—Conduct of relator—Acquiescence—Effect.

The conduct of the petitioner who comes to Court praying for its issue becomes one of the factors which have to be taken into account in this respect, and the writ ought not to be issued at the instance of a person who has acquiesced in or perhaps concurred in the very act which he afterwards comes to complain of. AIR 1953 Nag 81, Rel. on.

Thus, where the person seeking to object to the validity of election not only takes part but waits till he is defeated and then turns round to challenge the validity of that Act he should not be allowed to do so. I L R (1957) Madh Pra 188 : 1962 M P L J (Notes) 5 : 1957 Jab L J 170 : 1957 M P C 177 : AIR 1957 Madh Pra 60 (63) (Pt B) (Prs 21, 23).

——Art. 226 — Madras Hindu Religious and Charitable Endowments Act (19 of 1951), Ss. 3 and 6 (4) — Notification under S. 3 of Madras Act extending provisions of that Act to a charity—Petitioner in suit not objecting to validity of notice on ground that the charity was not exclusively confined to Hindus— Held, petitioner could not agitate that point, after dismissal of even second appeal filed by him, in writ petition. (1965) 1 Mad L J 311 : I L R (1965) 2 Mad 505 : 78 Mad L W 105 : A I R 1965 Mad 416 (417) (Pt A) (Prs 3, 4).

——Art. 226—Estoppel against applying.

Before a person aggrieved is refused a relief to which he would otherwise be entitled on the ground of acquiescence in the wrong complained of, it is necessary to establish that he knew, or ought to have known, his right, which he is alleged to have omitted to assert. A person who has no knowledge of his right and is not guilty of culpable negligence in being ignorant, will not be denied a relief to which he is entitled on the ground that he omitted to assert that

right. 70 Mad L W 981 : (1958) 1 Mad L J 1 : 1958 Mad L J (Cr) 22 : A I R 1958 Mad 236 (238) (Pt A) (Prs 5, 6) (DB).

[Reversed on another point in AIR 1960 S C 1191.]

——Art. 226 — Quo warranto —Writ is not issued as matter of course — Relator will not be entitled to information in nature of quo warranto if it is shown that he acquiesced in the election to which he objects or that he is raising objection which might have been put forward against himself at a previous election or that while cognizant of the objection he voluntarily so acted as to enable the respondent to exercise the office. (1954) 1 Mad L J 102 : ILR (1954) Mad 908 : A I R 1954 Mad 563 (568) (Pt E) (Prs 24, 25) (DB).

● ——Art. 226 –Scope –(Madras Co-operative Societies Act (6 of 1932), S. 51).

Where the petitioners objected to the jurisdiction of the Deputy Registrar to decide the dispute relating to the election of Directors of a Bank by its general body, by filing a writ petition to the High Court, and later on filed a revision under S. 51 of the Madras Act (6 of 1932) to the Registrar, the conduct of the petitioners in filing the revision could not be considered as precluding them from agitating the question in the writ proceedings. Madhava Rao v. Surya Rao. (1953 2 M L J 340 : 1953 Mad W N 515 : 66 Mad L W 821 : I L R (1953) Mad 1047 : A I R 1954 Mad 103 (105) (Pt B) (Pr 7) (FB).

● ——Art. 226 –Estoppel against applying –Election dispute—(Evidence Act (1872), S. 115) — Election — Validity.

Those candidates, who took their chances at the elections and failed, are not estopped from challenging the election of their opponents on the ground that the electoral rolls were defective. There can be no question of any estoppel because it cannot be said that the position of the other side has in any way altered by reason of something done or not done by the petitioners. Kanglu Baula v. Chief Executive Officer, ILR (1954) Nag 875 : AIR 1955 Nag 49 (58, 59) (Pt C) (Pr 25) (FB).

——Art. 226 – Petitioner stating in writ petition that he did not take part in election at any of its stages— Petitioner is not barred by doctrine of estoppel from filing writ application challenging legality of election on ground of its being violative of R. 17, Bihar Panchayat Election Rules. I L R 33 Pat 905, Disting. 1964 B L J R 455 : ILR 44 Pat 585 : AIR 1964 Pat 500 (502) (Pt B) (Pr 5) (DB).

——Art. 226 — Estoppel — (Evidence Act (1872), S. 115.)

Where the petitioners knowing of the illegality participated in an election and thus acquiesced or concurred in the election, they would be estopped from challenging the validity of that election after having lost. ILR 33 Pat 905, Rel. on ; AIR 1958 Pat 149 Disting. 1958 B L J R 177 : A I R 1959 Pat 7 (8) (Pt A) (Pr 6) (DB).

——Arts. 226 and 227—Applicability—Party denying jurisdiction of Tribunal and succeeding in the plea, cannot deny truth of the plea in subsequent proceedings before another Tribunal —Suit for rent –Defendant challenging jurisdiction of Civil Court and succeeding in his plea— He cannot subsequently in suit before Rent Controller say that he cannot pass eviction order — Tenant permitted to raise plea by Rent Controller and declining to exercise jurisdiction vested in it—More appropriate remedy is Art. 227 than Art. 226. See Ibid, Art. 227. 1955 B L J R 47 : A I R 1955 Pat 198 (DB).

——Art. 226—Quo warranto — Petitioner acquiescing in election —He will not be entitled to information in nature of quo warranto—(Municipalities—Patna Municipal Corporation Act (13 of 1952), S. 545 (2)). A I R 1955 N U C (Pat) 5971 (DB).

——Arts. 226, 31 and 19 — Conduct acquiescing in order of Government — Order challenged to be ultra vires on ground of contravention of fundamental right —Waiver of fundamental right—(Evidence Act (1872), S. 115)—See Ibid, Art. 31. AIR 1953 Pepsu 9.

● ——Art. 226 –Estoppel against applying –Lack of inherent jurisdiction—Failure of party to raise objection about — Effect of — Exercise of discretion by High Court.

Want of inherent or initial jurisdiction goes to the very root of the matter. Neither consent nor acquiescence of a party can vest a Tribunal with jurisdiction where none exists. Nor can such consent or acquiescence confer validity upon the order of the Tribunal where the order in the very nature of things is a nullity having been made by a Tribunal without any jurisdiction in the matter. Where the lack of inherent jurisdiction in a Tribunal is patent on the record, the failure of a party to raise objection about want of such jurisdiction before the Tribunal would not by itself stand in the way of the High Court granting relief to the party concerned on that score. If, however, because of the failure of the petitioner to raise such an objection there arise certain equities in favour of the opposing party or some other circumstances supervene which make it inexpedient to grant relief to the petitioner, the Court would in the exercise of its discretion refuse to grant such a relief. Davinder Singh Amar Singh v. Deputy Secretary-cum Settlement Commissioner, 66 Pun L R 555 : 1964 Cur L J 243 : ILR (1964) 1 Punj 905 : AIR 1964 Punj 291 (296, 297) (Prs 11, 12) (FB).

——Art. 226—Scope — Award of Industrial Tribunal —Major portion accepted — Continuance of litigation by petition—Permissibility.

It is open to a party to an industrial dispute to accept a major part of the award and still to continue the litigation in certain circumstances and one such circumstance is that the award in so far as it relates to certain workers is in excess of their demand. (1959-60) 16 F J R 152 : AIR 1960 Punj 76 (77, 78) (Pt A) (Pr 8).

——Art. 226 –Discretion of Court — Failure to raise objection as to jurisdiction –(Industrial Disputes Act (1947), S. 7 (1)).

The Court has always the power and the discretion to grant or refuse to grant the writ and while exercising discretion it will take into consideration all the the relevant factors. The failure to raise objection to defect or lack of jurisdiction of the Tribunal before it is always a material and relevant factor and must be taken into account. Ordinarily such a conduct would preclude the petitioner from claiming the writ unless a cogent explanation is furnished by stating the necessary facts upon affidavit which should satisfy the Court that the failure to raise the objection relating to jurisdiction was not deliberate or that the petitioner had no knowledge of facts on which the objection could be based.

Where a petition under Art. 226 was instituted in which the question of defect of jurisdiction of the Tribunal was raised for the first time,

Held, that such conduct would disentitle the petitioner to the relief by way of certiorari, nor could the petitioner claim any other relief under Art. 226 of the Constitution in the circumstances. 61 Punj L R 597 : ILR (1959) Punj 1602 : AIR 1959 Punj 389 (394) (Pt B) (Prs 7, 8) (DB).

——Art. 226—Writ Petition to set aside election — Petitioner fighting election in spite of alleged defects —Does not operate as estoppel — Writ petition not barred —(Evidence Act (1872), S. 115).

Held, that firstly, there cannot be any estoppel against the statute and secondly, because it cannot be justly postulated that the position of the respondents was in any manner altered or adversely affected by reason of something done or omitted to be done by the petitioners. **1962 Raj L W 57 : I L R (1961) 11 Raj 1144.**

——**Art. 226**—Motor Vehicles Act (4 of 1939), S. 57—Applicant for permit under Motor Vehicles Act not taking objections to applications by others for permit — This would only debar him from subsequently challenging validity of permits granted to them—This cannot stop him from pursuing his own application which is pending — If no orders are passed upon his application he can proceed under Art. 226. See Motor Vehicles Act (1939), S. 57. **A I R 1953 Raj 1.**

■ ——**Art. 226—Petition for writ of certiorari—Maintainability — Withdrawal of prior petition under S. 45, Specific Relief Act.**

The withdrawal of a petition filed under S. 45, Specific Relief Act, without decision on the merits after the coming into force of the Constitution of Mewar, is no bar to a subsequent petition for a writ of certiorari. Lakshmi Lal v. Bhagwat Singh, **ILR (1951) 1 Raj 570 : 1951 Raj L W 484 : AIR 1952 Raj 22 (25) (Pt C) (Pr 15) (FB).**

——**Art. 226—Application for writ, maintainability —[Evidence Act (1872), S. 115].**

Applicant taking advantage and benefits under order, cannot complain against the order. **6 Sau L R 534 : A I R 1954 Sau 90 (91) (Pt C) (Pr 8) (DB).**

——**Art. 226—Decision of Election Tribunal —Right to challenge by writ — Waiver — [Representation of the People Act (1951), S. 98]—(Waiver).**

Waiver is the abandonment of a right and is either express or implied from conduct. A person who is entitled to the benefit of a statutory provision may waive it and allow the transaction to proceed as though the provision did not exist.

Tribunal declaring election of applicant to be void —Applicant filing his nomination paper at fresh election — Applicant defeated — Application under Art. 226 against Tribunal's decision filed thereafter — Applicant held had waived his right of challenging decision of Tribunal by acquiescing in it. **A I R 1954 Vin Pra 44 (46) (Pt C) (Pr 12).**

49. Executive and quasi-judicial decisions—Distinction.

See also Notes 140 and 168.

■ ——**Art. 226**—Conditions for invoking Art. 136 (1) —Distinction between quasi-judical and executive decisions—'Tribunal' contemplated by Art. 136 (1) — Comparison with Arts. 226 and 227 — Industrial Disputes Act (1947), S. 10-A — Decision of arbitrator acting under—Appeal under Art. 136 (1) — Not competent —Arbitrator is not a Tribunal, although his decision is quasi-judicial — Position of Industrial Tribunal and private arbitrator under Arbitration Act compared. See Ibid, Art. 136 (1). **AIR 1963 S C 874.**

——**Art. 226—Distinction between quasi-judicial act and administrative or executive act—Consent of Advocate-General under S. 92, C. P. Code — Act of giving consent is merely administrative act.**

The act of the Advocate General in giving his consent to the institution of a suit under S. 92, C. P. Code cannot be called a quasi-judicial act. It is merely an administrative or executive Act. AIR 1954 Trav-Co 331, Diss. from. 8 Ind Cas 1160 (1) (Lah), Rel. on.

Section 92, or any other provision, of the C. P. Code does not require the Advocate-General to hold any enquiry or to give an opportunity to the party to be affected of being heard. The rules framed for the guidance of the Advocate-General which are contained in the Legal Remembrancer's Manual, even if they are treated as statutory rules do not make it incumbent upon the Advocate-General in all cases to give an opportunity to the party concerned of being heard. Further, the Advocate-General is not bound by the rules to act upon the report of the District Officer or to give his consent only on the basis of the facts and circumstances as determined upon the enquiry. He is at liberty to act upon his own pure discretion in spite of the reports of the District Officer.

Again a judicial or quasi-judicial act must involve a decision as to the rights of the parties and must affect the interests of one or the other of the parties. In giving his consent under under S. 92, C. P. Code, the Advocate-General is not expected to decide the rights of the contending parties. Even if he has to hold an enquiry he is merely to see whether there is a prima facie case that should be allowed to get to a Court of law. The Court is not to be influenced in deciding the case by the fact that the Advocate-General has given his consent to the institution of the suit. It is therefore not a case in which there is any decision about a dispute or a claim.

It may be that the Advocate-General will always be well-advised to hold an enquiry either himself or through the District Officer as required by the rules after giving notice to the proposed defendants to the suit and to give his consent only when he finds a prima facie case made out for the institution of the proposed suit. But this is merely a directive which can be said to be desirable and cannot be said to be binding as a matter of law. Case-law discussed.

(Distinction between quasi-judicial act and administrative or executive act pointed out.) **I L R (1955) 1 All 609 : :AIR 1955 All 372 (376) (Pt A) (Prs 9, 10, 11) (DB).**

——**Art. 226** — U. P. Agricultural Income-tax Act (1949), S. 6 (1), Proviso — Grant of permission to assessee to change method of computation of his income—Board of Revenue acts in its executive capacity. See U. P. Agricultural Income-tax Act (3 of 1949), S. 6 (1), Proviso. **AIR 1953 All 25.**

——**Arts. 226 and 227—Jurisdiction—Judicial orders — Magistrate acting under S. 87 of Madras Hindu Religious and Charitable Endowments Act (19 of 1951)—Nature of functions—(Criminal P. C. (1898), S. 435).**

Under S. 87 of Act (19 of 1951), the Magistrate is exercising more or less only an executive function; but still the Magistrate is acting in a judicial capacity. He therefore surely is a tribunal. He is only acting as a persona designata. The jurisdiction conferred on him is a special kind of jurisdiction relating to civil rights of the persons who come before him and has nothing to do with his powers or duties as a Magistrate. Therefore he is amenable to the jurisdiction of the High Court under Art. 227 of the Constitution. If he is not a tribunal, he will be amenable to the jurisdiction of the High Court under Art. 226. His action is thus not revisable under the provisions of the Criminal Procedure Code. AIR 1954 Mad 500, Foll. **(1958) 1 Andh W R 263.**

[Impliedly overruled in AIR 1959 Andh Pra 129.]

■ ——**Art. 226 — Executive acts — Issue of writs against.**

The issue of a writ of certiorari or any other suitable writ which the High Court can issue under Art. 226 or order that it can make under Art. 227 cannot be avoided by merely calling a particular order or action as in the nature of an executive order or action.

Though the acts which are purely executive in their nature, that is depending upon the discretion of the authority making it, may not be amenable to correction by the High Court, where the orders are passed or action is taken under a statute or an Act of the legislature by a Court or tribunal which is vested with the power to take and enforce decisions regarding the rights between rival parties who appear before the tribunal or between them and the State, their proceedings, orders and actions cannot be said to be "executive." They would really be in the nature of judicial or quasi-judicial proceedings and orders and where it is shown that the authority or tribunal has acted contrary to or has not observed the provisions of such Act or statute or has during the course of so doing not observed the rules of natural justice, the High Court has ample jurisdiction to issue the necessary writs. Sampu Gowda v. State of Mysore, I L R (1953) Mys 440 : 32 Mys L J 12 : AIR 1953 Mys 156 (165, 166) (Pt J) (Pr 42) (FB).

50. Executive, writs and orders against.

See also Note 140.

(a) Discriminatory, arbitrary and mala fide orders.

(b) Duty to act within law.

(c) Duty of High Court to exercise power with restraint.

(d) Limits on interference by Courts.

(e) Order without jurisdiction and against mandatory provisions.

(f) Discretionary orders.

(g) Orders not justiciable.

(h) Finality of executive and administrative orders.

50. Executive, writs and orders against.

See also Note 140.

——Art. 226 — "Executive action" — Meaning. See Ibid, Art. 118. **(1956) 2 Mad L J 430 : AIR 1957 Mad 48 (DB).**

——Arts. 226, 311 and 320 — Applicant high officer of State—Council of Ministers deciding that applicant must take all available leave and retire—Decision orally conveyed to applicant by Chief Secretary—Chief Secretary giving order in writing to that effect—Applicant applying for leave which was granted by Council of Ministers—Applicant before expiration of leave applying for writ of certiorari for quashing order of Council of State—Arts. 311 and 320 held did not apply because there was no order made dispensing with services of applicant — In circumstances of case writ of certiorari held could not be issued. **AIR 1952 Trav-Co 409 (411) (Pr 3) (DB).**

——Art. 226 — jurisdiction of High Court—Orders against Executive Officer in respect of administrative order—Power to issue.

The jurisdiction of the High Court under Art. 226 of the Constitution is much wider than it was prior to the enactment thereof. The High Court under Art. 226 of the Constitution has the duty to see that the fundamental rights guaranteed by the Constitution are not violated by any law or any action taken thereunder. The Court will undoubtedly put limitations upon its powers, and will not exercise its powers under the Article in a matter which cannot be dealt with judicially, nor would it take notice of anything which it cannot judicially take notice, nor interfere with the action of an executive officer unless it is satisfied that the executive officer concerned is under an obligation to do something or to forbear from doing something. The Hgih Court has under the Article undoubted jurisdiction to issue an order even against an executive officer who has issued an administrative order, in order to safeguard the fundamental rights of the citizens. **AIR 1950 S C 163;** AIR 1950 Bom 363 (FB) Ref. The powers of the Court under S. 18 of the Trav-Cochin High Court Act are the same as under Article. **ILR (1951) T C 496 : 1951 K L T 158 : A I R 1951 T C 197 (199, 200) (Pt A) (Pr 6).**

50 (a). Discriminatory, arbitrary and mala fide orders.

● ——Arts. 226, 309 — Government servant on leave preparatory to retirement—Leave revoked by Government, Government servant suspended and departmental enquiry ordered against him — Held, no breach of service rules - Petition under Art. 226 by such Government servant alleging mala fides on part of Minister in charge — No counter-affidavit by Minister concerned but affidavit filed by Secretary in the Department having no personal knowledge regarding allegations against Minister — Mala fides held proved—Orders set aside.

Held (i) (Per Full Court): that the impugned orders were not beyond the power of the State Government. The Service Rules, which were statutory, vested the power in the Government to pass the impugned orders.

Per majority:—(ii) The Constitution enshrines and guarantees the rule of law and Art. 226 is designed to ensure that each and every authority in the State, including the Government, acts bona fide and within the limits of its power and when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual.

Taking the present case of the power vested in Government to pass the impugned orders, it could not be doubted that it was vested in Government for accomplishing a defined public purpose viz., to ensure probity and purity in the public services by enabling disciplinary penal action against the members of the service suspected to be guilty of misconduct. The nature of the power and the use of that power for achieving an alien purpose—wreaking the Minister's vengeance on the officer—would be mala fide and a colourable exercise of that power, and would therefore be struck down by the Courts. 1925 A C 338 and 1926 Ch 66 and 1915 A C 872 and (1924) 1 Ch 483 and (1951) 2 K B 284 and 1904 A C 515, Rel. on. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by Government of its powers. If bad faith would vitiate the order, the same can be deduced as a reasonable and inescapable inference from proved facts. (1894) 29 Ch D 459, Rel. on. The only question which could be considered by the Court is whether the authority vested with the power has paid attention to or taken into account circumstances, wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated mala fide for satisfying a private or personal grudge of the authority against the officer.

In the circumstances of the case, it would not be proper to brush aside the allegations made by the petitioner, particularly in respect of those matters where they were supported by some evidence of a documentary nature seeing that there was no contradiction by those persons who alone could have contradicted them.

Per Majority, Raghubar Dayal and Mudholkar, JJ., contra.—The impugned orders were vitiated by mala fides, in that they were motivated by an improper purpose which was outside that for which the power or discretion was conferred on Government and the said orders should therefore be set aside. A I R 1963 Punj 298, Reversed. S. Partap Singh v. State of Punjab, (1965) 1 S C A 259: **A I R 1964 S C 72 (81 to 86, 93) (Pt E) (Prs 5 to 10, 13, 14, 28).**

■ ——Art. 32—Mala fide order—Order of Commissioner under S. 39 of Calcutta Police Act (1866).

Petition under Art. 32 on grounds that reason given by Commissioner for refusing licence are not correct and that the Commissioner is annoyed with person applying for licence as the latter want to High Court by means of a writ petition — Are not sufficient for holding order of Commissioner to be mala fide. Kishan Chand Arora v. Commissioner of Police, Calcutta, (1961) 3 S C R 135: (1961) 2 S C A 150: (1961) 2 S C J 309 : (1961) Mad L J (Cr) 541 : A I R 1961 S C 705 (710) (Pt D) (Pr 6).

■ ——Art. 226—Applicability—Selection of Controller—Industries (Development and Regulation) Act—Test of mala fides on the part of Government. See Industries (Development and Regulation) Act (1951), S. 18-A. AIR 1957 S C 676.

■ ——Art. 226 — Applicability — Abuse of power — Remedy of aggrieved party — Section 5(7A) of the Income-tax Act is not violative of Art. 14 and also does not impose any unreasonable restriction on the fundamental rights to carry on trade or business enshrined in Art. 19 (1)(g). If there is any abuse of the power it can be remedied by appropriate action either under Art. 226 or under Art. 32 and what can be struck down is not the provision contained in S. 5(7A) but the order passed thereunder which may be mala fide or violative of those fundamental rights. See Ibid, Art. 14. AIR 1957 S C 397.

——Art. 226—Executive action, mala fide—Duty of High Court — U. P. Police Regulations, Pr. 228 — Direction to close history sheet issued.

It is fundamental to the powers conferred on High Court both under Arts. 226 and 227 of the Constitution to see that 'the rule of law' is strictly adhered to in respect of executive actions which touch either a citizen's way of life or in any other way put his liberty and reputation in jeopardy. Where under the garb of maintaining a history sheet and having surveillance of a citizen, the police has taken action which in any manner affects the citizen's liberties then such action would be struck down.

(A direction to the police to close the history sheet and stop surveillance of the petitioner was issued as the action of Police was mala fide.) I L R (1963) 1 All 289 : 1963 All L J 590 : 1963 (2) Cri L J 241 : A I R 1963 All 408 (411, 412) (Pt C) (Prs 14, 15, 16, 17) (DB).

——Art. 226—Evidence Act (1872), S. 114—Discretion vested in Government Official—Presumption of bona fide exercise — When can be made. See Evidence Act (1872), S. 114. AIR 1961 All 361.

——Art. 226—U. P. Civil Service (Judicial Branch) Rules (1951), R. 14— Considerations involved — Relevancy of political activities of candidate — Opinion based on two grounds — One of them not relevant — Effect — Participation in R. S. S. Satyagraha — Held, was relevant consideration in determining fitness for judicial service. See U. P. Civil Service (Judicial Branch) Rules (1951), R. 14. AIR 1961 All 361.

——Art. 226—Executive decision—Interference—Petition under Art. 226 impugning decision of Government to impose qualifying test—Not discriminatory—High Court held had no jurisdiction to interfere with executive decision of Government. See Ibid, Art. 14. AIR 1960 All 484.

——Arts. 226 and 227—Scope — Power under, when to be exercised.

In a writ petition the fact that the petitioner considers the impugned decisions arbitrary is not enough. The Court has to consider whether the powers have been exercised in an arbitrary manner. 1959 All W R (HC) 218 : 1959 All L J 438 : AIR 1959 All 525 (526) (Pt B) (Pr 4).

——Art. 226—Mutation proceedings—Order not just—Interference with order—(Mutation).

An order in mutation proceedings cannot be said to be a just order where the father whose name has been allowed to be brought on record by the Sub-Divisional Officer was a party to the mutation proceedings and he never objected to the names of his sons being brought on the record, and therefore the High Court is entitled to interfere with the order even if the writ jurisdiction is discretionary. 1956 All L J 726 : 1956 All W R (HC) 756.

——Art. 226 — Allegation of mala fides in Government — Allegations must be more specific and direct to sustain plea.

In cases in which Government's action is challenged on ground of mala fides, to make general and broad allegations of lack of bona fides or of being influenced by extraneous considerations or other reasons is not sufficient. Something more specific, more direct and more precise is necessary to sustain a plea of this nature. If on a vague and broad allegation devoid of any detail and which does not even specify the individual who was subjected to the alleged vice, the Government are to enter on their defence and affirmatively establish that what they did was perfectly bona fide and unconnected with any improper motives or extraneous considerations, it will indeed be putting the Government in a most difficult and least enviable position. AIR 1962 S C 630 and AIR 1937 P C 146 (147, 148), Foll. (1965) 2 Andh W R 383 : AIR 1965 Andh Pra 425 (430, 431) (Pt E) (Pr 9).

——Art. 226 — Northern India Ferries Act (1878), S. 8, Para 3, R. 19 framed under Act—Order rejecting bid of highest bidder—That the name of the highest bidder is on the confidential list maintained by Government of suspected smugglers of opium — Stated as reason for rejection — Nothing on record to show that officer conducting sale himself came to the conclusion on the point after considering the circumstances and materials placed before him — Source on which Government acted also not disclosed—Order is arbitrary and capricious because reason for rejection is not one in compliance with S. 8 Para. 3 and R. 19 framed under Act—High Court is entitled to interfere with the order by issue of a writ inasmuch as there was no exercise of discretion at all by the conducting officer. AIR 1962 Assam 46 (48) (Pr 5) (DB).

[Reversed in (1962) Supp 3 S C R 503.]

——Arts. 226, 14 — Discriminatory administrative order of individual officer. See Ibid, Art. 14. AIR 1951 Bom 132 (DB).

——Art. 226—Administrative orders—Issue of writ—Adjudications by administrative Officers — Effect of bias — Penalty imposed by Assistant Collector of Customs under S. 167 (8) — Same officer making preliminary search and report against accused — Effect. See Sea Customs Act (1878), S. 182. 1958 Cr L J 628 : AIR 1958 Cal 232.

——Art. 226—Income-tax Act (1922), S. 34—Repeated assessments — If process is repeated mala fide, the High Court can and will always interfere. See Income Tax Act (1922), S. 34. AIR 1954 Cal 564.

——Arts. 226, 14, 19 (1) (g) and (6) — Validity of order directing retail dealers in cloth to carry on business through co-operative societies — (Himachal Pradesh Cotton Cloth Dealers Licensing Order, 1948) —No relief unless it was shown that the power was exercised arbitrarily. See Ibid, Art. 14. AIR 1953 Him Pra 41.

——Art. 226—Bad faith—Proof — Held order passed by Government under S. 4 (1) of the Electricity Act

(1910) was not proved to have been passed mala fide—(Electricity Act (1910), S. 4)— AIR 1964 S C 72 and AIR 1964 S C 364, Rel. on. **ILR (1965) 1 Ker 578 : 1965 Ker L J 561 : 1965 Ker L J 548 : AIR 1965 Ker 253 (269) (Pt D) (Prs 63, 64 65, 66) (DB).**

——Art. 226 — Grant of licence—Consideration of objections—Exercise of discretion by licensing authority — Plea of mala fide and perverseness on part of authority — When can be sustained. See Kerala Cinemas (Regulations) Act (32 of 1958), S. 5 (1). **I L R (1961) 2 Ker 6.**

——**Art. 226**—Municipalities—Madras District Municipalities Act (1920), S. 43 — Division into wards—Mala fides. See Municipalities — Madras District Municipalities Act (5 of 1920), S. 43. **AIR 1953 Mad 510.**

——Arts. 226, 19 and 245 — Notification by Director of Public Instruction prescribing certain copy books for use in schools—Order arbitrary and creating monopoly — Notification quashed. **ILR (1953) Mys 625 : 1954 Cri L J 905 : AIR 1955 Mys 81 (83 to 86) (Pt A) (Prs. 4, 6, 9, 10) (DB).**

——Art. 226—Order allotting vacant premises under Cl. 23 (1), C. P. and Berar Letting of Houses and Rent Control Order, 1949—Effect of order is to seek to deprive owner of enjoyment of property — Order is illegal if it is arbitrary and in utter disregard of law under which it is passed—Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order, 1949, Cl. 23 (1). **1951 Nag L J 146 : ILR (1951) Nag 228 : AIR 1951 Nag 22 (24) (Pt D) (Pr 10) (DB).**

——Art. 226—Writs against executive — Arbitrary exercise of discretion —Employees' Provident Funds Act (1952), S. 14 (B) — Employer not making payment in scheduled time — Government not levying damages — Employer can legitimately presume that damages had been condoned — Levying of damages not immediately after default but after allowing accumulation of defaults for years together is arbitrary exercise of discretion — High Court can interfere.

The purpose of S. 14-B is as much reformative as punitive. A defaulting member is given a chance to amend himself when a penalty up to 25 per cent. becomes leviable and although it is a statutory duty of the employer to make payment of contribution and administrative charge by 15th of every month the power of Government to levy damages being discretionary it is also a legitimate inference for any employer to make that if the delay of two or three days has been condoned in the past it will not be taken account of in the future. Thus where the employer had not made payments within scheduled time but the delay never exceeded five days and in most cases it was of one or two days only and the delayed payments in some cases related to successive months but the Government had not levied damages in respect of those occasional defaults when they occurred but chose to wait for six years to levy damages in respect of all the defaults :

Held, that technically the damages should have been levied immediately after the default and it was legitimate for the employer to have thought that the Government had decided not to exercise its discretion to levy damages. To choose a date to levy damages after six years was arbitrary and had resulted in operation of law very harshly and the Court is entitled to interfere in its writ jurisdiction. **1964 Cur L J 477: AIR 1965 Punj 441 (441, 442) (Pt A) (Prs 3, 4, 6, 8).**

——Art. 226 — Government order attacked on grounds of want of bona fides—Allegations denied — Court, if can enquire into question of fact—Procedure, to be followed—Punjab High Court Rules and Orders Vol. V, Chap. 4-F (b) — Civil App. No. 36 of 1963 dated 16-9-63 (S C), AIR 1964 S C 962, AIR 1957 S C 354: AIR 1957 S C 82, AIR 1958 S C 36, AIR 1964 S C 449, AIR 1964 S C 72, (1956) 1 All E R 855, AIR 1943 Lah 41 (FB) and AIR 1952 S C 106, Rel. on. Surinder Nath v. State of Punjab, **66 Pun L R 418 : ILR (1964) 1 Punj 722 : A I R 1965 Punj 386 (390, 391) (Prs 13, 15, 16) (FB).**

——**Art. 226**—Urgent grievance of citizens — Representations to Minister and Secretaries to State Government not heeded—Citizens filing writ petition against authorities—Objection that petition was premature and filed with undue haste—Objection held ill advised and repelled as unmeritorious—Attitude of bureaucratic indifference on part of high placed authorities deprecated. **ILR (1964) 2 Punj 150 : AIR 1964 Punj 533 (537) (Pt A) (Pr 9) (DB).**

——**Arts. 226, 163 (3) and 166 (2)**—Punjab Municipal Act (3 of 1911), S. 238 (1)—Investigation into mala fides of Minister in charge — Order of supersession under S. 238 issued in the name of Rajpramukh—Jurisdiction of Court—Investigation into mala fides of Minister-in-Charge — Jurisdiction of Court. See Ibid, Art. 163 (3). **AIR 1957 Punj 100.**

——**Arts. 226 and 19 (1) (f)**—Mala fide order of Government under colour of law—Order cancelling pre-partition tenancy rights without inquiry and reallotting them to another—Illegal and can be terminated. **1956 Raj L W 501 : ILR (1956) 6 Raj 554 : AIR 1956 Raj 139 (141, 142) (Pt B) (Prs 10, 11, 14, 15) (DB).**

50 (b). Duty to act within law.

——Art. 226 — Administrative Order — Notification Order, uncommunicated order — Notification dated 28-12-60 under West Bengal Panchayat Act (1957) —Communication — Order when becomes complete and effective — Order is effective only when it is communicated to person concerned — Transfer of Property Act (1882), S. 3 — Notice — When person said to have — Civil P. C. (1908), S. 80, Contract Act (1872), S. 4 —Natural Justice —Communication of order.

An order to be effective must not only be made by a competent authority but must be completed and it can only be completed when it is communicated to the person against whom or in whose favour it has been made, that is to say, the person who would be affected by that order. Until such communication is made, it could be varied as many times as is necessary : AIR 1963 S C 395 (398) and AIR 1961 S C 493 (512), Foll.

Where an order appointing the petitioner as Supervisor of Panchayat has been made by the Director of Panchayats who was the competent authority, but before it was communicated to the petitioner, it was recalled and cancelled.

Held, the order was never completed and therefore, never became effective. ('64) **68 Cal W N 1109.**

——**Art. 226**—Revenue dispute between parties—Panchayati Adalat declaring petitioner hereditary tenant according to compromise and ordering correction of revenue records— Adalat not acting under S. 72, U. P. Panchayat Raj Act but only under S. 82 under which it only recorded the compromise — S. D. M. setting aside order of Panchayati Adalat in revision entertained beyond time — S. D. M. acts without jurisdiction — Order can be interfered with under Art. 226 — Defence that Panchas' order was obtained by fraud or that they were parties to a conspiracy will not be allowed to be taken in the writ proceedings—(U. P. Panchayat Raj Act (26 of 1947), Ss. 82, 85, 70). **AIR 1955 NUC (All) 4435.**

——Art. 226 — Contribution order including loan—Amounts not recoverable as land revenue under S. 42 (4A), Co-operative Societies Act—Proceedings for recovery quashed. See Co-operative Societies—

Co-operative Societies Act (1912), S. 42. 1954 All L J 305 : AIR 1954 All 646.

——Art. 226 — Administrative authority — Discretionary power — Exercise of—Order on cyclostyled form.

It is a well-known convention and a well-recognized practice in Government offices that where an officer agrees with an office note, he merely initials and that is enough to indicate his assent to the office suggestion; it does not necessarily indicate that the officer acted mechanically.

It is not unusual to convey orders in printed or cyclostyled forms, specially when the order relates to a matter which frequently comes up before an authority. This saves time and work in the office. From the fact that the disputed order is on a cyclostyled form, it does not follow necessarily that the mind was not applied in passing that order, specially when in the counter-affidavit it is stated that the officer concerned gave full consideration to the merits of the case. 1952 All W R (H C) 517 : 1952 All L J 557 : ILR (1953) 1 All 817 : AIR 1953 All 25 (30) (Pt D) (Pr 33) (DB).

——Art. 226—Application under—Maintainability—Action of District Magistrate requisitioning property under U. P. (Temporary) Accommodation Requisition Act.

As according to the provisions of the U. P. (Temporary) Accommodation Requisition Act, the District Magistrate is not expected to make a judicial approach in the matter of requisitioning, it is very doubtful whether an order of requisition by him can be said to be quasi-judicial. A writ of certiorari is not permissible in such a case. Nevertheless as Art. 226 is so wide, if any authority acts against law then an application under that Article would be maintainable against the authority for the issue of proper directions to act according to law. 1952 ALJ 163 : 1952 A W R (HC) 241 : ILR (1953) 1 All 216 : AIR 1952 All 836 (838) (Pt A) (Pr 3) (DB).

——Art. 226 — Appointment of informal committee by chairman for inquiry—Legality. See U. P. District Boards Act (10 of 1922), S. 40. AIR 1952 All 681 (DB).

——Art. 226 — Matter left to satisfaction of Government—Land Acquisition Act (1894), Ss. 17 and 5-A—Omission to form opinion as to nature of land or opinion formed on irrelevant reasons — Notification to direct dropping of enquiry under S. 5-A is not according to law and must be set aside. See Land Acquisition Act (1894), S. 17. AIR 1961 Bom 89.

——Art. 226—Mysore Police Act (5 of 1908), S. 40—Notification under — Validity — If can be challenged on ground that proceedings under S 144, Criminal P. C. would have been more appropriate so as to protect rights of petitioners in respect of management of religious institution - Duty of State to protect civil rights—Extent of, in cases of emergency arising out of breach of public peace. 1962 Mys L J (Supp) 411.

——Arts. 226 and 311 (2) — Assam Jail Manual, R. 115—Reduction in rank—Right of appeal—Order passed by Local Government — Right of appeal cannot be taken away—Certiorari. See Ibid, Art. 311 (2). AIR 1956 Manipur 34.

——Art. 226 — Executive bodies — Procedure—Cancellation of license—Procedure—Principles of natural justice. See Bihar and Orissa Excise Act (2 of 1915), S. 42. AIR 1955 Pat 345(DB).

——Art. 226 — Administrative agencies created by statutes — Powers of — Have no arbitrary and uncontrolled powers — Powers of Chief Administrator under Building Rules—Not absolute or uncontrolled or immune from judicial scrutiny — Punjab Capital (Development and Regulation) Building Rules (1952), Rr. 117, 7. ILR (1964) 2 Punj 150 : AIR 1964 Punj 533 (541, 542, 543) (Pt E) (Prs 22, 26, 27, 28) (DB).

——Arts. 226, 19 (1) (f), 31 — Person in occupation of land and his name entered in revenue papers — Sub-Divisional Officer cannot restrain person from cultivating and transferring same — He must take legal proceedings if he considers such person's title or possession illegal.

Administrative orders cannot be taken recourse to in such a manner as to interfere with the fundamental or legal rights of the citizens. The Constitution has provided rule of law and the Government Officials are expected to have regard for it. They should not indulge in doing anything contrary to the provisions of law or in disregard thereof. Where a person is in occupation of certain lands and the lands are also entered in the revenue papers in his name the Sub-Divisional Officer cannot pass an order restraining the person from cultivating the lands or from transferring the same. If the officer thinks that the title of the person or his possession is illegal he should take proceedings in accordance with law. ILR (1963) 13 Raj 720 : 1963 Raj L W 480 : AIR 1964 Raj 75 (76) (Pr 3) (DB).

——Art. 226 — Who can apply — Writ against executive.

Where an applicant contends that he claims to be an adopted son of 'A' and is thus entitled to succeed to 'A's' property, that that claim is being investigated before proper authorities or in a proper Court and that the State Government cannot in its executive capacity intervene and decide the question of adoption in a manner adverse to him, the applicant has a right to ask the High Court under Art. 226 to issue any appropriate writ or direction. The right which the applicant has, is his claim to the estate of 'A' which he wants to assert under the general law of the land. And the State cannot interfere with that right by a mere executive order passed under the authority of no law. AIR 1953 S C 91 (95), Rel. on; AIR 1952 S C 12; AIR 1953 Assam 12, Ref 1954 Raj L W 553 : ILR (1954) 4 Raj 773 : AIR 1954 Raj 193 (194, 195) (Pt B) (Pr 7) (DB).

——Art. 226 — Powers of High Court — Order in excess of jurisdiction.

Dictum : "The executive authority may have wide powers. But it must not swerve from the limits imposed upon it by the law. Equally important is that it should exercise its powers bona fide for the purpose for which they have been conferred and not for any ulterior purposes." 1955 Ker L T 901 : AIR 1957 Trav-Co 209 (212) (Pt B) (Pr 15).

50 (c). Duty of High Court to exercise power with restraint.

——Art. 32—Writ against Executive — Defence of India Rules (1962), Rr. 30 (1) (b), 30-A (6) and 30-A (8) —Order of detention and its review — Both proceed upon subjective determination of prescribed authority — Subjective determination not justiciable. Sadhu Singh v. Delhi Administration, (1965) 2 S C A 147 : AIR 1966 S C 91 (94, 95) (Pt A) (Prs 8, 9).

——Art. 226 — Order for settlement of ferry—Not in accordance with law—'Nature of direction which can be given by High Court.'

Where the High Court in the exercise of its jurisdiction under Art. 226 held that the order of the officer conducting an auction sale of a public ferry, refusing to accept the offer of the highest bidder was not in accordance with S. 8, Northern India Ferries

Act or R. 19 framed under the Act and further held that the offer of the petitioner being the highest should be accepted.

Held, that the Order of the High Court, in so far as it declared the rights of the highest bidder was erroneous and in excess of its authority as it was for the appropriate authorities to deal with the matter and make a fresh settlement and the High Court could not itself decide what is entrusted to the executive authorities under the Act. A I R 1952 S C 192 Foll.; AIR 1962 Assam 46, Reversed. State of Assam v. Tulsi Singh, (1964) 1 S C J 42 : I L R (1962) 14 Assam 269 : (1962) Supp 3 S C R 508.

——Art. 226 — Principle of judicial review — Court will not comment on executive acts which do not violate the law or the Constitution. 1961 All L J 927 : AIR 1962 All 301 (306, 307) (Pt F) (Pr 32).

——Art. 226 — Powers of High Court — (Police Act (1861), S. 7).

It is not within the province of the High Court under Art. 226 to interfere in the quantum of punishment awarded to a delinquent Government Officer under Police Act. 1960 All W R (H C) 272 : 1960 All Cr R 192 : (1960) 2 Lab L J 279 : 1960 All L J 310.

——Art. 226—Scope of inquiry — Industrial Disputes Act—Existence or not of industrial dispute — Decision of referring authority — High Court's power to go into. See U. P. Industrial Disputes Act (28 of 1947), S. 4-K. AIR 1959 All 369.

——Art. 226—Jurisdiction of High Court—Municipality—Removal of member — Opinion of Government as to exceptionable conduct — Justiciability. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 40 (3). AIR 1959 All 26 (DB).

——Art. 226—Jurisdiction of High Court—Extent of —Administrative orders.

High Court cannot step in in all cases where it finds that there has been unfairness or discrimination in an administrative action. The jurisdiction of the Court is limited to a great extent, in exercising its powers under Art. 226 to some illegalities apparent on the face of the record or direct or indirect violation of some statutory rules or provisions.

Taking the Government as an ordinary party, the High Court cannot force the hands of the Government to sell their goods to anybody in particular, nor can the Court issue a writ directing them to sell them in terms of the notification issued by them when neither the notifications nor the rules they advertised were framed under any statutory provisions or provisions coming under any Act. AIR 1956 Assam 158 (160) (Pr 9) (DB).

——Art. 226—Powers of High Courts — Municipalities—Calcutta Municipal Act (33 of 1951), Sch. 17, R. 5 (4)—Exercise of power by Executive—Constant vigilance by High Court.

The High Court can always determine in an application under Art. 226 whether public officials have kept within their statutory limits. While the High Court is very reluctant to intervene, where experts like the City Architect consider a particular structure to be in imminent danger within the meaning of sub-r. (4) (a) of R. 5 of Sch. 17, Calcutta Municipal Act, 1951, it must deal with such applications with great care and circumspection, inasmuch as the rule is a very stringent one and makes a deep inroad into the rights of property, guaranteed to the citizen. AIR 1956 Cal 410 (413) (Pt C) (Pr 19).

——Art. 226—Ministerial act — Interference — (Sea Customs Act (1878), S. 30).

The ascertainment of necessary facts as to whether S. 30 (a) or S. 30 (b) of the Sea Customs Act applies, is a duty cast upon the Customs authorities and such duty is ministerial. The High Court under Art. 226 should be very reluctant to disturb the finding of the Customs authorities on such a point, provided, however, that it is based upon a proper conception of the law. ILR (1955) 2 Cal 470.

50 (d). Limits on interference by Courts.

——Art. 226 — U. P. (Temporary) Control of Rent and Eviction Act, S. 3 — Permission of the District Magistrate granted to eject tenant in the exercise of his discretion—Discretion not subject to question in a civil Court — Permission neither mala fide nor capricious—Power of High Court under Art. 226 to go into sufficiency of the reasons given by the District Magistrate.

The U. P. Rent Control Act has left it solely to the District Magistrate to grant or refuse permission for filing a suit for eviction in his discretion and no provision is found in the Act that it is subject to correction by the Court of law. (A I R 1952 All 699, Ref.) Where the District Magistrate has given his reasons, which is not required of him by the Act, and the reasons do not appear mala fide or capricious the High Court cannot under Art. 226 go into the question whether the reasons given by the Magistrate for the exercise of his discretion were sufficient or not. 1952 A L J 536 : 1952 A W R (H C) 516 : AIR 1952 All 916 (916, 917) (Prs 2, 3) (DB).

——Art. 226—Power to review executive action — Extent of—High Court cannot go into factual merits of executive order or substitute it by its own.

The jurisdiction of a High Court under Art. 226 of the Constitution is only supervisory, and not appellate, the consequence of which distinction is that a High Court cannot enter into the factual merits of an order passed by the Government or substitute its own order therefor. A High Court may, on finding an error of jurisdiction or an error of law or bias, review an executive action and quash the same, but has still to leave the exercise of the executive power to the proper authority. Therefore it is not open to the High Court under Art 226, to declare the petitioner to be holding the place of a Professor from the date he approached the High Court when he had in fact not been appointed as Professor by the Government as also the direction to pay him the salary of a Professor from that date. A I R 1952 S C 192, and A I R 1963 S C 1626 Foll. I L R (1964) 1 Ker 564 : 1964 Ker L J 832 : (1964) 2 Lab L J 378 : A I R 1965 Ker 108 (109) (Pt A) (Pr 5) (DB).

——Art. 226 — Writ against executive — Limits of —Interference by Court.

It is not open to the petitioner to ask the Court in writ proceedings to review the evidence recorded by the Enquiring Officer, as if the Court is sitting in appeal over his conclusions. It is enough to state that the findings of the Enquiring Officer as accepted by the State, are based on evidence available in the case. The Court is not concerned in these proceedings with the question whether that evidence is adequate to support the conclusion. (1964) 1 Mys L J 333 : (1964) 9 F L R 98 (DB).

——Art. 226 — Civil Courts cannot issue directions regulating proceedings of administrative authorities apart from recording finding on rights of parties. 1960 Raj L W 385.

50 (e). Order without jurisdiction and against mandatory provisions.

——Art. 226—The High Court can examine administrative orders when they are made in defiance of the

mandatory provisions or without jurisdiction. See Minimum Wages Act (1948), S. 5 (2). AIR 1953 Ajmer 65.

——Art. 226—Jurisdiction—Prejudice—Relevancy — Violation of law sufficient — (Land Acquisition Act (1894), Ss. 6, 17 and 39).

Where the action of the Government in issuing the notification under Ss. 6 and 17 was in clear violation of the provisions of S. 39 of the Land Acquisition Act which provisions are mandatory in their nature, and in the writ proceedings initiated by the owners of land, the Company contended that the petitioners were not, in any way prejudiced by the omission to carry out the provisions of Part VII:

Held, that the question was of disobedience of the mandatory provisions of law and the question of prejudice or want of it was only a matter of secondary importance. The owners were therefore, entitled to relief at the hands of the High Court. 1957 All L J 450 : 1957 All W R (HC) 437 : AIR 1959 All 635 (637) (Pt C) (Pr 9).

——Art. 226 — Invalid order—Authority permitted to make order subject to condition—Condition not observed — Validity of order—Quashing of—U. P. Industrial Disputes Act (1947), S. 3.

Where the making of an order by an executive authority is permitted by a statute subject to a condition, the order has the force of law only if the condition precedent to the making of that order has been complied with by the authority making it.

The U. P. Government Order made on 15th March, 1951, by which the State Industrial Tribunal is constituted has no legal force and is not binding as a subordinate piece of Legislation on the persons affected by it, as it is an order which is not passed after complying with the condition precedent laid down under S. 3, U. P. Industrial Disputes Act.

Obiter:—The compliance with the condition precedent must appear on the 'face of the order itself. AIR 1956 All 689 (694) (Pt C) (Pr 9) (DB).

——Art. 226 — Scope — (Payment of Wages Act (1936), S. 15).

If a Magistrate refused to admit the application under S. 15, Payment of Wages Act, after hearing the opposite party he cannot be said to have exercised a jurisdiction not vested in him or to have exercised his jurisdiction wrongly and the High Court has no jurisdiction to issue writ under Art. 226, in such cases. 1953 All W R (HC) 697 : 1953 All L J 732 : AIR 1954 All 198 (199) (Pt B) (Pr 6) (DB).

——Art. 226 — Magistrate's order against provisions of S. 85, U. P. Panchayat Raj Act. See U. P. Panchayat Raj Act (26 of 1947), S. 85. 1953 Cri L J 1842 : AIR 1954 All 3.

——Art. 226—Any other purpose.

Where an Inspector of Schools passed an order of rustication against a student for his alleged participation in a fracas in front of his school without a report from the head of the institution and without an enquiry as to whether he did take part in the incident:

Held, that the officer had no jurisdiction to pass the order under Para. 96, U. P. Education Code, 1936 Edn. in the absence of report and further the order offended principles of natural justice in that it had been passed without an enquiry and was set aside. ILR (1954) 2 All 36 : AIR 1953 All 623 (624) (Pt B) (Pr 6) (DB).

[Overruled on another point in AIR 1966 All 477 (FB).]

——Art. 226—U. P. Land Utilization Act (5 of 1948), S. 3 — Validity of order of allotment made without proper service of notice. See U. P. Land Utilization Act (5 of 1948), S. 3. AIR 1953 All 585.

——Art. 226—High Court can interfere in administrative orders also.

The powers of the Indian Courts under the Constitution "are much wider and are not confined to issuing prerogative writ only." Article 226 empowers the High Court to issue to any person or authority "any directions, orders or writs." This Court, therefore, has power to interfere even in the case of administrative orders which are made in defiance of mandatory provisions of law or without any jurisdiction. AIR 1950 S C 163, Rel. on. ILR (1953) 1 All 251 : 1952 All L J 319 : 1952 All W R (HC) 323 : AIR 1952 All 752 (753) (Pt A) (Pr 6) (DB).

——Art. 226—Income-tax Act (1922), S. 37 (2)—Search and seizure under, in excess of powers conferred—Executive action is ultra vires and illegal—Can be set aside under Art. 226. See Income-tax Act (1922), S. 37 (2). AIR 1964 Assam 1.

——Art. 226—Powers of High Court — Writ against administrative order—Limits of interference—(Natural justice).

No administrative order should be interfered with by issue of a writ unless the Court is convinced that the order is in violation of the principle of natural justice or in flagrant disregard of any statutory rules or orders. A I R 1957 Assam 108 (111) (Pt B) (Pr 6) (DB).

——Art. 226 — Illegality — Assam Settlement of Fisheries Rules, Rr. 8 and 13—Report of auction sale of fisheries aubmitted to Commissioner for approval —Commissioner making recommendation—Jurisdiction.

Per Sarjoo Prasad, C. J., and Mehrotra J.—(Deka, J. contra) : There is nothing in R. 8 which precludes the Commissioner, while examining the report of the Deputy Commissioner, sent to him for confirmation of the sale to consider various matters and to advise the Deputy Commissioner about the manner in which the settlement is to be made. It cannot be said that the Commissioner in making any such recommendation has acted illegally or arbitrarily so as to give power to the High Court to interfere with his order under Art. 226 of the Constitution. Harinath Das v. State of Assam. ILR (1958) 10 Assam 44 : AIR 1958 Assam 70 (73, 74, 75, 76, 77) (Pt C) (Prs 7, 8, 9, 14, 18, 19) (SB).

——Art. 226—Grounds for interference—Collector not carrying out statutory duties—Petition under Art. 226 lies. See Land Acquisition Act (1894), S. 11. ('61) 65 Cal W N 908.

——Art. 226—Scope of—Interference with action of executive—Powers under Art. 226—If restricted by S. 67, Income-tax Act—Income-tax Act 1922, S. 67.

The Court can interfere with the action of the executive if the act complained of does not come within the four corners of authority given him by the Act. It can also interfere if the act complained of is mala fide. But in the absence of either of those two conditions the Court has no authority to interfere with the action of the executive. The Court cannot question the rightness or the wrongness of the order complained of.

On the above principle, where the action of the Income-tax Authorities is not within the four corners of the powers committed to it under S. 46 (5a), Income-tax Act, then the order passed under that section should be set aside.

Apart from this, the powers conferred by Art. 226 of the Indian Constitution are not subject to the res-

frictions imposed by the provisions of S. 67, Income-tax Act, and the same cannot override or control the provisions of Art. 226 of the Indian Constitution. **(1951) 19 I T R 538 : 87 Cal L J 109 : AIR 1951 Cal 430 (433, 434) (Pt B) (Prs 10, 13).**

——Art. 226—**Limitations on powers of High Courts —Administrative orders—Writ can issue against.**

There is no limitation to the nature of a writ which can be issued by a High Court under Art. 226. Thus where the Collector issues a notification reforming wards in a village for panchayat elections, which is illegal, the High Court can issue a writ to the Collector prohibiting him from enforcing that notification or acting under that notification or conducting the election in pursuance of that notification though the notification issued is not a judicial or quasi-judicial notification : A I R 1960 S C J 223 Rel. on; 53 Bom L R 1, Distinguished. **(1962) 3 Guj L R 56.**

——Art. 226 — Grant of land by former Indian Ruler —Revocation of—Legality of—Revocation by executive authority is not legal — Writ issued. See Ibid, Art. 31 (1). **AIR 1954 Him Pra 84.**

——Arts. 226, 31 (1)—**Invasion of fundamental right by executive—Duty of Court.**

In cases of invasion of fundamental rights it is not merely a power but a duty of the High Court to grant relief by the issue of prerogative writs under Art. 226. AIR 1951 Pat 434, Rel. on.

The High Court will exercise the utmost restraint in interfering with the acts of the executive. But where the High Court is satisfied that the fundamental rights guaranteed by the Constitution have been violated by any act or order of the executive it is the sacred duty of the High Court to set it aside. The High Court has power to do this under Art. 226 by issuing a writ or any appropriate order so that a wrong done by the order of the Government may be remedied. A I R 1952 Hyd 36, Rel. on. A I R 1953 Him Pra 57 (58, 59) (Pt B) (Prs 8, 9).

——Art. 32—Rights to property — Executive interferences — Powers of High Courts and Supreme Court. See Ibid, Art. 19 (1) (f). **A I R 1955 N U C (Hyd) 417 (DB)**

——Art. 226 — **Corrective function of High Court where executive transgresses limits of Constitution or violates fundamental rights.**

The duty to abide by the Constitution and to maintain the rule of law is cast upon all the three branches of the State, i.e., the legislature, executive and the judiciary and if the first two in any way transgress the limits of the Constitution or violate any of the fundamental rights, it is the duty of the Courts to declare it so. Naturally, the High Court will be very reluctant to interfere with an order of the executive unless it is fully satisfied that the action of the executive cannot in any way be supported in view of the provisions of the Constitution. The High Court will exercise the utmost restraint in interfering with the acts of the executive. But where the High Court is satisfied that the fundamental rights guaranteed by the Constitution have been violated by any act or order of the executive it is the sacred duty of the High Court to set it aside. The High Court has power to do this under Art. 226 by issuing a writ or any appropriate order so that a wrong done by the order of the Government may be remedied. A I R 1951 Hyd 1 (FB) and AIR 1951 Hyd 89 (FB), Foll.

Note.—In this case the police authorities, who had dispossessed and deprived the petitioner of his property without any authority of law, were by a writ ordered to restore the property. **1952 Cri L J 340 : ILR (1952) Hyd 180 : A I R 1952 Hyd 36 (37) (Pr 3) (DB).**

——Art. 226—**Madras Educational Rules—Nature of —Mere executive instructions—Government order in breach of Rules—Issue of writ.**

The Madras Educational Rules are only a body of executive orders and instructions. Therefore, orders of Government issued in pursuance of such Rules are merely executive instructions, a breach of which is not amenable to judicial review under Art. 226. The conferment of a right of appeal to the aggrieved party, is not sufficient to import a judicial element into orders which are impugned especially when there is no prescribed procedure for hearing the appeal. A I R 1958 Kerala 290 and AIR 1957 Trav-Co 214, Rel. on ; A I R 1958 S C 398; A I R 1959 Pat 520 and A I R 1958 Andh Pra 470, Disting. **1960 Ker L T 188 : ILR (1960) Ker 410 : A I R 1960 Ker 327 (328) (Pt A) (Pr 2).**

——Art. 226 — Executive order of Government — Refusal to pay arrears according to refixation of salary of Government servant — Government servant's right to challenge order. See Ibid, Art. 14. **A I R 1959 Ker 338.**

——Art. 226—Right to relief—Illegal order of Executive authority — Quashing of—Notification providing for service conditions of Municipal Commissioners — Violation—Writ petition—Maintainability—See Municipalities—Travancore District Municipalities Act (23 of 1116), S. 13 (i). **1958 Ker L J 1070.**

——Art. 226 — Executive fiat — Unauthorised sale of property by Collector — Deprivation of property — Writ by High Court. See Ibid, Art. 19 (1) (f). **A I R 1954 Kutch 11.**

——Art. 226 — Administrative orders—Interference by High Court — Permit granted to applicant under Motor Vehicles Act, cancelled on appeal without notice to applicant — Fit case for interference by High Court—Motor Vehicles Act (1939), S. 64.

Though the Court may not control all administrative and executive acts, they can and, in order to see that no injustice is done by authorities that are invested by Legislative enactments with large statutory powers affecting the rights of private citizens, should insist if such insistence is necessary to achieve the object and purpose of the statute—that in passing even administrative orders the well-recognised principle of approach are not ignored. (1880) 24 Q B D 712 and 1915 A C 120, Rel. on.

Where a permit granted to the applicant under the Motor Vehicles Act is cancelled on an appeal without any notice to the applicant, the cancellation is improper and it is eminently a fit case in which the High Court ought to interfere to set right the wrong. **A I R 1952 Madh B 128 (130) (Pt D) (Prs 17, 18) (DB).**

——Art. 226 — M. P. Abolition of Proprietary Rights Act (1951), S. 6 — Transfers prior to 16.3.1950 — Application for correction of annual papers — Application refused by revenue authorities on ground that transfer was bogus — Order can be challenged under Art. 226 — (C. P. Land Revenue Act (2 of 1917), S. 47 (1). See Tenancy Laws — M. P Abolition of Proprietary Rights Act (1 of 1951), S. 6. **A I R 1960 Madh Pra 109.**

——Art. 226—Executive acts—Issue of writ.

The executive can only act in pursuance of the powers given to it by law and it cannot interfere with the liberty, property and rights of the subject except on the condition that it can support the legality of its action before the Court. A I R 1931 P C 248 and A I R 1956 S C 479, Rel. on.

Where the action of the executive is wholly unjustified by law and interferes with the fundamental rights of subjects it is unnecessary for the Court to concern itself with the motives which impelled the

executive to act. The Court has the power under Art. 226 to give redress to the petitioners against the wholly illegal action of the executive infringing their fundamental rights. **ILR (1957) Madh Pra 658 : 1957 M P C 725 : 1957 Jab L J 1088 : A I R 1958 Madh Pra 115 (128) (Pt I) (Prs 21, 22) (DB).**

——Arts. 226 and 32—Executive order — Relief primarily based upon order, if can be granted under writ jurisdiction.

It is not correct to say that it is not at all open to the petitioner to seek, in the exercise of the writ jurisdiction, a relief based primarily upon an executive order of the Government. Where a public authority has been directed by its higher authority to perform a particular act, the refusal by the subordinate authority to perform that act is capable of correction in the writ jurisdiction of the High Court. (1961) 12 S T C 304 (Mad), Foll. (1965) 16 S T C 664 : 78 Mad L W 482 : A I R 1966 Mad 179 (181) (Prs 9, 10).

——Arts. 226, 352, 358 and 359 — Defence of India Act (51 of 1962), Ss. 44, 45 — Order on detenu imposing restrictions, interfering with ordinary avocations of life and enjoyment of property — Provision in the Act, directory or mandatory — Tests—Order not to be questioned in Court—Extent and ambit of powers of Court — Order in excess of powers or colourable exercise of power - Interference by Court — Writ under Art. 226 of the Constitution — Powers of High Court under — Extent and scope of.

The President had proclaimed a State of Emergency under Art. 352 (1) of the Constitution. Under Art. 358 while a Proclamation of Emergency was in operation, the rights under Art. 19 were subject to executive action. A notification was also in force under Art. 359 suspending the rights to move Courts for the enforcement of rights conferred under Arts. 14, 21 and 22. The petitioner was held in detention under the Defence of India Act of 1962. He applied under Art. 226 of the Constitution praying for a writ of mandamus directing the respondent to cancel the restrictions imposed on him, such as the night lock-up, and to grant him right to have a radio, to receive more letters, etc. On the scope of Ss. 44 and 45 of the Defence of India Act, 1962, whether the enactment allowing imposition of restrictions on the detenu was directory or mandatory, whether he had a justiciable right, whether the High Court could exercise the powers under Art. 226 of the Constitution :

Held (Per Anantanarayanan, J.). — The Legislature did not intend S. 44 of the Defence of India Act (1962) to be mandatory, in the sense that an infringement of it immediately renders the order made under the Act or Rules invalid and void ipso facto. The most important consideration is that the Legistature equally enacted S. 45 in juxtaposition with S. 44, and that provision is meaningless if the intendment had been that non compliance with S. 44 would be per se justiciable in Courts. No logical distinction can really be maintained between the order of detention itself, and any order imposing terms and conditions of detention or specifying the place ot detention. Ordinarily there is no justiciable right of a detenu to question either his order of detention, or the terms and restrictions imposed under the Defence of India Rules, by virtue of any alleged violation of S. 44, in the Courts of the land. But this does not necessarily imply that the Courts are wholly without power, either with regard to a detention order itself, or with regard to the terms and restrictions imposed, the place of detention or other allied matters. These could be canvassed in appropriate proceedings, on two main grounds, that the concerned authority had exceeded the ambit of its power conferred by the Legislature, and that there was a colourable exercise of the power or an exercise of it lacking bona fides, and animated by some ulterior object, shown to the satisfaction of Court.

Article 226 of the Constitution confers upon all the High Courts very wide powers, subject alone to the limitation of territorial jurisdiction and the availability of the person or authority upon whom the writ issues, within such territory. The power conferred under Art. 226, as well as the jurisdiction must be construed as wide and overriding, and could not be affected by the provisions of a specific enactment seeking, in effect, to curtail the exercise of such a power.

This does not immediately imply that the exercise of such power by the High Court under Art. 226 will be in derogation of the intendment of the Legislature in enacting S. 44 as a directory principle, not as mandatory one, and in enacting S. 45 (1) in juxtaposition to S. 44. On the contrary what it implies is that in addition to the two factors upon which the Courts could nevertheless interfere with regard to orders of detention or orders imposing restrictions upon detenus, under the Defence of India Act, namely, acts outside the statutory power or acts lacking bona fides, the High Court would have the power of interference upon the principles of writ jurisdiction, where there is an error apparent on the face of the record, or where a principle of natural justice has been flagrantly violated. But the exercise of writ jurisdiction is always within the limits of the proper recognition by the High Court, of factors relevant to powers delegated to the Executive by the Legislature. Where, for instance, the compulsory disclosure of information by the State even to Court, might imperil security, the High Court will not exercise the writ jurisdiction in a mode that necessitates such a disclosure.

[No grounds were found to exist in the instant case to warrant interference by the issue of a writ.]

The true test to determine whether a particular provision of law is merely directory or is mandatory in character, is, whether the declaration of a particular order as violative of a statutory provision renders it ipso facto null and void, or merely renders the concerned authority subject to correction or discipline for having flouted an enactment. Though the question depends on the intention of the Legislature, as could be gleaned from the language used, it is not the language which is conclusive or all-important. The use of the word 'shall' is not necessarily conclusive. The purpose for which the provision has been enacted, particularly in the context of the other provisions of the enactment and the general scheme thereof may be looked into.

Per Ramamurti, J. — The two main considerations for regarding a rule as directory are : (i) absence of any provision for the contingency of a particular rule not being complied with or followed; and (ii) serious general inconvenience and prejudice to the general public would result if the Act in question is declared invalid for non-compliance with the particular rule. Far from declaring that any act done in violation of S. 44 of the Act would be deemed to be invalid or void S. 45 provides just the contrary, that no order made in exercise of any power conferred by or under the Act shall be called in question in any Court. Such a provision is hardly reconcilable with the view that S 44 is mandatory. On the second consideration, if any act of the Government done in violation of S. 44 is to be declared null and void, it will result in serious prejudice to the public and cause considerable dislocation and seriously interfere with the war efforts taken by the Government in the matter of the defence of India and the public safety besides completely defeating and frustrating the very purpose and object of the enactment. If the action of the

authority complies with the directive in S. 44 no protection or saving as in S. 45 at all is necessary in regard to the action. On the other hand, if the authority is guilty of fraudulent exercise of the power or its misuse for a collateral purpose opposed to the object and purpose of the enactment that act will be invalid, and it is settled law that to such a situation the saving in S. 45 will not apply and the legality of such acts can certainly be called in question in any Court. It is only for the intermediate case, where the authority has acted contrary to the provisions of S. 44 that the saving or the restriction in S. 45 really comes into play or serves any useful purpose. **ILR (1964) 1 Mad 327 : (1965) 1 M L J 486 : 1965 M L J (Cr) 258 : (1965) 1 Cri L J 714 : A I R 1965 Mad 225 (228, 229, 234, 246) (Pt B) (Prs 4, 7, 23, 24, 66).**

——Art. 226 — Breach of service rules framed by executive—Jurisdiction of Courts. See Ibid, Art. 310. AIR 1958 Mad 243.

——Art. 226 (1) — Invasion of fundamental rights — Issue of prerogative writs.

In cases of invasion of fundamental rights it is not merely a power but a duty of the High Court to grant relief by the issue of prerogative writs under Art. 226. The High Court will exercise the utmost restraint in interfering with the acts of the executive. But where the High Court is satisfied that the fundamental rights guaranteed by the Constitution have been violated by any act or order of the executive it is the sacred duty of the High Court to set it aside.

The High Court has power to do this under Art. 226 by issuing a writ or any appropriate order so that a wrong done by the order of the Government may be remedied. AIR 1953 Him P 57 and AIR 1952 Hyd 36, Rel. on. AIR 1955 Manipur 49 (54, 55) (Pt E) (Pr 20).

——Art. 226 — Writ against executive authority — Income-tax Act (1961), S. 148.

While issuing notices under S. 148 of the Act, the Income-tax Officer is not acting judicially or quasi-judicially and consequently no writ of certiorari or prohibition can be issued. But it is well settled that High Court has power to issue in a fit case an order prohibiting the executive authority from acting without jurisdiction, particularly where such an act subjects or is likely to subject any citizen to lengthy proceedings and unnecessary harassment. AIR 1961 S C 372, Rel. on. **(1965) 56 I T R 250 : (1964) 2 I T J 654 : (1964) 1 Mys L J 503 : AIR 1965 Mys 255 (256) (Pt A) (Pr 5) (DB).**

——Art. 226—Powers of High Court under—Extent of—Administrative Orders.

The powers of the High Court under Art. 226, are wide and not limited to cases for safeguarding fundamental rights as implied from the words 'for any other purpose." AIR 1952 Nag 330 and AIR 1953 Mys 156 (FB), Ref.

Administrative orders may be challenged by a petition under Art. 226 if those involve infringement of constitutional rights or disregard of rules. AIR 1952 All 752 and AIR 1952 All 753, Ref.

Under Article 226, the High Court has ample powers to issue to any person in authority, including any Government, a direction for the enforcement of any of the rights conferred by Part III and for any other purpose. Interference by the Court will be warranted by the law when even an executive authority is not exercising its powers bona fide for the purpose contemplated by the law or influenced by extraneous and irrelevant considerations and where injustice has resulted. A. I. R. Commentary on Constitution, Art. 226 No. 119, Rel. on; (Distinction between bona fide actions and mala fide actions pointed out). **I L R (1955) Mys 203 : AIR 1955 Mys 81 (85, 88) (Pt B) (Prs 9, 10, 22, 23) (DB).**

——Art. 226—Powers of High Court — Fundamental right put in jeopardy by act of executive.

The power of the High Court under Art. 226 of the Constitution for enforcing fundamental rights is very wide and is not restricted to the issuing of only the well-known writs under the common law. Those writs may not prove adequate to deal with every infringement of a fundamental right. A fundamental right guaranteed by the Constitution may be put in jeopardy by an act of the executive. The Court has been empowered to issue to any person or authority, and in an appropriate case even to the Government directions, orders or writs for the enforcement of rights conferred by Part III of the Constitution. **I L R (1951) Nag 959 : AIR 1951 Nag 138 (140, 141) (Pt B) (Pr 19) (DB).**

——Art. 226 — Scope of—Executive act—Demand of excise duty in violation of Art. 265—Power of High Court to interfere.

Under Art. 226 of the Constitution, the High Court is empowered to issue, apart from the well-known writs, orders or directions for the enforcement of fundamental rights or for any other purpose. Even executive acts are not outside the scope of the power of the Court under that article. Where at the risk of his property being put in peril the petitioner is asked to comply with a demand for an excise duty in violation of a principle enshrined in Art. 265 of the Constitution, the case calls for the exercise of the power of the High Court under Art. 226 of the Constitution. **I L R (1952) Nag 156 : AIR 1952 Nag 139 (144) (Pt H) (Pr 42) (DB).**

——Art. 226 — Order by Maharaja of Jaipur on 6th April 1949, levying fine of Rs. 10,000 on jagirdar for illicit distillation—Order held illegal. **AIR 1954 Raj 200 (DB).**

——Art. 226 — V. P. Government Rev. Department Order No. 115 dated 8-4-53/22-4-53 — Validity — Executive order depriving property rights of petitioner without adequate reasons. See Ibid, Art. 31. **AIR 1955 N U C (Vind-Pra) 767.**

50 (f). Discretionary orders.

——Art. 226 — Ejectment suit — Permission for its institution—Exercise of discretion by District Magistrate cannot be challenged in Court of law. See Houses and Rents—U. P. Temporary Control of Rent and Eviction Act (3 of 1947) (as amended by Act, 44 of 1948), S. 3. **AIR 1952 All 699 (DB).**

——Art. 226—Administrative proceedings—Interference with — Appointment of Mauzadars — (Assam) Land Revenue Manual, Ch. VIII, Part II, Para. 115).

The appointments of Mauzadars are made under executive instructions in the exercise of powers of the Provincial Government. By issuing executive instructions as contained in para. 115 of the Manual and permitting the Deputy Commissioner to appoint or dismiss Mauzadar subject to the approval of the Government, the power that vests in the Government has not been surrendered. It remains with the Government.

The executive instructions contained in para. 115 are not rules which have the force of law. A surrender of powers of the Government is possible by legislative enactments or by rules which have the force of law. Mere executive instructions for the guidance of subordinate officers for making provisional appointments do not have the force of such

rules as may be enforced against the Government in a Court of law and do not create enforceable rights.

Where no appointment could be finalised without the approval of the Provincial Government and where the whole case is before the Provincial Government for approval of the appointment made by the Deputy Commissioner, it cannot be regarded as having exceeded its power if the Government decided to differ from the Deputy Commissioner and selected another candidate for the office of the Mauzadar, particularly when the whole record is before the Provincial Government and the qualifications of the different candidates which have been considered by the Deputy Commissioner are before it.

Held, that no case for interference under Art. 226 was made out. The proceeding was administrative in character. There was no right of appeal against it. No binding rule of law had been violated. AIR 1953 Assam 155 and AIR 1954 Assam 12, Disting. **I L R (1954) 6 Assam 479 : AIR 1954 Assam 261 (263, 264) (Prs 7, 8, 10) (DB).**

——Art. 226 — Order of appointment by Deputy Commissioner — Interference with — (Assam Land Revenue Manual, R. 116).

Article 226, in spite of the plenitude of power which it confers on the High Courts, would not justify interference with the exercise of discretion by the Deputy Commissioner when passing an administrative order appointing a person as a 'Mauzadar. **I L R (1953) 5 Assam 447 : AIR 1954 Assam 12 (16) (Pt F) (Pr 25) (DB).**

——Art. 226—Administrative Orders — [Assam Forest Manual, Part 2, Chap, 3, R. 3 (ii)].

The Deputy Commissioner or the Sub-Divisional Officer when exercising his power of fixing or refixing the sites under the rules under Assam Forest Regulation (1891) is not bound by any objective standards. He is not bound to give any reasons. There is no provision for appeal against these orders. Fixing of sites or their alteration is left to his discretion. Any erroneous exercise of this discretion cannot be controlled by high prerogative writs: 11 A C 45, Distinguished. **AIR 1953 Assam 168 (170) (Pt C) (Pr 9) (DB).**

——Art. 226—Interference with administrative order.

It is not that in no case can the High Court interfere under its power prescribed under Art. 226 where the order complained of is an administrative order but where discretion is left to the officer concerned, and it has been exercised by him and the procedure properly followed, the High Court will not interfere in dealing with a petition under Art. 226 even though the order may be considered to be wrong on merits. If certain matters are left to the discretion of the officer, the Court cannot control that discretion unless the discretion is arrived at mala fide or is not a proper exercise of discretion. AIR 1952 Bom 468, Rel. on; AIR 1952 S C 16, Disting. **I L R (1953) 5 Assam 263; AIR 1953 Assam 145 (147, 149, 150) (Pt C) (Prs 10, 29, 30) (DB).**

——Arts. 226 and 19 (5)—Custom in Garo Hills that it is in interest of people there that no Nepali or foreigner should be allowed to live in Garo village without Deputy Commissioner's permission—Deputy Commissioner after due enquiry coming to conclusion that petitioner living in that village was not in the interest of villagers—Expulsion order—Validity—Discretion held properly used. See Ibid, Art. 19 (5). 1953 Cri L J 495 : A I R 1953 Assam 61.

——Art. 226 — Executive act — Calcutta maidan—Police Commissioner—Refusal of permission to circus shows—Issue of writ.

Except for the area comprising the Fort William and the Victoria Memorial, the rest of the Calcutta maidan has been entrusted to the State Government for proper administration, which it is doing through the Commissioner of Police, Calcutta. Permission for a circus show was refused to an Indian citizen, who thereupon applied for a suitable writ against the Police Commissioner.

Held, that the administration of the affairs of the maidan was an executive matter and there was no law by which the administration has to be performed in a particular manner. The petitioner had not established that the public had perfected any legal right against the Union with whom vested the title to the property or that there had been encroachment upon the right of the public. As there was no pleading on behalf of the petitioner that he had been discriminated by reason of 'race', and no sufficient proof that there had been such discrimination, the High Court could not interfere by the issue of a high prerogative writ. A I R 1959 Cal 45, Rel. on. 64 Cal W N 348 : 1960 Cri L J 1432 : A I R 1960 Cal 664 (666, 667, 668) (Prs 5, 6).

——Art. 226—Applicability — Unauthorised expenditure by Chief Minister of a State—Application for writ—Competency.

Where the Chief Minister of a State is alleged to be illegally spending amounts out of the Consolidated Fund, that is not within the scope of an application under Art. 226. The Centre is astute enough to look after its own financial interests and unauthorised expenditures will undoubtedly be disallowed in audit. The interference of the High Court is not called for. 60 Cal W N 555 : I L R (1957) 3 Cal 390 : A I R 1956 Cal 378 (384) (Pt I) (Pr 27).

——Art. 226 — Order of Collector to demolish cattle pound is executive order — This power is not taken away by Chapter V — No approval of State Government is necessary. See Cattle-Trespass Act (1871), S. 4. 1962 (1) Cri L J 39 : A I R 1962 Ker 10.

——Art. 226—Choice of title of newspaper — Magistrate has discretion to authenticate or cancel declaration—Order refusing to cancel declaration not quasi-judicial — No interference by High Court under Art. 226 of Constitution of India. See Press and Registration of Books Act (1867), S. 5 (2). A I R 1965 Madh Pra 128 (DB).

——Art. 226 — Land Records Manual, Vol. II, R. 3 (i).

Confirmation of Revenue Inspectors in the discretion of Collector — No writ can be issued for confirmation. **1963 M P L J (Notes) 159.**

——Arts. 226 and 227—Administrative or executive action—High Court will not substitute its own decision on merits.

In proceedings under Art. 226 or even under Art. 227 in regard to administrative authority or tribunal, the High Court will not substitute its decision on merits. It will only see whether the administrative authority or the tribunal was really acting in exercise of the powers it has under the law or rule, and in good faith and in accordance with accepted notions of fairplay and natural justice. If on consideration of the merits it happens to arrive at a decision different from what the authority or the tribunal has arrived at, still, it will not thrust its opinion on them. To do so, would be to frustrate the very purpose with which certain matters are left within the discretion of administrative authorities or within the judicial or quasi-judicial competence of special tribunals. **1960 M P C 492 : 1960 M P L J 1063 : 1960 Jab L J 1160.**

——Art. 226—Discretionary orders—Issue of writ—(Gwalior Co-operative Societies Rules (Smt. 1997), R. 52).

If on inspection the Registrar comes to certain conclusions about the manner in which the society or the bank is functioning, it is entirely his look-out and not the business of the High Court. If he is dissatisfied he is empowered to take different steps. Where the Registrar acts under R. 52 certainly the High Court cannot go into merits. 1959 M P C 195 : 1960 M P L J 715 : (1959) 1 Lab L J 618 : 1959 Jab L J 459 : A I R 1959 Madh Pra 218 (220, 221) (Pt C) (Prs 12, 13) (DB).

——Art. 226 — M. B. Secondary Education Act, S. 16 —Regulations under Chap. 11, Regn. 4 — Inspection report—Report purely advisory—Board not bound to accept it while granting recognition to a School—Court cannot interfere with recognition on that ground. 1959 M P C 52.

——Art. 226—Scope of jurisdiction of High Court—Interference with executive direction by Magistrate to police to take action under S. 107, Criminal P. C.

The High Court cannot be called upon to exercise its jurisdiction under Art 226 of the Constitution simply on an executive direction by a Sub-Magistrate to the police to take a particular action under S. 107, Criminal P. C. (1952) 1 Mad L J 471 : 1953 Cri L J 63 : 1952 Mad W N (Cr) 68 : A I R 1952 Mad 880 (880) (Pr 2) (DB).

——Art. 226—Discretionary orders — Matter within discretion of executive—Issue of writ.

The matter of renewal of annual leases of Government lands is purely a matter within the discretion of the executive authority and a writ under Art. 226 will not lie directing that discretion to be exercised one way or the other. In such cases Courts have no power to investigate the grounds or the reasonableness of the decision arrived at in the exercise of that discretion except when mala fides are clearly proved. A I R 1958 Manipur 1 (4) (Pt E) (Pr 19).

——Art. 226—Powers of High Court.

The amount of the extra water rate charged under R. 32 of the Sirhind Canal Rules is a matter that solely rests with the canal authorities and is not one that can be questioned in a Court of law or, at any rate, by a petition under Art. 226 of the Constitution. A I R 1956 Pepsu 40 (48) (Pt II) (Pr 30) (DB).

——Art. 226—Subjective satisfaction of officer when justiciable. See Abducted Persons (Recovery and Restoration) Act (1949), S. 4 (1). A I R 1955 Pepsu 48.

——Art. 226 — Two villages with population of less than 500—Villages contiguous though another village intervening — Absence of relaxation of limit by Government — Villages cannot have separate Sabha areas — Question of relaxation pertains to discretion of Government — High Court cannot interfere. See Panchayats—Puniab Gram Panchayat Act (4 of 1963), S. 4 (1). ('65) 67 Punj L J 511.

——Art 226 — Although R. 25 of Displaced Persons (Compensation and Rehabilitation) Rules compels authorities to transfer property to claimant, R. 26 empowers them to use discretion in case of non claimant — High Court can neither re-examine nor interfere under Art. 226 of Constitution of India. See Displaced Persons (Compensation and Rehabilitation) Rules, R. 25. ('65) 67 Punj L R 215.

——Art. 226—Powers of High Court under—Extent and ambit of — Exercise of its discretion, by a Tribunal or Authority—Interference with—Permissibility — Issuance of writ or directions — When could be issued or given.

The High Court in exercise of its powers under Art 226 of the Constitution cannot interfere with the exercise of discretion by any authority or tribunal provided the authority has not exceeded the bounds of its jurisdiction or acted mala fide or based its order on wholly extraneous grounds. But it is the constitutional duty of the High Court to keep all authorities and tribunals (under the Court's jurisdiction) while discharging their judicial, quasi judicial or statutory functions, within the bounds of their jurisdiction and to compel them, wherever necessary, to perform the duties enjoined on them by law strictly in accordance with the relevant statutory provisions. This is the only way in which the High Court can assist in the maintenance of rule of law which is enshrined in Art. 14 of the Constitution. The High Court would indeed be failing in its duty if it declines, even in a proper case to compel any authority, howsoever high, which is otherwise within its jurisdiction, to conform to the rule of law and to act within the circumscribed limits of their statutory authority. Normally the High Court will give appropriate orders or directions under Art. 226 of the Constitution when it is found (1) that a judicial or quasi-judicial tribunal or a statutory authority has (i) acted without inherent jurisdiction or (ii) acted in excess of its jurisdiction; or (iii) assumed jurisdiction where it had none; or (iv) while exercising judicial or quasi-judicial functions passed some order in which some glaring error of law on some material point is apparent on the face of the record and on account of such assumption, refusal or excess of jurisdiction or such error of law, manifest injustice has resulted to the aggrieved party; (2) when a statutory authority passes an order which is tainted with fraud or is actuated by malice or is vitiated on account of being based on some wholly extraneous considerations (3) when the impugned order or action is violative of any of the fundamental rights enshrined in Part III of the Constitution; (4) when the impugned order or action is violative of any statutory right of the petitioner resulting in manifest injustice to him and he has no other adequate alternative remedy to get the wrong rectified; (5) when the life or property of a citizen is being jeopardised by the State and the State is not able to support such an interference with the life, liberty or property of the subject, on the authority of any valid law.

It is neither possible nor proper to fetter the discretion of the High Court in the matter of exercise of its powers under Art. 226 of the Constitution or to lay down any hard or fast rules for the same. But the jurisdiction of the High Court under the article is to be normally exercised keeping in view the above principles and at the same time keeping in view the fact that it is not for the High Court to interfere in the day-to day work of statutory and other authorities, so long as they remain within their bounds and do their duties as enjoined on them by law. 1965 Cur L J 541 : I L R (1965) 2 Punj 802 : (1965-66) 29 F J R 155.

——Art. 226 — Erroneous decision of Custodian General in extending time for revision — No ground for issue of writ—(Administration of Evacuee Property Act (1956), S. 27.)

Even if it be held that the Deputy Custodian General was in error in extending the time for revision it is not for the High Court to interfere under Art. 226 of the Constitution. AIR 1952 S C 319, Relon. 59 Pun L R 52 : I L R (1957) Punj 491.

——Art. 226 — Discretionary power vested in administrative authority—Court when can interfere.

There are well-defined limits within which the exercise of a discretionary power vested by the statute in

an administrative authority can be disturbed by the Courts. These principles are—(i) the authority for the exercise of the power depends on its being strictly within the limits of the statute, and the Court would not allow the power to be exercised for any collateral purpose; (ii) there must be observance of the mandatory statutory procedure; and (iii) there is existence of the basic facts with reference to which the power is vested provided that the Legislature does not vest the determination of the basic facts in the authority itself. 1905 A C 426, Rel. on. 1954 Cri L J 1672 : ILR (1954) 4 Raj 172 : AIR 1954 Raj 264 (267) (Pt E) (Pr 9) (DB).

——Art. 226 — Application for re-instatement allowed by Revenue Board — Interference by High Court. See Tenancy Laws — Rajasthan Tenants Protection Ordinance (9 of 1899), S. 7. AIR 1954 Raj 40 (DB).

——Art. 226 — Issue of writs under — Jagir taken under management of Court of Wards, Rajasthan — Jagirdar disqualified under S. 7 (1) (b) (ii) of Marwar Court of Wards Act — Not convicted of any non-bailable offence — Minister's note that Jagirdar should be declared unfit to manage — Thikana — If an order for declaring him unfit — If it amounts to the requisite "declaration by the Durbar" Government of Rajasthan — Arts. 166 and 163 of the Constitution—Validity of taking over.

Superintendence of Thikana N was assumed by the Court of Wards, Rajasthan, under Marwar Court of Wards Act, S. 7 (1) (b) (ii) on the basis of a letter of the Revenue Secretary issued on the note of a Minister of the Government of Rajasthan. The Minister's note was to the effect that in view of the circumstances set forth he was of the view that it is clear the Thakur is liable to be declared unfit to manage his Thikana N and the Thakur should be declared unfit to manage the Thikana N. On this so-called order the Revenue Secretary issued a letter to the Commissioner of Jodhpur Division instancing the various acts of the Thakur rendering him to be declared unfit to and incapable of managing the affairs of the said Thikana and therefore it is necessary to take it under the superintendence of the Court of Wards and the Thakur be declared as incapable to manage his Thikana.

The Thakur applied under Art. 226 of the Constitution of India praying for the issue of a writ in the nature of certiorari, prohibition or mandamus or any other appropriate writ to the State of Rajasthan and the order made under S. 7 (1) (b) (ii) of the Marwar Court of Wards Act be quashed. Allowing the application it was held : The recitals in the order of the Revenue Secretary cannot be questioned as incorrect by the Court and it has only to see whether the order challenged is valid on the said recitals.

The contention of the applicant that the conjunction "and" in S. 7 (1) (b) (ii) should be read in its ordinary grammatical sense cannot be accepted; it should be read as "or". It is not necessary that the Thakur should have been convicted of a non-bailable offence in addition to his being declared unfit because of the facts recited in Rajasthan Court of Wards order, which ground is found in the corresponding provision in Rajasthan Court of Wards Act, which replaced the Marwar Act. (AIR 1951 All 119, Ref.; AIR 1950 S C 265, Dist.)

The assumption of superintendence by the Court of Wards of the Thikana under S. 11 (a) can only be sustained if the Thakur has been disqualified under S. 7 (1) (b).

Section 7 (1) (b) (ii) requires a 'declaration of the Durbar' now "declaration of the Government of Rajasthan" (vide S. 3 (1) of Rajasthan Administration Ordinance I of 1949).

The Ministers under Art. 163 of the Constitution merely aid and advise the Governor (Raj Pramukh) in the exercise of his functions. Hence the so-called order of the Minister is merely a note tendering advice and ordering the Secretary to take necessary steps.

It is not a declaration or an order declaring the Thakur unfit as required by the S. 7 (1) (b); Art. 166 of the Constitution provides that all executive actions of the Government must be taken in the name of the Raj Pramukh and duly authenticated. ILR (1952) 2 Raj 207 : 1952 R L W 291 : A I R 1953 Raj 46 (47 to 49) (Pts A, B) (Prs 9, 11, 13, 16, 17) (DB).

50 (g). Orders not justiciable.

——Art. 226 - Jurisdiction—Order under S. 3, Foreigners Act (1946) deporting petitioner validly passed—There is no power in the High Court to extend time to petitioner to remove his goods. I L R (1963) 15 Assam 279 : AIR 1963 Assam 105 (108) (Pt E) (Pr 11) (DB).

——Art. 226 — Administrative or executive orders — Interference — Post Office Act Ss. 9, 7 and Sch 1—Post Office Rules, R. 30—Application for registration or renewal of registration as newspaper—Conditions to be satisfied by the periodical — Question is left to the decision of Post Master General or other authorised officer—It is left to the subjective satisfaction of the executive authority — It is not justiciable by Courts of law — Applicant may be called upon to give such information as required — Rules do not however, give any right of hearing or right to any notice—It is left to executive discretion — The only grounds on which decision will be interfered with will be the ground of mala fide — Petitioner is not entitled to writ of mandamus unless the decision is extraneous to purposes of the Post Office Act. See Post Office Act (1898), S. 9. AIR 1961 Bom 105.

——Art. 226—Executive orders are not law — Settlement of fisheries in West Bengal is by executive orders—Not justiciable under Constitution of India, Art. 226. 65 Cal W N 685 : A I R 1961 Cal 214 (217) (Pr 6).

——Art. 226—Certiorari and mandamus — Issuance of—Executive act—Futile writ—Manager appointed under S. 10 (2) (b) of Administration of Evacuee Property Act—Cancellation of appointment—Cannot be remedied either by certiorari or mandamus.

If there be sufficient legal justification for passing orders, they cannot be vacated on the ground of their purporting to be under some power that does not confer the jurisdiction. AIR 1958 S C 232 and 1959 Ker L T 636, Rel. on.

Appointment of a manager under S. 10 (2) (b) of the Administration of Evacuee Property Act in respect of properties which have vested in the Custodian under S. 8 being essentially an executive act, the cancellation of such order would also be an executive act and cannot be vacated by a writ of certiorari.

Nor can a writ of mandamus be issued against the Custodian who had cancelled such appointment, since the authorities higher than the Custodian who have a discretion to remove the person from the managership, could nullify the effect of the writ. AIR 1952 Bom 277 and (1777) 98 E R 1220 Rel. on.; A I R 1954 S C 403 and A I R 1957 S C 529, Dist. 1961 Ker L J 382 : 1961 Ker L T 1081 : A I R 1962 Ker 152 (155, 156) (Prs 8, 9) (DB).

——Art. 226 — Administrative or executive orders—Issue of writ.

Orders relating to fixation of the rank of a Government servant in the integrated gradation list of the ministerial staff are only executive orders not amount-

ing to law, passed in the exercise of the executive functions of the State. An executive order may be changed at the will of the Government by another executive order. Such orders are not justiciable. ILR (1955) Trav-Co 404 and AIR 1958 Ker 1 (FB), Rel. on. 1960 Ker L T 892 : A I R 1961 Ker 52 (53) (Pt A) (Pr 2) (DB).

——Art. 226—Powers of High Court—It is not within the province of the High Court to make any suggestion for relaxation of the restrictions placed on a foreigner to the executive authorities when they have taken action under the Foreigners Order, 1948. 1959 Ker L T 1242 : 1959 Ker L J 1361 : ILR (1959) Ker 181 : 1960 Ker L J 821 : A I R 1960 Ker 177 (183) (Pt D) (Pr 36).

——Art. 226 — Executive or administrative rules framed by Government —Infringement of—Justiciability—Art. 31 (2).

The formulation of a proper integration rule governing the services of two former Indian States integrated into one State or the right invocation or application thereof in particular case apart from any question of mala fides or discrimination, is not justiciable under Art. 226 of the Constitution.

Per Koshi, C. J.—In the absence of a violation of constitutional guarantees or an infringement of the rules of natural justice no civil servant will be entitled to redress under Art. 226, against any Government order made against him. A I R 1958 Mad 53, Foll. 1957 Ker L T 938 : 1957 Ker L J 833 : I L R (1958) Ker 48 : (1958) 2 Lab L J 717 : AIR 1958 Ker 85 (87, 88) (Pt A) (Prs 5, 9, 12) (DB).

——Art. 226 — Executive order — Interference — Arts. 311, 366 and 372 — (Service Regulations and Standing Orders of Cochin—Violation of) — Travancore-Cochin Administration and Application of Laws Act (1125), S. 2).

The Service Regulations and Standing Orders of Cochin constitute no more than executive order, a violation of which cannot be corrected under Art 226 of the Constitution. ILR (1956) Trav-Co 1339, Rel. on. 1957 Ker L T 693 : 1957 Ker L J 707 : I L R (1957) Ker 884 : (1958) 2 Lab L J 76 : A I R 1958 Ker 79 (79) (Pr 4) (DB).

——Art. 226 — Administrative order — Equation of services in matter of integration—It is administrative decision and cannot be interfered with in proceedings under the Article.

The decision of the competent authority about the equation of posts in the matter of integration of services after reorganisation of States is an administrative decision which cannot be interfered with by High Court in proceedings under Art. 226 of the Constitution. 1965 M P L J 825 : 1965 Jab L J 1008: AIR 1966 Madh Pra 134 (135) (Pt B) (Pr 5) (DB).

——Art. 226 — Subjective satisfaction — What constitutes — Subjective satisfaction whether can be challenged in Court of law.

Where the exercise of an administrative act is made dependent by the Legislature upon the existence of contingency involving a question of fact about which the authority has to be satisfied, then the satisfaction of the authority in regard to that fact is a subjective satisfaction which cannot be challenged in a Court of Law if the grounds upon which it has been made have a rational probative value and are not extraneous to the scope or purpose of the relevant provision. AIR 1951 S C 157 and AIR 1952 S C 174 and AIR 1954 S C 179 Rel. on. 1961 M P C 225 : 1961 Jab L J 913 : 1961 M P L J 828 : A I R 1961 Madh Pra 356 (360) (Pt C) (Pr 7) (DB).

——Art. 226 — Executive orders — Bihar Education Code—Violation of —Issue of writ.

The Bihar Education Code is a mere compilation of executive orders issued from time to time by the State Government for the guidance of the Director of Public Instruction and his subordinates. It is not a collection of statutory rules, and, therefore, no writ can be issued if there has been any violation of those rules. 1957 B L J R 114; Rel. on. 1958 B L J R 212 : I L R 37 Pat 462 : A I R 1958 Pat 653 (654) (Pt C) (Pr 4) (DB).

——Art. 226 — Writ for direction to Jail authorities to permit accused to meet other co-accused for filing joint appeal —Relief outside scope of Art. 226.

Where the petitioner's detention is valid, it is not for the High Court to direct under Art. 226 the jail authorities to permit him to meet with any other accused persons. Such a relief is wholly outside the scope of Art. 226. That is a matter for the internal administration of the jail authorities and the High Court will be disinclined to interfere with those matters. 63 Punj L R 586 : I L R (1961) 2 Punj 693 : 1961 (2) Cr L J 687 (2) : A I R 1961 Punj 524 (527, 528) (Pt C) (Pr 10).

——Art. 226 —Revision under S. 64 (h), Motor Vehicles Act — Order by Minister of State — Interference in writ proceedings—Not to judge in own cause — Principle not applicable to an official deciding matter which may affect his own department. See Motor Vehicles Act (1939) (as amended by E. P. Act 28 of 1948), S. 64 (h). AIR 1960 Punj 142.

——Art. 226 — Imposition of punitive police force—It is for Government to decide—Court's cannot interfere under Art. 226. See Police Act (1861), S. 15. 1955 Cri L J 733 : AIR 1955 Punj 103.

50 (h). Finality of executive and administrative orders.

——Art. 226 -Land Acquisition Act (1894), S. 5A — Finailty of Government decision — See Land Acquisition Act (1894), S. 5A. AIR 1954 Assam 81.

——Art. 226—Writs and Orders against executive.

A provision regarding the finality of the decisions of executive officers cannot take away the jurisdiction of the High Court under Art. 228 to quash a decision which is based on a manifest error of law or which has the effect of the officer exercising a jurisdiction not vested in him. 73 Mad L W 191 : (1960) 1 Mad L J 434 : ILR (1960) Mad 500.

——Art. 226—Infringement of R. 6 (2) (b) of Saranjam Rules—Direction being administrative cannot be enforced by issue of mandamus—Bombay Saranjams, Jagir and other Inams of Political Nature Resumption Rules, 1952, R. 6 (2) (b) — Per Division Bench. Hanumantha Rao v. State of Mysore, (1963) 2 Mys L J 164 (FB).

——Art. 226—Administrative order—Interference — C. P. and Berar Municipalities Act, Ss. 15 (1) and 22 (2).

The powers conferred on the High Court by Art. 226 of the Constitution are wide enough to enable interference in proper cases with an order under S. 15 (1) of the C. P. and Berar Municipalities Act, although such an order is administrative and is given finality by the provisions of S. 22 (2) of the Act. 1952 N L J 682 : I L R (1953) Nag 245 : A I R 1953 Nag 125 (126) (Ft C) (Pr 5) (DB).

[Overruled on another point in AIR 1961 Madh Pra 274 (FB).]

——Art. 226 — Import Control Policy (from Jan. to June 1956), Part IV, Item 314, Cl.(d) in remarks column

—Interpretation — Customs Authorities have exclusive jurisdiction to interpret—Its interpretation must prevail and same cannot be assailed in writ proceeding. See Imports and Exports (Control) Act (1947), S. 3. AIR 1965 Punj 181 (DB).

——Art. 226—Powers of High Court — Construction of revenue entry—Displaced persons (Compensation and Rehabilitation) Act (1954), S. 7.

In exercise of its writ jurisdiction, the High Court would not interfere on the question of construction of a revenue entry, for purposes of determination of compensation under Displaced Persons (Compensation and Rehabilitation) Act. That would be a matter within the jurisdiction of the Rehabilitation authorities. A I R 1964 S C 477, Rel. on. 1965 Cur L J 817 (Punj) (DB).

51. Fundamental rights, contracting out of.

■ ——Art. 32—Contracting out of fundamental rights — Procedure laid down in the Act for settlement of disputes between Patiala State Bank and its customers —No infringement of Art. 19 (1) (f) and (g). See Ibid, Art. 19 (1) (f). A I R 1963 S C 222.

52. Fundamental rights, suspension of.

See Notes 217 and 119 and Ibid, Arts. 358, 359.

53. Futile or unnecessary writ.

(a) Certiorari.
(b) Mandamus.

53. Futile or unnecessary writ.

■ ——Art. 226—Infructuous writ — Rajasthan Minor Mineral Concession Rules, Rr. 36 (7) and 59 — Govt. is not bound to accept highest bid — It is not arbitrary to accept bid of co-operative society of mining labourers in preference to highest bid. Contract, however, about to end — Supreme Court will not interfere, even if acceptance of contract was not legal, See Rajasthan Minor Mineral Concession Rules (1959), S. 36 (7). AIR 1965 S C 1992.

■ ——Art. 32 — Infructuous writ—Deputy Commissioner giving liquor contract under Mysore Excise Act to B — Action wrong and running counter to policy of legislature — In ordinary event A would be given the writ but as it would be ineffective due to the expiry of the contract year and as it was not practice of the Supreme Court to issue meaningless writs, no writ was issued. See Mysore Excise Act (5 of 1901), S. 16. AIR 1954 S C 592.

——Art. 226—Futile application — Relief by way of writ is discretionary, and where the purpose sought for is already achieved, the High Court should not move in the matter. A I R 1962 All 574 (576, 577) (Pt B) (Pr 6).

——Art. 226—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 176, 182-A and 182-B—Division of holding—Appeal against order of Collector under S. 176 not entertained by Commissioner on ground of non-maintainability — Board of Revenue setting aside order of Commissioner in second appeal — Writ petition against order of Board, held not maintainable as even if writ powers were exercised ultimate order that would be passed would not affect rights or position of parties—Useless exercise of writ powers held not appropriate. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 176. 1962 All L J 11.

——Art. 226—Petition under, against order cancelling petitioner's permit which expired subsequently — Petition does not become infructuous on account of expiry of period of permit — Petitioner has still subsisting interest in result of petition as he would be in a position to obtain renewal of permit if order of cancellation is set aside. AIR 1960 All 247 (249, 250) (Pt B) (Pr 14).

——Art. 226—Futile writ—Issue of—Art. 311.

A candidate declared successful in a preliminary examination held by the Collectorate for the purpose of recruitment to the post of an apprenticeship in that office does not thereby get a right to any service whatsoever. A declaration, therefore, that he had passed the examination would be futile. The High Court does not interfere by way of writ unless the right of a party is affected in any manner. AIR 1955 All 534, Disting. AIR 1960 All 123 (123, 124) (Prs 3, 5) (DB).

■ ——Art. 226—Futile writ—Issue of.

It is well-established principle that the issue of a writ being within the discretion of a Court, the Court would rarely issue a a writ if the issue of such a writ was to be futile. Mahesh Chandra v. Tarachand Modi, ILR (1958) 2 All 817 : AIR 1958 All 374 (387) (Pt F) (Pr 85) (FB).

——Art. 226—Futile writs.

High Court will not issue a writ, order or direction in a case in which the final authority is not bound by the orders of the High Court and may well flout the directions of the High Court by ignoring them and passing orders as he thought best. I L R (1956) 1 All 622 : 1955 All L J 375 : A I R 1955 All 512 (515) (Pt B) (Pr 14) (DB).

——Art. 226 — The High Court will not issue a writ which will be ineffective—A I R 1954 S C 592, Foll. AIR 1955 N U C (All) 2031.

——Art. 226—Futile writs—Issue of.

It is not the practice of the High Court to issue meaningless writs. A I R 1954 S C 592, Foll. 1958 Andh L T 587.

——Art. 226—Temporary permit issued under S. 62, Motor Vehicles Act, 1939—Period of permit expiring on day of hearing of petition — Application made during period of permit for writ questioning legality of issue of permit will still be considered. A I R 1963 Assam 1 (2) (Pt A) (Pr 4) (DB).

——Art. 226—Futile writ—Issue of — Relief against effective order to be sought.

Where the Commissioner of Income-tax does not merely dismiss the revisional application against the order of the Income-tax Officer but modifies that order, it is necessary for the assessee who has filed a writ petition to get the order of the Commissioner of Income-tax set aside before he can hope to get any relief from the High Court. The reason is that the High Court will decline to pass an order which will not be an effective order. (1959) 36 I T R 538 (Bom).

——Art. 226—Expiry of licence under S. 39, Calcutta Police Act — Application under Art. 226 for issue of writ of mandamus against Commissioner of Police for refusal to grant renewal of licence—Held, time of licence having been irretrievably expired it would be useless to issue writs. 1965 (1) Cri L J 679 : AIR 1965 Cal 312 (324) (Pt I) (Pr 47) (DB).

——Art. 226—Futile writ—Writ challenging validity of order of reversion of petitioner — Retirement of petitioner pending disposal of writ — Writ not rendered infructuous since if order of reversion is quashed petitioner would get relief in respect of arrears of any pension on the footing that he had never been reverted. A I R 1964 Cal 265 (276) (Pt F) (Pr 17).

——Art. 226—Mandamus—Writ to compel authorities to issue import license for period which had long expired—Firm, established importer, dissolved—Applications, by re-constituted firm for import license within prescribed time not made in accordance with rules and regulations — Licensing authority refusing to issue licence—Mandamus to command authority to issue license for expired periods cannot be issued—

Scheme of import trade regulations analysed. A I R 1960 Cal 561 (564, 565) (Pr 4).

——Art 226—Futile or unnecessary writ — License under Bengal Places of Public Amusement Act asked for - Period expiring—Issue of writ - (Bengal Places of Public Amusement Act (10 of 1933), S. 5 (3)).

Where the period for which the license was asked for has expired the High Court will not make any order because such order will be infructuous. A I R 1956 Cal 146 (147) (Pt A) (Pr 3).

——Art. 226 — Futile writs — Application for writs against orders of Collector of Customs — Rule 'nisi' directed against him by name — He ceasing to be Collector of Customs — Application cannot be allowed.

One R who was the Collector of Customs made an order under Sea Customs Act imposing penalty on certain party. That party applied for writs of certiorari and prohibition against the orders of R and the Rule 'nisi' was directed against R by name. The Union of India was not made a party to the proceedings at all. R however ceased to function as Collector of Customs and was transferred to some other post.

Held, that the rule, if it was made absolute, could be made absolute only against R but to do so would be to require him to do what he could not possibly do and to give to him a direction which would be utterly meaningless. In such circumstances the application for writs under Art. 226 could not be granted. AIR 1955 Cal 241 (244) (Pt C) (Pr 9) (DB).

——Art. 226—Futile writ—Issue of.

Under Art. 226 an order is never made which will be ineffective. ILR (1955) 2 Cal 470.

——Art. 226—Scope — Suspension or cancellation of arms licence—Recording of reasons must be by authority — It must appear from order that it was passed for security of public peace—Conditions are mandatory—Conditions not complied with—Order is without jurisdiction and must be quashed—Even if licence expires relief of quashing such order is not infructuous. See Arms Act (1878), S. 18 (a). I L R (1965) Guj 571.

——Art. 226 — Futile writ — Acts done in obedience to higher authority.

A writ of certiorari or mandamus or any writ under Art. 226 of the Constitution, cannot be granted in respect of acts done in obedience to a higher authority. The issue of a writ in such a case will be futile. A writ of mandamus is never issued forcing any authority, officer or tribunal to exercise a doubtful jurisdiction nor a writ of certiorari to quash an order when no object is served thereby. I L R (1955) Hyd 780 : AIR 1955 Hyd 269 (270, 271) (Pt A) (Pr 2) (DB).

——Art. 226—Futile or unnecessary writ.

The duty of a Court consists of deciding a case that comes before it and for doing so, it must adjudicate upon questions which are necessary for the decision. But when conditions came into existence on account of which the relief prayed for by a party cannot serve any useful purpose and even if the relief is granted, it would not be of any avail even to the party itself, the Court must refuse to go into all the matters raised therein and must throw out the application as being infructuous. 1956 Cri L J 1400 : A I R 1956 Kutch 12 (13) (Pt C) (Pr 6).

——Art. 226—Octroi Inspector temporarily appointed to post of Octroi Superintendent for a period of 6 months—Reversion to original post — Writ petition for quashing order—Period for which petitioner could hold such post expiring — Petition dismissed as infructuous. 1956 M B L J (H C R) 1307.

——Art. 226 — Futile writ — For issue of writ, petitioner must show that in the event of his grievance being remedied he would get some benefit.

Whenever the petitioner complains of a particular act of commission or omission on the part of an authority, he should also indicate that in the event of the particular omission or commission being remedied, he would get some benefit to which he is entitled in all justice. Where the petitioner, who was in unauthorised possession of premises under arrangement with the allottee, challenged the vires of S. 3 of the Madhya Bharat Public Premises Eviction and Recovery of Rent Act (27 of 1951) because that section did not provide for hearing in which he could prove his case:

Held, that hearing the petitioner's story could only result in his story being accepted but even if it was accepted he could not become an authorised person. Hence on this ground the petition was liable to be dismissed. 1961 M P L J 1228 : 1961 Jab L J 256 : ILR (1962) Madh Pra 57.

——Art. 226—Futile writ—Issue.

Where the State in utter violation of the fundamental rights of the petitioners and other members of the Jain community installed a Shivling in a public temple of theirs and also prevented them from entering the temple for worship and contended that even if the High Court issued a writ or direction to remove the 'ling' and allow the petitioners to worship in the temple it would be not only difficult but impossible for them, because of certain reasons, to carry out the orders and therefore the writ would be futile :

Held, in the facts of the case that when the petitioners were prevented from entering the temple for worship of the Shivling which was there, a writ or direction issued by the Court would be effective in the case. ILR (1957) Madh Pra 658 : 1957 M P C 725 : 1957 Jab L J 1088 : A I R 1958 Madh Pra 115 (126) (Pt H) (Pr 20) (DB).

——Art. 226 — Discretion — Exercise of — Validity of time expired Ordinance—It can be agitated.

The remedy provided for in Art. 226 of the Constitution is a discretionary remedy and the High Court will not exercise its discretion about the validity of an Ordinance that expired about 8 years back. 1957 M P C 770 : 1957 Jab L J 1039 : 1958 M P L J 184 : AIR 1958 Madh Pra 82 (82,83) (Pt B) (Pr 2).

——Art. 226—Futile writ would not be issued—Petitioner, a dismissed servant, praying for quashing of dismissal order being forwarded by adopting procedure which was not according to natural justice—Death of petitioner—Continuance of proceedings by legal representatives — Maintainability — Charges against petitioner not likely to be wiped out by issue of writ — Writ not to be issued — Unless person has legal right he cannot apply under Art. 226.

The petitioner was a servant against whom certain charges including that of corruption were framed and after the departmental enquiry he was dismissed from service. He filed a writ petition praying that his order of dismissal be quashed since the procedure adopted by the authorities, he alleged, was opposed to the principles of natural justice. After filing the petition he died and his legal representatives were brought on record. When the maintainability of writ proceedings by the legal representatives was challenged they contended that whether or not the petitioner, the dismissed officer, was dead could make no difference to the relief sought, namely quashing of the offending order on the record.

Held, that the charges against the officer included the charge of corruption. Assuming that the impugned order was quashed on the ground urged in the petition the position would be that the department

would be entitled to continue the proceedings afresh against the delinquent officer. What the High Court could do was only to vacate the impugned order. The charges that were framed against the delinquent officer would not stand wiped out by the writ. It was true that if the dismissal of the officer was improper, then the legal representatives would be entitled to recover from the State such emoluments and other monetary benefits which the delinquent officer would have been entitled to during the period he was kept out of office. But it could not be denied that the recovery of such emoluments would not follow as a matter of course by the issue of a writ. The issue of a writ was only sought as a step towards further legal steps which the legal representatives of the deceased officer proposed to take. The relief sought was purely personal to the delinquent officer and such personal right which really involved the continuance in service or otherwise of a person would not survive to the legal representatives. Unless the person had a legal right, he could not seek the exercise of the extraordinary jurisdiction under Art. 226. A I R 1962 S C 1044, Rel. on. **(1965) 2 Mad L J 302 : A I R 1966 Mad 260 (262) (Prs 4, 5).**

——**Art. 226**—Income-tax Act (43 of 1961), S. 137 (1), (2), (3), (XXI) — Income tax Act (1922), S. 54 — Relaxation contained in S. 137 (3) (XXI) operates in respect of statements by assessee in assessment proceedings under repealed Act — Party in whose favour statement was made is entitled to certified copy of statement—Writ under Art. 226 of Constitution, however, refused on ground that conditions necessitating its issue did not exist—Jurisdiction of High Court could not be invoked and could not be exercised in favour of the petitioner solely on the ground that conditions making the statement necessary might arise in the future. See Income-tax Act (1961), S. 137 (1). **A I R 1964 Mad 305.**

——**Art. 226 — Power of High Court to quash order which has spent its force.**

The High Court may have power to quash an order although it has spent its force but whether or not it would exercise such power would depend on the circumstances of the case. **37 Mys L J 666 : ILR (1959) Mys 19 : 1960 Cri L J 379 : A I R 1960 Mys 57 (59) (Pt C) (Pr 7) (DB).**

——**Art. 226**—Complaint by Additional Deputy Commissioner under S. 177, I. P. C. — Application for withdrawal under S. 195 (5), Criminal P. C., made to Board of Revenue—Application rejected by Board for want of jurisdiction—Petition for writ under Art. 226 directing Board to return application for representation — Order of Board upheld — Direction to Board held unnecessary as there being no question of limitation petitioner could apply to State Government for relief. **1953 Nag L J 126 : 1953 Cri L J 741 : ILR (1953) Nag 668 : A I R 1953 Nag 121 (122) (Pt B) (Pr 7) (DB).**

——**Art. 226 — Relief prayed for not serving useful purpose.**

A Court is not a debating society which is bound to consider and determine all the points that the parties may raise. Its duty consists only of deciding a cause that comes before it and of adjudicating upon the questions that are necessary for the decision. When in a particular case conditions come into existence on account of which the relief prayed for by the party cannot serve any useful purpose and if granted it will not be of any avail even to the party itself, the Court can simply refuse to go into all the matters raised therein and must throw out the petition as infructuous : A I R 1933 Oudh 423, Rel. on. **('50) 2 Pepsu L R 621.**

——**Art. 226—Writ not serving useful purpose.**

If the Court is satisfied that the writ applied for is not likely to serve any useful purpose it can reject the application for this reason alone. **('50) 2 Pepsu L R 443.**

——Art. 226 — Infructuous petition — Notice under S. 10 (2), Punjab Agricultural Produce Markets Act 1961 by Chairman — Market Committee suspending license of petitioner for period of fifteen days — Writ petition against order—Expiry of period of suspension —Writ petition becomes infructuous. **67 Pun L R 66.**

——Arts. 226 and 227—Court will not pass any order which will for all practical purposes be a dead letter. **1965 Pun L R (Sup) 464.**

——Art. 226 — Discretion of Court — Court will not grant writs which may be futile. **('62) 64 Punj L R 1014.**

53 (a). Certiorari.

——**Art. 226 — Futile writ — Issue of — Practice — (Municipalities —Bengal Municipal Act (15 of 1932), S. 529-A).**

Where in a petition for writ of certiorari to quash the order of the District Magistrate refusing to entertain appeal filed under S. 529-A, Bengal Municipal Act, 1932, the High Court finds that the District Magistrate had jurisdiction to entertain appeal but the Magistrate could not have granted any relief even if the appeal had been entertained, it would be utterly futile for the High Court to set aside the order of the Magistrate and send the matter back to him, because the only result that will follow is that the appeal would be dismissed. **AIR 1956 Cal 393 (395, 396) (Pt B) (Pr 7).**

——**Art. 226—Certiorari—Futile writ—Proceeding of inferior tribunal are null and void—No writ.**

It is well settled that certiorari does not issue where the proceedings of the inferior tribunal are not merely voidable, but are absolutely null and void, for in such a case, no benefit will accrue from the issue of the writ. It is open to the parties to ignore them, or to have them set aside by the decree of a competent court as and when occasion arises. **A I R 1959 Manipur 24 (25) (Pt C) (Prs 8, 9).**

——**Art. 226 — Certiorari — Futility — Quashing of void proceedings.**

A certiorari does not issue where the proceedings of the inferior Court or tribunal are not merely voidable but are absolutely null and void. **AIR 1959 Manipur 17 (19) (Pt B) (Pr 15).**

——**Art. 226—Certiorari—Writ of—Futile writ — Will not be issued.**

Where the petitioner had applied under Art. 226 for the issue of a writ of certiorari for quashing a special resolution of the Municipal Commissioners, but the force of the resolution had come to end long before the petition came for hearing:

Held, that the application had already become infructuous and no useful and effective writ of certiorari could or should be issued in respect of that resolution which had spent its force. Rameshwar Prasad Agarwal v. Sinha, **1965 B L J R 715 : A I R 1966 Pat 6 (7) (Pt A) (Pr 2) (FB).**

——**Art. 226 — Writ of certiorari — Futile writ — Issue of.**

A writ of certiorari will not be issued if it will be futile or unnecessary. Chitaley and Rao, "Constitution of India", Vol 2 (1954 Edn.), Page 2032, Rel. on. **AIR 1956 Sau 100 (101) (Pt B) (Pr 6).**

——**Art. 226 — Certiorari — Discretion of Court — Principles governing —No writ when result of case decided by writ subject to reconsideration by another statutory tribunal having jurisdiction to decide it finally.**

The writs of certiorari and mandamus are high prerogative writs and their issue is discretionary with

the Court. Once the writ is issued, the result must be final and must not be subject to interference by any other authority or tribunal. Where under the law, the matter decided by the issue of a writ is subject to reconsideration at a later stage by another tribunal constituted for the purpose, who would be competent to finally dispose of the matter, it amounts in fact to that tribunal sitting in judgment over a writ issued by the High Court. Since that is opposed to the very principle on which the issue of the writ is based, the High Court will not in such cases interfere and issue a writ. 1951 K L T 714 : ILR (1951) T C 808 : A I R 1952 T C 1 (4) (Pt B) (Pr 12).

——Art. 226— **Certiorari and mandamus — Issue of writs —Principles — Writs not effective to afford relief to party affected—Writ, if can issue—Practice.**

A writ of certiorari and mandamus will not be granted when it will not be effective. Where, in a matter, after quashing an order of a subordinate tribunal, the High Court issues a mandamus to that tribunal to do its duty under the law, it would not be open to the High Court to issue any specific directions to that authority as to the manner in which the duty should be discharged, and there would be nothing to prevent that authority from arriving at the same conclusion as before, the remedy and the relief afforded cannot be said to be effective. In such a case the High Court will not issue either writ. ILR (1951) T C 808 : 1951 KLT 714 : AIR 1952 T C 1 (4) (Pt A) (Pr 11).

53 (b). Mandamus.

——Art. 226—Mandamus — Nature of orders which would be passed —Futile writs. See Northern India Ferries Act (1878), S. 8. AIR 1959 Assam 169 (DB).

——Art. 226—**Mandamus — Writ is not to be issued unless Court is certain that its command will be carried out.**

A writ of mandamus is a high prerogative writ. The Court issues a command in order to remedy a grave error or to set right injustice and the Court would never issue such a command unless it is certain that that command would be respected and carried out. ILR (1952) Bom 785 : 54 Bom L R 137 : A I R 1952 Bom 277 (281) (Pt C) (Pr 7) (DB).

——Art. 226— **Mandamus —Petition against Government official by personal name —Transfer of officer —Effect—Proper procedure.**

High Court cannot issue a writ which is bound to be infructuous. Where, therefore, a petition for a writ of mandamus is made against a certain Government official in his personal name and he ceases to hold that office by reason of his transfer, no effective order can be passed against him and hence the proceeding must be dismissed as infructuous. On general principles it is not possible to substitute the official who succeeds to the post as respondent in his place.

As transfers of Government Officers are ordinary incidents of their service a petitioner for a writ should implead a public officer by the designation of his office, instead of individually and should strengthen his position further and ensure himself against subsequent defects in the constitution of his proceedings by impleading the relevant State as party. 95 Cal L J 633 : AIR 1955 Cal 534 (534, 535) (Prs 4, 6) (DB).

——Art. 226—Mandamus—Thing not in existence—Order for return will not be passed. See Bengal Foodgrains (Disposal and Acquisition) Order (1947), Cl. 3 (1). AIR 1952 Cal 502.

——**Art. 226—Mandamus.**

A writ of mandamus will not be issued if the issue of such writ is bound to prove infructuous. AIR 1953 Cal 653 (657) (Pt E) (Pr 35) (DB).

——**Arts. 226, 19, 31 and 311— Mandamus to restore to office — Removal from office — Person removed not given opportunity — Effect — Futile writ.**

The petitioner was appointed as Mahant by the State Government. While he was in office for some years the Government in pursuance of the findings of the Civil Courts in a litigation that the appointment was ab initio void on the ground that the Central Government alone had the power of appointment removed the petitioner from the office and took over administration into its own hands. The petitioner thereupon initiated proceedings under Art. 226 for a writ to the Government to restore him to the office and remove the interim manager who had been appointed.

Held, the petitioner had not established that he had any fundamental right to the office of Mahant. There was no question of his having been 'deprived' of property. There was no question of the application of Art. 311 to the case because the petitioner who was party to the litigation in which it was found that his appointment was invalid was aware of the findings. Further even if the Court set aside the order of removal, still a writ would be futile because the State Government had been by that time delegated with powers of appointment (which included also the power to remove) and it could again pass an order removing the petitioner from the office. A I R 1928 Bom 20 and A I R 1928 Lah 237 (2) and A I R 1955 Pepsu 106 and A I R 1955 Pepsu 172, Disting : A I R 1952 Sau 59, A I R 1956 All 503 and A I R 1952 S C 12 and A I R 1955 Punj 34 and A I R 1957 Him Pra 1 and A I R 1954 S C 119, Rel. on. AIR 1957 Him Pra 49 (51, 52) (Prs 10, 11, 12).

——**Art. 226—Issuing of futile writs.**

A mandamus will not go when it appears that it would be futile in its result. Accordingly it will not be granted if the party complained of has powers which would enable him to make the writ inoperative. Likewise even though grounds be made out upon which the Court might grant a writ of certiorari, it will not do so where no benefit could arise from granting it. Held, that as the petitioner's services were terminable under his contract of service on a month's notice even if the reliefs prayed for by the petitioner were to be granted to him, the same would be rendered nugatory by the respondent taking action under that term of the contract. AIR 1954 Him Pra 1 (4) (Pt B) (Pr 12).

——**Art. 226—Mandamus—Futile writ.**

Held, that the writ of mandamus which the petitioner asked for could not be issued in this case because the period for which the licence had been asked for was over long ago, and the purpose for which amplifier was required might no longer be in existence. So in the exercise of its discretion the High Court would decline to issue the writ of mandamus asked for though the petitioner was able to establish that the rejection of the application he had made under S. 71 (xv), Madras City Police Act on 10-3-1954 was improper and invalid. AIR 1955 NUC (Mad) 3183.

——Art. 226 — Futile writs — Lease of fishery rights by Government—Lease cancelled on ground of breach of conditions of lease and fresh lease given to another person — Application by former lessee for quashing order of cancellation of lease and asking lessor to forbear from acting in furtherance of order of cancellation — Subsequent lessee not made party to writ petition.

Held, as subsequent lessee was not made party any order passed in proceedings under Art. 226 would prove infructuous and hence writ of mandamus could not issue. A I R 1961 Manipur 28 (31) (Pt F) (Pr 10).

——Art. 226 — Mandamus — Rejection of petitioner's application for import licence and acceptance of others — Interim order by Court to suspend issue of licences to others until further orders—Rejection was proved improper as it was without any power and petitioner was not at fault — Writ could be issued even after expiry of licensing period. (1964) 1 Mys L J 513 : AIR 1965 Mys 143 (149) (Pt D) (Pr 18) (DB).

——Art. 226—Mandamus—Futile writ—Amendment of statutory rules of recruitment — Public Service Commission having no power and statutory duty to make any selection to the posts of Gazetted Probationers—Writ of mandamus will be purposeless. See Ibid, Art. 245. AIR 1963 Mys 263 (DB).

——Art. 226—Laches—Futile writ.

After possession had been taken from the petitioners on 2nd December 1953, the petitioners did not file their petition till 19th January 1954, and thus for a little more than a month and a half they allowed the canal authorities to go ahead with the work of the construction of the canal. The result was that the authorities expended considerable amount of money in that construction and after they had gone a long way then the petitioners came and filed the petition.

Held, that the writ of mandamus directing delivery of possession to the petitioners could not issue for the reasons that the petitioners so delayed the petition as to stand by while major part of the construction work of the canal went on and was carried out before they came to the Court, and the Government had already taken steps to acquire the land of the petitioners under the provisions of the Pepsu Land Acquisition Act, 1953, and the issue of the writ would thus be rendered inoperative and futile as soon as the acquisition proceedings were complete. ILR (1954) Patiala 507 : AIR 1954 Pepsu 174 (179, 180) (Pt D) (Pr 7).

——Art. 226—Mandamus—Writ of—Refusal, when issue will be futile.

It is a well-known rule that whenever a writ of mandamus would be unavailing, or if granted, fruitless, it will be refused. 58 Punj L R 299 : ILR (1957) Punj 122 : AIR 1956 Punj 201 (203) (Pt C) (Pr 9) (DB).

——Art. 226 — Mandamus — (Delhi Cement Control Order (1950)).

It is quite useless to grant the petitioner an order by way of mandamus directing the Director of Civil Supplies to allow him facilities for filing an application for a license under the Cement Control Order, if the license is thereafter going to be justifiably refused. 56 Punj L R 121 : ILR (1954) Punj 958 : AIR 1954 Punj 141 (141, 142) (Pt A) (Prs 3, 8).

54. Government, writ against.

(a) Appropriate cases.

(b) Government of another State.

See also Note 120.

(c) Rajpramukh and Governor.

54. Government, writ against.

● ——Art. 226 — Industrial Disputes Act (1947), Ss. 10, 12—Discretion of Govt. to refer dispute under S. 12 (5)—S. 12 (5) does not confer power on Govt., to make reference independently of S. 10 (1)—Under S. 12 (5) Govt. can consider other relevant facts besides the report of Conciliation Officer — Govt. in considering question of reference taking into consideration extraneous matters — Mandamus can issue requiring Govt. to reconsider its decision. See Industrial Disputes Act (1947), S. 10. AIR 1960 S C 1223.

——Art. 226 — Writ petition against Government — Governor's opinion challenged — Government not bound to disclose reasons for opinion. See Ibid, Art. 16. AIR 1961 All 361.

● ——Art. 226 — Order passed under S. 3, U. P. Industrial Disputes Act on basis of report submitted under S. 14, Industrial Disputes Act, 1947 by a Court of inquiry — Validity. See U. P. Industrial Disputes Act (28 of 1947), S. 3. AIR 1954 All 538 (FB).

[Reversed on another point in AIR 1961 S C 420].

——Art. 226 — Motor Vehicles Act (1939), Ss. 64-A, 57 (7) and 64 — Powers of Government in revision — Refusal of permit by Regional Transport authority—Reasons not given — Defect rectified in appeal — Government cannot interfere with appellate order. See Motor Vehicles Act (1939), S. 64-A. AIR 1960 Andh Pra 371 (2).

——Art. 226 — Writ against Government — (Motor Vehicles Act (1939), S. 64-A).

"Legality" and "regularity" are terms used in grounds of judicial interference on an appeal or revision. An order is illegal if is is opposed to any enactment or any rule having the force of law. It is irregular if the procedure followed is in violation of the principles of natural justice and fairplay. The term 'propriety' is, however, of wide import. If, after due consideration, the Government has taken a decision on the matter, it is not for the Court to investigate the relative merits or soundness of one point of view as against the other.

If the Government in coming to its conclusion in revision under S. 64-A Motor Vehicles Act has taken into account facts or circumstances irrelevant for a consideration of the question before it or has been influenced by extraneous considerations in reaching its decision or if the order of the Government is mala fide or biased in any manner, it is the duty of the High Court to quash the order of the Government. But so long as the Government exercises its power under S. 64-A bona fide and for the purpose for which the power has been conferred the High Court cannot substitute its own notions for the policies or opinions on which the Government acts and quash the order of the Government as being in excess of its powers. ILR (1956) Andh Pra 726 : 1956 ALT 67 : 1956 Andh W R 85 : AIR 1957 Andh Pra 55 (57) (Pt A) (Prs 3, 4) (DB).

——Art. 226 — Northern India Ferries Act (17 of 1878), S. 8, Para. 3 — Rule 19 of rules framed under Act — Order rejecting bid of highest bidder — That the name of the highest bidder is on the confidential list maintained by Government of suspected smugglers of opium stated as reason for rejection — Nothing on record to show that officer conducting sale himself came to conclusion on the point after considering the circumstances and materials placed before him — Source on which Government acted also not disclosed — Order is arbitrary and capricious because reason for rejection is not one in compliance with S. 8, Para. 3 and R. 19 framed under Act — High Court is entitled to interfere with the order by issue of a writ inasmuch as there was no exercise of discretion at all by the conducting officer. See Northern India Ferries Act (1878), S. 8, para. 3. AIR 1962 Assam 46.

——Art. 226—Rules under Assam Land and Revenue Regulation (1 of 1886) — Settlement rules — R. 66 — Interpretation of — Order of Government directing settlement and order of Deputy Commissioner in pursuance of this order—Validity—Settlement if can be set aside under Art. 226. See Tenancy Laws—Assam Land and Revenue Regulation (1 of 1886)—Rules under—R. 66. ILR (1959) 11 Assam 38.

——Art. 226—Writs against Government — Auction sale of right to cut and collect forest produce—Government acting without jurisdiction — Power of Court to interfere.

In undertaking commercial transactions, the Government are in better position than any other individual provided they have some statutory provisions or rules on the point to guide them and subject to which the transactions are to be conducted. Therefore where there were no rules covering the question except the clause in the sale notice itself which provided that the sale was to be confirmed by the conservator of forests if the bid was below Rs. 25,000 and by the Government if it exceeded that amount.

Held, that the discretion to approve or not to approve of the sale lay with the Conservator of Forests, and not with the Government, and the order of Government, therefore, proposing to make a settlement in favour of a person whose bid was not the highest and in derogation of the sale in which the petitioner's bid was the highest has to be set aside and a direction given to the Conservator of Forests to exercise a proper discretion in the matter. A I R 1952 S C 16, Rel. on.; AIR 1954 S C 592, Dist. AIR 1957 Assam 174 (176, 177) (Prs 4, 5) (DB).

——Art. 226 — Jurisdiction — Lease of Government land—Annual Patta— Nature of right of patta holder —Notice of non-renewal — Dismissal of objections — Appeal — Cancellation of patta pending appeal—Approval by Governor—Writ application—Maintainability. See Assam Land Revenue Regulation (1 of 1886), S. 11. ILR (1956) 8 Assam 160.

——Art. 226 — Annual lease under Assam Settlement Rules—Sub-lessee—Right of, against Government — Order of ejectment of sub-lessee — Writ against order —Maintainability. See Tenancy Laws — Assam Land and Revenue Regulation (1 of 1886). AIR 1956 Assam 81.

——Art. 226—Right of ministerial officers to contest election under Assam Municipal Act if subject to Government Servants' Conduct Rules—Refusal of permission by Government—Interference by High Court. See Municipalities— Assam Municipal Act (1 of 1923), S. 13 (vii). AIR 1955 NUC (Assam) 5290 (DB).

——Art. 226—Power of the State Government under S. 59, Bombay District Municipalities Act — Order preventing Municipality from imposing tax and from collecting duly and validly imposed tax—Validity. See Bombay District Municipal Act (3 of 1901), S. 59. AIR 1954 Bom 278 (DB).

——Art. 226—Issue of writ causing administrative inconvenience—Duty of Court.

It may be that interference under Art. 226 by the High Court may result in inconvenience or difficulty in administration. But what the Courts have to guard against is a much greater evil. When they find in the modern State wide powers entrusted to Government, powers which affect property and person of the citizen, it is the duty of the Courts to see that those wide powers are exercised in conformity with what the Legislature has prescribed. It is true that in order that the modern State should function the Government must be armed with very large powers; but the High Court does not interfere with exercise of those powers. The High Court only interferes when it finds that those powers are not exercised in accordance with the mandate of the Legislature. Therefore, far from interfering with the good governance of the State, the Court helps the good governance by constantly reminding Government and its officers that they should act within the four corners of the statute and not contravene any of the conditions laid down as a limitation upon their undoubtedly wide powers. Therefore, even from a practical point of view, even from the point of view of the good governance of the State the High Court should not be reluctant to issue its prerogative writ whenever it finds that the sovereign Legislature has not been obeyed and powers have been assumed which the Legislature never conferred upon the executive. ('52) 54 Bom L R 681: AIR 1952 Bom 468 (475) (Pt D) (Pr 2) (DB).

——Art. 226—Powers of High Court — Matter left to subjective satisfaction of Government — Power of Court to scrutinize. See Land Acquisition Act (1894), S. 40. ('58) 62 Cal W N 73.

——Art. 226—Public body going to be constituted wrongly — Intervention.

Neither the Government nor a public officer can be allowed to exercise statutory duties, in excess of or not in accordance with the law, and if it is brought to the notice of the Court that a public body was going to be constituted wrongly and in violation of the provisions of law, the Court is bound to intervene and put the matter right. 58 Cal W N 443; AIR 1955 Cal 83 (87) (Pt G) (Pr 7).

——Art. 226 — Application under—Procedure to be adopted by respondent Government.

Where an application is filed under Art. 226 of the Constitution impleading Government as respondent, the Government is by no means a favoured litigant and must comply with the normal procedure to be adopted in all legal proceedings. It should answer the allegations in the application by an affidavit copy whereof should be furnished to the applicant in good time before the date fixed for hearing and the applicant will be at liberty to use a reply, also furnishing copies to the respondent. If in showing cause, the Government is of the opinion that disclosure of any fact or document will be injurious to the State, it is its duty to allege so, and it will be for the Court to decide the point. It is not enough for the Government merely to appear at the trial through a lawyer or to write letters to the Registrar showing cause. ('51) 55 C W N 45 : AIR 1952 Cal 798 (798) (Pt A) (Pr 3).

——Art 226—Petition against Collector and Assistant Collector—Whether against State Government—Civil P. C. (1908), S. 79 — Constitution of India, Art. 300.

In view of S. 79 of the Civil P. C. and Art. 300 of the Constitution of India petition for writ of mandamus against the Collector and the Assistant Collectocannot be interpreted as directed against the State Government. AIR 1952 Him Pra 16 (17) (Pt B) (Pr 4).

—Art. 226—Formation of opinion under S. 4 (1) (a) of Electricity Act (1910) is subjective not to be tested by objective standards — Order not to be reviewed by Courts — Validity of order does not depend upon recital of expression of opinion but actual formation of opinion—Electricity Act (1910), S. 4.

When the legislature has left it to the authority concerned to form an opinion on certain matters, the grounds for the formation of the opinion, or the correctness of the opinion so formed by the authority concerned, do not fall for consideration for review at the hands of the Courts so long as the authority has acted honestly and there were materials available before it, on the basis of which such an opinion could be formed. The opinion that is formed by the Government under S. 4 (1) of the Electrity Act is a subjective one which cannot be tested by objective standards. Merely because the order under S. 4 (1), of the Electricity Act does not record the opinion of the Government, as required, in respect of matters referred to in S. 4 (1) (a) of the Act on the basis of which action has been taken, it does not vitiate the order,

especially when the records show that the State has formed the opinion before issuing the orders. The validity of the order does not depend upon the recital of the formation of the opinion and the making of the order in consequence : AIR 1949 P C 136 and AIR 1963 Madh Pra 41 and (1891) A C 666 and A I R 1956 S C 446 and AIR 1961 S C 1381 and AIR 1954 S C 1536 and (1943) 2 All E R 546 and A I R 1959 S C 107 and A I R 1950 S C 222 and AIR 1960 S C 468 and AIR 1960 S C 606, Disting ; AIR 1962 S C 1110 and AIR 1962 S C 1217 and A I R 1964 SC 1813, Rel. on. **ILR (1965) 1 Ker 578 : 1965 Ker L T 561 : 1965 Ker L J 548 : AIR 1965 Ker 253 (272, 275, 276, 277) (Pt E) (Prs 77, 78, 92, 93, 96, 97, 98, 101) (DB).**

——Art. 226—Applicability—Refusal of government to deal with black-listed contractor—If infringement of fundamental right or rule of law—No remedy available under Art. 226. See Ibid, Art. 13. **AIR 1958 Ker 333 (DB).**

——Art. 226—Madras Hereditary Village Offices Act (3 of 1895) — Appointment of village headman—Board of Revenue confirming — Interference by Government in revision—Quashing of order of Government in writ proceedings — Nature of order of Government, whether judicial — Effect of quashing. See Madras Hereditary Village Offices Act (3 of 1895). **ILR (1959) Mad 380.**

——Art. 226 — Decision of transport authorities — Government's jurisdiction to interfere with, under S. 64-A, Motor Vehicles Act — Power of Court to pronounce on correctness of Government's action — (Motor Vehicles Act (1939), S. 64-A).

By enacting S. 64-A, Motor Vehicles Act the legislature clearly intended that the State Government should have the powers to intervene, if it was satisfied that the order in question was either illegal, irregular or improper. AIR 1956 S C 463, Rel. on.

Where it cannot be said that there was no material before the State Government on which they could pass their order it is not the province of the Court to say whether the Government properly construed their earlier order, in applying the principles laid down therein to the case. Whether the fact that the permit holder had transferred his permit should be taken as a circumstance against him, is not a matter for the Court to decide. **70 Mad L W 623 : A I R 1957 Mad 623 (626, 627) (Pt B) (Prs 11, 12, 13) (DB).**

——Art. 226 — Mysore Revenue Appellate Tribunal Act (24 of 1957), S. 12 — Effect of repeal of S. 6, Mysore Board of Revenue Act — State Government cannot entertain revision against Board's order after its repeal — Refusal to entertain revision is not failure to exercise jurisdiction — (Mysore Board of Revenue Act (7 of 1955), S. 6). See Mysore Revenue Appellate Tribunal Act (24 of 1957), S. 12. **AIR 1960 Mysore 87.**

——Art. 226—Nature of proceedings — (Mysore Co-operative Societies Act (52 of 1948)).

Order by government upholding the resolution of Co-operative Bank removing member — Proceedings on an application under Art. 226 against the order is not a proceeding in which the reasonableness of the order can be canvassed. The question is one of jurisdiction and not as to how it is exercised. **ILR (1953) Mys 508 : 33 Mys L J 137 : A I R 1954 Mys 59 (61) (Pt E) (Pr 4) (DB).**

——Art. 226—Scope — (Mysore Co-operative Societies Act (52 of 1948), S. 59).

Orders of Government, however extensive the power of the Gvernment may be under S. 59 of the Co-operative Societies Act, are liable to be questioned on the ground of want of jurisdiction or failure to apply the principles of natural justice. The question of expulsion of a member is a 'Dispute touching the business of a Society' and the decision which would be protected from review by the Courts are 'constitutional' decisions, i. e, decisions pronounced in conformity with the Act, the rules and the bye-laws and the principles of natural justice. **33 Mys L J 137 : ILR (1953) Mys 508 : AIR 1954 Mys 59 (62) (Pt H) (Pr 8) (DB).**

● **——Arts. 226, 227—Issue of writ against Government.**

Article 226 does not forbid the issue of writs against Government but only limits it to appropriate cases. Even administrative orders of Government could be interfered with under Art. 226 if these were in defiance of mandatory provisions of law.

So long as, and whenever it exercises judicial and quasi-judicial powers and gives final judgments between two parties which has legal sanction by its own force, the Government or any tribunal within the jurisdiction of the High Court, is subject to the writs which may be issued under Art. 226 and to the superintendence contemplated under Art. 227.

Where, therefore, the State Government set aside the orders as regards the grant of land under S. 58 of the Mysore Revenue Code, purporting to exercise a power of review which the Code did not confer upon the Government and persons concerned applied to the High Court under Art. 226.

Held, that in those circumstances and in order to safeguard stability and security of title to property against interference by means of orders based on consideration shifting from time to time it was appropriate that the orders passed in the application for review should be quashed as being without jurisdiction. Sampu Gowda v. State of Mysore, **ILR (1953) Mys 440 : 32 Mys L J 12 : AIR 1953 Mys 156 (161, 165, 166) (Pt H) (Prs 19, 20, 39, 44) (FB).**

——Art. 226—Absence of jurisdiction — Proceedings for acquisition of land for extension of abadi — State Government not applying its mind as to whether any unoccupied land was availab'e—Acquisition proceedings for occupied land are without jurisdiction. See Madhya Pradesh Land Revenue Code (2 of 1955), S. 226. **1961 N L J (Notes) 56.**

——Art. 226—Power to issue directions, etc. to Government.

Even if no infringement of a fundamental right is involved the power of the Court extends to issuing to the Government directions, orders or writs for any other purposes. **1955 Nag L J 145 : A I R 1954 Nag 258 (259) (Pt B) (Pr 6) (DB).**

——Art. 226 — Rules under Reso. 7252, 7581-121, dated 15th September, 1913, regulating grant of mineral leases and prospecting licences — Rights of Government to regrant lease or license — Discretion of Government to regrant leases of licences. See Government of India Act (1935), Seventh Schedule, List 1, Item 36. **AIR 1954 Nag 161 (DB).**

——Art. 226—Invalid or erroneous order—Mines and Minerals (Regulation and Development) Act (1948), S. 4 (2)—Mineral Concession Rules (1949), Rr. 67 and 68—Rules made under Mines and Minerals Act are mandatory—Lease of mica mining area granted by Government in violation of Rr. 67 and 68 is void—Holder of certificate of approval from Government—Application for issue of writ — Maintainable. A I R 1953 Pat 370 and AIR 1954 Pat 235 and A I R 1954 S C 592 and (1916) 1 K B 595 Rel. on. **1956 Pat L R 458 : ILR 35 Pat 700 : AIR 1956 Pat 506 (507, 508, 509, 511) (Pt A) (Prs 7, 8, 12) (DB).**

——Art. 226—Individual dispute — Reference to Tribunal—Validity —Issue of writ to quash proceedings.

See Industrial Disputes Act (1947), S. 7 (1). **A I R 1956 Pat 274.**

——Art. 226—Illegal act of dispossession by Government.

Where a person is in actual possession of land and there is no summary procedure provided by law in the State whereby the executive authorities can dispossess a man of immovable property, the action of the authorities in dispossessing the person of the land by executive action and without recourse to law is illegal and without jurisdiction. The fact that the person has no valid title to the land is not material.

In the case of trespass by a private person, the only remedy that the person dispossessed has is a suit for possession of the land and not by way of petition under Art. 226. But where the Government enters upon a high-handed executive action to dispossess a subject of his property, in such a case a writ petition is a proper and an adequate remedy for the subject against the Government.

(Direction was issued to the Collector to put the person back into possession of the land). AIR 1952 Pepsu 12 and AIR 1952 Hyd 36, Ref. **I L R (1954) Patiala 258 : AIR 1955 Pepsu 60 (61, 62) (Prs 5, 6, 8).**

——Art. 226 — Mines and Minerals (Regulation and Development) Act (1948), S. 4—Application for mining lease not in conformity with rules — Grant of lease—Matter for Government to decide—High Court cannot interfere— Mineral Concession Rules (1949), Rr. 27, 28, 29, 32 and 57. See Mines and Minerals (Regulation and Development) Act (1948), S. 4. **AIR 1959 Punjab 589.**

——Art 226 — Judicial orders — Mineral Concession Rules, 1940—Rr. 32, 57 and 59 — Review application under R. 59—Decision of Central Government—Interference. See Mines and Minerals (Regulation and Development) Act (1948), S 5. **ILR (1957) Punj 39.**

——Art. 226—Municipalities—Punjab Municipal Act (1911), Ss. 16, 22 — Removal of Vice-President—Discretion of State Government — No interference by civil Court. See Municipalities — Punjab Municipal Act (3 of 1911), S. 16. **AIR 1955 N U C (Punj) 4990.**

——Arts. 226 and 227 — Nature of function of High Court under Articles.

The function of the High Court is not to sit in appeal on the enquiries held by Governments or their officers. Under Arts. 226 and 227 the Court has only a supervisory function and its powers are confined to canalising the acts of the enquiring officers. **1955 Cr L J 305 : AIR 1955 Punj 3 (4) (Pt C) (Pr 9).**

——Art 226 — Rajasthan Minor Mineral Concession Rules (1955), Rr. 30, 33, 39—R. 30, applies to leases under R. 33—Rule 30 makes it obligatory on Government to grant lease initially for period of five years and extension for same period and renewal also. See Rajasthan Minor Mineral Concession Rules (1955), R. 30. **1962 R L W 672.**

——Art. 226 — Classification of prisoners — Government alone can do—Trial courts are not authorised to do it — Right of prisoner to move High Court for direction. See Criminal P. C. (1898), S. 401. **ILR (1959) 9 Raj 1212.**

——Art. 226—Power under Art. 226 is unfettered by the restrictions given in S. 45 Specific Relief Act—High Court in a proper case can order Government to pay compensation to the applicant especially when there is no other remedy open to applicant —Government freezing and acquiring stocks of grain in possession of applicant under cl. 25, Rajasthan Food Grains Control Order, 1949 — Grain sold away by Government — Action of Government held illegal—Government was ordered to pay to applicant a sum of money in respect of stocks acquired at prevailing market rate as fair compensation. 1952 Cri L J 732 : 1951 Raj L W 467 : ILR (1951) 1 Raj 674 : AIR 1952 Raj 74 : (79) (Pt H) (Pr 20) (DB).

——Art. 226 — Issue of writ—Order of Government accepting resignation of membership of Municipal Board after withdrawal of such resignation.

An order of Government accepting a resignation of membership of a Municipal Board after the withdrawal of the resignation is not illegal or ultra vires, in the absence of any law to the effect that the Government had no authority to act upon a letter of resignation after its withdrawal. No writ of any kind under Art. 226 of the Constitution can be issued in such circumstances. **1952 R L W 4 : ILR (1951) 1 Raj 591 : AIR 1952 Raj 53 (54) (Prs 3, 4) (DB).**

——Art. 226 — Industrial Disputes Act (1947), Ss. 10 (1) (c) and 12 (5)—Meaning of 'may' in S. 10 (1) (c) —No duty on Government to make reference — Issue of Writ. See Industrial Disputes Act (1947), S. 10 (1) (c). **AIR 1953 Sau 46.**

——Art. 226—Jurisdiction of High Court—Order by Government on review petition—Interference.

Where dealing with the question as to the correct date of birth of the petitioner, the Assistant Secretary to Government stated that the documents produced by the petitioner could not be accepted as proof of his date of birth "against the school register."

Held, that considering the fact that Government was dealing with a review petition the failure on the part of Government to consider the evidentiary value of all the documents produced by the petitioner was not sufficient for the High Court to interfere with the order of Government in the exercise of the jurisdiction vested in the High Court under Art. 226 of the Constitution. **ILR (1956) Trav-Co 879 : 1956 Ker L T 906 : A I R 1957 Trav Co 124 (130, 131) (Pt B) (Pr 16) (DB).**

54 (a). Appropriate cases.

——Art. 226—'Authority'—Government, if.

In Art. 226 the clause 'including in appropriate cases any Government' goes with the preceding word 'authority' and on a plain and reasonable construction it means that the word 'authority' in the context may include any Government in an appropriate case. The position, therefore, is that under Art. 226 power is conferred on the High Court to issue to any person or authority or in a given case to any Government, writs or orders there specified for enforcement of any of the rights conferred by Part III and for any other purpose. Khajoor Singh v. Union of India, **(1961) 2 S C R 828 : (1961) 2 Andh W R (SC) 46 : (1961) 2 S C J 235 : (1961) 2 M L J (SC) 46 : 1961 M L J (Cr) 498 : (1961) 1 S C A 173 : AIR 1961 S C 532 (537, 538) (Pt A) (Pr 12).**

——Art. 226—"In appropriate cases against Government" — Illustration — See West Bengal Estates Acquisition Act (1 of 1954), S. 39 (1) (b) and (4). **AIR 1955 N U C (Cal) 5330.**

——Art. 226 (1) — Administrative Order — Interference.

In order that the prerogative writ of certiorari may be availed of the act complained of must be a judicial or a quasi-judicial act. A purely administrative order cannot be interfered with by the issue of a writ of certiorari. The expression 'in appropriate

cases any Government' only confers on the High Court powers of interference with orders of the Government only in appropriate cases i.e., cases which require the exercise of quasi-judicial powers by the Government, Case law discussed. AIR 1952 Cal 901 (904) (Pt B) (Prs 23, 24).

——Art. 226—Interference—Grounds— Government altering or putting wrong interpretation on Rules—Mere irregularity — No writ application lies—(Government Servants' Conduct Rules, R. 1).

Since R. 1 of Government Conduct Rules reserves to the Government power to add or alter or modify any of the conduct rules, if it alters any of the rules without notice, it is a mere irregularity or even if it gives a wrong interpretation on any of the rules, in either case writ motion will not lie. 1957 Ker L T 891 : 1957 Ker L J 914 : (1958) 2 Lab L J 77 : AIR 1958 Ker 283 (284, 285) (Pt A) (Pr 6) (DB).

● ——Art. 226 — "Person or authority"—If include Government.

The words 'person or authority' are wide enough to include even Government. The mention of "any Government" as being included in 'person or authority' is not to introduce something which was not already there, but is more by way of abundant caution, so that no question may arise that what was contemplated was not 'Government' but only a person or authority. An authority can only act through the agency of human beings and so also the authority of Government is exercised through the agency of persons. Surajmal Arjundas v. State of Madhya Pradesh, 1957 M P C 680 : 1957 M P L J 788 : 1957 Jab L J 1011 : ILR (1957) M P 507 : AIR 1958 Madh Pra 103 (112) (Pt D) (Pr 33) (FB).

——Art. 226—Certiorari — When can issue—Certiorari where proceeding of inferior tribunal are null and void.

It is well settled that certiorari does not issue where the proceedings of the inferior Tribunal are not merely voidable, but are absolutely null and void, for in such a case no benefit will accrue from the issue of the writ. It is open to the parties to ignore them or to have them set aside by the decree of a competent Court as and when occasion arises. AIR 1959 Manipur 24 (25) (Pt C) (Prs 8, 9).

54 (b). Government of another State.

See also Note 120.

● ——Arts. 226 and 230 — Writ to authority outside jurisdiction — (States Reorganisation Act (1956), S. 59).

Under Art. 226 the jurisdiction of the Bombay High Court to issue writs is confined to issuing writs on those persons and authorities which are within the territorial jurisdiction of that Court.

In a case in which a writ was filed by a dismissed Government servant against the State of Madhya Pradesh and admitted by the High Court of Nagpur but subsequennly transferred to the Bombay High Court under the provisions of S. 59 (2), States Reorganisation Act, the Bombay Court cannot issue a writ to the State of Madhya Pradesh to reinstate the petitioner if it finds the petitioner entitled to remedy. Sub-section (5) of S. 59 of that Act introduces only a limited fiction as a result of which the Bombay High Court would be bound to respect only the order admitting the petition passed by the Nagpur High Court.

Section 59 (5) is not an extension of the jurisdiction of the High Court under Art. 230 so as to permit the High Court to issue writs under Art. 226 to authorities and persons not situated within its jurisdiction. Article 230 deals with the territorial extension of the jurisdiction of the High Court. What it contemplated is that the Parliament may by law confer upon the High Court of Bombay a territorial jurisdiction wider than the territorial jurisdiction of the State. But that is not what S. 59 (5) does. The Parliament purporting to act under Art. 230 of the Constitution cannot confer upon the High Court jurisdiction which it did not possess, to issue writs against the M. P, State which is outside its jurisdiction. AIR 1958 Raj 124, Disting. Dr. Surjuprasad Gumasta v. State of M. P., 60 Bom L R 1468 : 1959 Nag L J 8 : (1959) 1 Lab L J 572 : ILR (1959) Bom 641 : AIR 1959 Bom 122 (124) (Prs 3, 4, 5) (FB).

54 (c). Rajpramukh and Governor.

——Arts. 226 and 361—Acts of Governor—Immunity from process of Court—Issue of writ under Art. 226.

In the case of official acts an absolute immunity from the process of Court is given to a Governor and this immunity extends not only to his official acts but also to acts purporting to be done by him in exercise of the powers conferred on him, so long as he is not guilty of dishonesty or bad faith. But this will not preclude the acts of the Governor from being questioned, if they can be done without a process on him. Indeed Art. 361 itself recognises that this immunity would not restrict the rights of any person to bring appropriate proceedings against the Government.

Where an Assistant Engineer having been served with an order imposing the penalty of compulsory retirement preferred an appeal to the Governor who by order transferred it to the Secretary to the Government and thereupon the Engineer prayed for issue of a writ of certiorari against the Governor for quashing his order.

Held, that the Governor was not answerable for his act of sending the appeal to be disposed of by the Government. The Governor was also not responsible to the Court for the manner of his disposal, for no process could be served on him. The application against the Governor was therefore liable to be dismissed. 1954 Andh L T (Civ) 71 : I L R (1955) Andh Pra 208 : (1954) 2 Mad L J (Andh) 33 : 67 Mad L W 1212 : A I R 1954 Andhra 9 (11) (Pt B) (Prs 13, 14, 15).

——Arts. 226, 361 and 171 (3) (e), (5) and 163 (3)—Nomination of members to State Legislative Council by Governor — Application under Art. 226 for suitable writs against Governor and nominated persons —Maintainability — High Court has no power to enquire into validity of nominations.

The Governor of West Bengal purporting to act in exercise of his powers under Art. 171 (3) (e) read with Cl. (5) issued a Gazette notification nominating certain persons as members of the State Legislative Council. The petitioner who had addressed a letter to the Governor a day previous to such notification offering his services for such membership not having been nominated by the Governor applied under Art. 226 for a writ of mandamus directing the Governor, to recall the nominations of those members and for a direction to forbear from giving effect to the notification and also for suitable directions upon the nominated persons preventing them from exercising their rights under the said nominations.

Held, that (i) the application in so far as it sought relief against the Governor was wholly incompetent in view of the absolute bar created by Art. 361.

(ii) The Governor not being answerable to Court by reason of Art. 361, it follows that the validity or invalidity of the nominations cannot be enquired into by the High Court. The Governor not being liable to justify the nominations is not bound to disclose any facts relating to such nominations either by affidavit or otherwise. The other respondents cannot also be properly called upon to support or justify the

nominations because they may not know anything about the facts or considerations which led the Governor to make the nominations. The advice tendered by the ministers to the Governor cannot also be enquired into by the Court by reason of the provisions of Art. 163 (3) of the Constitution.

(iii) Even if a writ of quo warranto which was the only writ suitable in the circumstances had been specifically asked for in the application as against the nominated persons, the notification annexed to the petition would have been relied upon by the respondents as their warrants. So long as the notication stood, it will be a complete answer to a writ of quo warranto. The application was, therefore, bound to fail as against the other respondents also. ('52) 56 Cal W N 651 : A I R 1952 Cal 799 (802, 803), (Pt C) (Prs 10, 14, 15).

——Arts. 226 and 361 — Applicability — Act of Raj Pramukh done professedly under Constitution. See Ibid, Art. 361. A I R 1953 Madh B 54 (DB).

——Arts. 226 and 361 — Immunity only personal—Actions amenable to scrutiny by Court.

Because the Governor is not amenable to the process of the Court it cannot be said that the High Court cannot examine his action in appointing a person as Advocate-General and pronounce upon its legality. The immunity afforded by Art. 361 is personal to the Governor. That article does not place the actions of the Governor purporting to be done in pursuance of the Constitution beyond the scrutiny of the Courts. It is not the rule that relief cannot be granted in proceedings for a writ of quo warranto in the absence of the authority making the appointment. (1916) 1 K B 595 ; A I R 1945 Cal 249, Rel. on. I L R (1952) Nag 409 : A I R 1952 Nag 330 (333) (Pt D) (Prs 9, 10) (DB).

——Arts. 226 and 361 — Writ against Governor. See Ibid, Art. 361. A I R 1956 Pat 384 (392, 398) (Pt D) (Prs 16, 35) (DB).

——Art. 226—Satisfaction of Rajpramukh—Grounds of satisfaction — Court's power. See Pepsu Civil Services (Safeguarding of Natural Security) Rules (1954), R. 3. A I R 1956 Pepsu 19.

——Art. 226—Bar to suits—Quasi-judicial tribunal.

Section 3 of the Ordinance (6 of 1955) when it says that the final decision of the Rajpramukh shall not be liable to be called in question in any civil Court, does not bar the jurisdiction of the High Court under Art. 226 of the Constitution. As the Rajpramukh is to be treated as a quasi-judicial tribunal for purposes of these decisions, the High Court has the power to issue such appropriate writ, direction or order as it may deem fit under Art. 226. I L R (1955) 5 Raj 995: A I R 1955 Raj 203 (207) (Pt I) (Pr 16) (DB).

54A. Habeas corpus.

See Part C (Notes 186 to 223).

55. High Court, writ against.

See Note 5.

56. High Court, power to issue appropriate writ.

See also Note 37.

——Art 226 — Application under S. 491, Criminal P. C — Jurisdiction of High Court to issue necessary writ in absence of prayer. See Criminal P. C. (1898), S. 491. 1963 All L J 894.

——Art. 226 — Only general relief for issuing any writ, order or direction prayed for — Omission to claim specific relief cannot tie down hands of Court —It will formulate the writ, order or direction which ought to be issued. 1951 S C J 29 : A I R 1951 S C 41, Rel. on. 1962 All L J 501 : 1962 All W R (H C) 475: A I R 1962 All 590 (602) (Pt J) (Pr 47) (DB).

[Reversed on another point in A I R 1966 S C 1164.]

——Art. 226—Writ — Issue and framing of — Jurisdiction of Court—Specific relief not asked—Effect.

The actual framing and the issue of an appropriate writ is within the jurisdiction of the Court. No doubt a petitioner is required to state the reliefs he claims specifically in his petition, but the ultimate duty is of the Court to issue a writ suitable in the circumstances of a particular case. And, therefore, even where the petitioner has not specifically asked for appropriate relief, if the circumstances of the case require it, the Court can issue the necessary and appropriate writ to meet the ends of justice. 1962 All W R (H C) 57.

——Art. 226 — Procedure—Failure to choose appropriate writ—If ground for dismissal of petition.

Failure to choose appropriate writ in itself is not a ground for rejecting the petition under Art. 226. Where the petitioner under Art. 226 has prayed not only for a writ of certiorari but also for any other writ or order in respect of an order under S. 46 (5), Income-tax Act, passed by the Income-tax Officer the petition under Art. 226 cannot be rejected on the ground that order under S. 46 (5) is merely an administrative order and no writ of certiorari can be granted to quash such order. A I R 1952 Cal 601, Dist. ; A I R 1958 Andh Pra 458 ; (1958) 1 Andh W R 480 Rel. on. (1960) 39 I T R 730 : AIR 1961 Andh Pra 165 (169) (Pt B) (Pr 16).

——Art. 226 — Powers of High Court to issue appropriate writ.

May be that the appropriate writ to ask for against some of the respondents would have been the writ of quo warranto but the omission to ask for such a writ against those respondents does not stand in the way of the High Court granting relief against the other respondents. ('57) 61 Cal W N 341.

——Art. 226 — Contravention of statutory provision — Appropriate writ can be issued though writ prayed for not available.

Where it is clear that the action complained of involves a contravention of the statute, an appropriate writ can be issued even though the writ of the particular kind which the petitioner has asked for may not be available to him. AIR 1960 S C 1223; AIR 1960 Mad 238, Rel. on. (1962) 3 Guj L R 66.

——Art. 226 — Applicant naming wrong remedy — Not sufficient for rejecting claim—High Court has jurisdiction to issue appropriate writ.

The jurisdiction of the High Court under Art. 226 is not limited to the issuing of the types of writs mentioned therein, but extends to granting appropriate writ, direction or order. The applicant, seeking relief, is no doubt bound to name the remedy that he wants, but if he chooses the wrong label or writ, he should not be made to suffer the penalty of the rejection of his claim on that ground. The High Court is not powerless to mould and issue appropriate writ suitable to the occasion. The form of the writ to be issued is only of secondary importance. The primary things to be considered are, broadly, as follows : (1) Whether the applicant is a person aggrieved, having an interest or legal right in the subject-matter ; (2) Whether there has been an infraction or violation of such right or interest; (3) Whether the matter is justiciable. The denial of relief to a suitor, because of his error or judgment in selecting the proper writ, will defeat the very purpose of writs. 75 Mad L W 732 : I L R (1963) Mad 51 : (1963) 14 S T C 94 : A I R 1963 Mad 166 (169) (Pt C) (Pr 11) (DB).

——Art. 226—Powers of High Court.

It is true that the order of the Government directing fresh elections in contravention of Village Panchayats Act is not judicial or quasi-judicial and therefore a writ of certiorari would not be appropriate. But where it is clear that the action complained of involves a contravention of the statute, an appropriate writ can be issued even though the writ of the particular kind which the petitioner has asked for may not be available to him. (1960) 1 M L J 472 : AIR 1960 Mad 238 (240) (Pt B) (Pr 4).

57. History of writs.

See Note 84.

58. Hypothetical opinion.

——Art. 226—Scope—Opinion on hypothetical and abstract questions and futile and irrelevant declarations not to be given.

The relief by way of writ is a proceeding of an exceptional type. The Court should not allow it to be utilised by a party for the purpose of obtaining its opinion on hypothetical and abstract questions or for seeking declarations. The primary purpose of Art. 226 seems to be the enforcement of legal rights and obligations and not their declaration in vacuo. Sri Furga Gita Vidyalaya v. State of U. P., 1962 All L J 329 : 1962 All W R (HC) 243 : I L R (1962) 1 All 737 : A I R 1962 All 187 (191) (Pt B) (Pr 16) (FB).

——Art. 226 — Mandamus — Mere threat of fundamental rights being invaded is not a ground to invite High Court to pronounce upon the legality of any statutory provisions — High Court invited to decide abstract questions of law — High Court would not undertake inquiries. AIR 1964 Andh Pra 501 (Pt A) (Pr 8) (DB).

——Art. 226—Scope.

In a petition under Art. 226 the Court will not enter into a mere academic discussion of the legality or otherwise of a Statute unless it is necessary to do so for the purpose of reaching an end.

Hence, where the order sought to be challenged itself provides for compensation to the petitioner for the land taken away from him, the Court will not decide the constitutionality of the statute under which the order was passed where the Act is challenged on ground that no provision was made in it for payment of such compensation. A I R 1951 Nag 58, Rel. on. AIR 1954 Bhopal 1 (2) (Pt A) (Pr 8).

——Art. 226 — Academic questions — Decision of — (Practice).

The Court does not express academic opinion when nobody is aggrieved by any action on the part of the legislature or the executive. I L R (1955) Bom 680 : 57 Bom L R 288 : AIR 1956 Bom 1 (20) (Pt S) (Pr 49) (DB).

[Reversed on another point in AIR 1957 S C 699.]

——Art. 226 — Writ against executive — Grounds—Party must establish a right and prove its infringement — Relief cannot be claimed by raising academic questions.

In order to invoke extraordinary remedy under Art. 226 of the Constitution a petitioner must in order to entitle himself to get any relief show that manifest injustice has resulted to him as a result of the impugned order or action. He must further prove that he has a right and then allege and prove the infringement thereof. In the absence of a claim of any such right and a complaint of its infringement and resultant manifest injustice to the petitioners, the High Court is not bound to pronounce on a question merely for academic purposes. A I R 1965 S C 632, Rel. on. 67 Pun L R 1082.

——Art. 226 — Abstract propositions of law — High Court in writ proceedings does not pronounce judgment on abstract points of law. 65 Pun L R 1136 : I L R (1964) 1 Punj 607.

——Art. 226 — Powers of Court under—Theoretical questions and practical difficulties in applying Acts.

Under Art. 226 of the Constitution the High Court will not answer theoretical questions; it can only assist in fit cases the removal of grievance which cannot be otherwise remedied except with disproportionate expense, delay and trouble. But when no grievance is there, the question concerned can be best left open.

Further, there is a distinction between ultra vires of any legislative provision on the one hand, and on the other, the practical difficulty of applying it. In the former case the High Court can be invited to make a declaration but in the latter it cannot do anything. It is for the authorities applying the law to find out a modus operandi consistent with the law. If in evolving the modus operandi that authority violates any provision of the law itself, it can be restrained by a writ from the High Court. A I R 1954 Vindh Pra 24 (30) (Pt G) (Prs 34, 35).

59. Illegal assessment.

(a) Payment of tax, whether operates as estoppel.

(b) Writ against.

59. Illegal assessment.

——Art. 226 — Writ against illegal assessment and levy of tax—U. P. Town Areas Act (2 of 1914), Ss. 14, 15, 15A, 15B, 17 and 18 — Imposition of new tax and revision of assessment of old tax—Procedure pointed out. AIR 1955 N U C (All) 1754.

——Art. 226—Cause of action.

The initiation of assessment under a taxing statute which is ultra vires ultimately results in a levy of tax, and constitutes an actionable wrong which a party is entitled to prevent by an order issued by the Court. The order of the Court would be to the effect that the officers concerned who has initiated the assessment should not complete an illegal and unauthorised act. A I R 1951 S C 23, Rel. on. ('53) 55 Bom L R 246 : 1953-4 S T C 10 (DB).

[Reversed on another point in AIR 1953 S C 252.]

——Art. 226—Akola Municipality — Maintainability of petition — Assessment for triennial by M. C.—Order in appeal on the 22nd April 1950 — Assessment becoming final only on appeal—Petition under Art. 226 is competent — Municipalities — C. P. and Berar Municipalities Act, S. 83 and Bye-laws 18 and 19 of Akola Municipality.

Under the Bye-laws of the Municipality an assessment was to be final only when appeals were disposed of. A building was built and completed on the 1st April 1948 when the triennial assessment of Municipal Committee was to run for a year more and the Committee by resolution on the 4th March 1949 assessed the building on footing of a certain rental valuation. The order in appeal against this was passed on the 22nd April 1950 and revision dismissed by the Board of Revenue.

Held, that a petition under Art. 226, Constitution of India was competent. M. P. No. 130 of 50, D/- 28-2-51 and M P No 90 of 50, D/- 20-4-51: 1951 N L J Note No 186, Dist. 1952 Nag L J (Notes) 63 (DB).

59 (a). Payment of tax, whether operates as estoppel.

——Art. 226—Discretionary orders — Interference — Payment of tax pending appeal—Discretion of authorities — Improper exercise of — Application for writ. See Income-tax Act (1922), S. 45. AIR 1958 Cal 159.

59 (b). Writ against.

——Art. 226 — Grievance of assessee against order passed by Income Tax Officer—Grievance could be removed by Appellate Income Tax Authority—High Court will not enertain writ petition — Income Tax Act (1922), S. 41 (1), Proviso.

Where an assessee has been wrongly assessed and his liability has been computed and fixed at a higher rate, the appellate authority under the Income Tax Act is competent to deal with his grievance, and give him relief, if he is entitled to any. The writ jurisdiction of the High Court cannot be invoked for agitating matters of this nature. When it is not a case where the jurisdiction of the Income Tax Officer is challenged either on the ground that he has no jurisdiction or on the ground that he exceeds the jurisdiction which the statute has conferred upon him, then to invoke the extraordinary jurisdiction of the High Court is an attempt to by pass the provisions of the Income Tax Act. A I R 1961 S C 809, Rel. on. ('65) 69 Cal W N 984.

60. Illegal taxation.
- (a) Recovery of.
- (b) Writ against.
- (c) High Court's power.
- (d) Refund.
- (e) Constitutionality.

60. Illegal taxation.

——Art. 226—Taxation law—Ground of challenge. See Ibid, Art. 19 (1) (g). AIR 1962 S C 148.

——Art. 226 — Illegal taxation.

Where the proceedings against an assessee were commenced under a repealed law they are liable to be quashed by a writ under Art. 226. I L R (1955) Mys 344 : AIR 1955 Mys 99 (102) (Pt B) (Pr 13) (DB).

[Reversed on another point in AIR 1958 S C 808.]

——Art. 226 — C. P. and Berar Sales Tax Act (21 of 1947), S. 11 — Assessment by Additional Sales Tax Officer is without jurisdiction—High Court has power to interfere under Art. 226. Constitution of India — See Sales Tax—C. P. and Berar Sales Tax Act, 1947, S. 11. 1951 Nag L J 611 (DB).

60 (a). Recovery of.

——Art. 226—Property attached for default in payment of certain taxes takabi and other dues—Property auctioned by Tehsildar before receipt of stay order issued by Board of Revenue — Held, realisation and recovery of tax having been stayed, any recovery made after stay order would not be in accordance with law and could contravene provisions of Art. 265—Hence it would be fit case for exercise of writ jurisdiction. See Ibid, Art. 265. 1965 All L J 277.

60 (b). Writ against.

——Arts. 226 and 227—Scope of inquiry — Levy of surcharge for supply of electrical energy—Petition for writ—Maintainability—(U. P. Electricity Supply (Licensed Undertaking War Cost) Order, Cl. 4).

In 1944 a licensee for the supply of electrical energy with the consent of the Government, had introduced "war costs surcharge" under Cl. 4 of the U P. Electricity Supply (Licensed Undertaking War Cost) Order. In the 1955 the Government issued a Notification causing an amendment in Cl. (2) (b) of the Fourth Annexure, allowing the licensee to impose a minimum charge from consumer. The consumer filed petition under Arts. 226 and 227 of the Constitution contending that the war having terminated many years ago no justification remained for the levy of war cost surcharge :

Held, that the duty of the High Court was merely to see whether or not the surcharge was authorised by law, and besides, as the consumer had been paying the surcharge without demur since 1944, it was too late in the day for him to complain after the enforcement of the Constitution in 1950 that the charge was improper. AIR 1959 All 220 (221) (Pt A) (Pr 5).

——Art. 226 — Taxing Statute — Bar of 'alternative remedy' will not apply.

The powers under Art. 226 are very wide. In cases where taxing statute is challenged, the High Court will not refuse relief to the petitioner on the mere ground that an alternative remedy is available to him. A I R 1952 All 753 (FB), Rel. on. 1955 All L J 735 : A I R 1956 All 324 (324, 325) (Pt A) (Pr 3).

——Art. 226 — Income-tax Act (1922), S. 46 (2) — Arrears of income-tax—Recovery of - Certificate issued under S. 46—Collector forwarding it on to Tahsildar for recovery — Tahsildar trying to collect arrears from transferee of property of assessee — Without filing objections before Tahsildar transferee petitioning High Court to issue writ of mandamus against Tahsildar—Held (i) that Collector need not be joined as party : (ii) that there was no provision of law permitting filing of objections before Tahsildar; and (iii) that even though suit could be filed still in circumstances of the case High Court would entertain the writ petition. 1956 All W R (HC) 34 : (1956) 29 ITR 54 : AIR 1956 All 179 (180, 181) (Pt B) (Prs 10, 11, 12)

——Arts. 226 and 286 (1) (a) — Order imposing sales tax in contravention of Art. 286 (1) (a)—Order quashed under Art. 226. 1955 All L J 19 : ILR (1955) 1 All 107 : (1955) 6 S T C 77 : A I R 1955 All 99 (101, 103, 104) (Pt C) (Prs 1, 7, 8)

——Art. 226—Right to relief—Writ need be against operative or enforceable order only.

Where in a writ petition the relief sought by the petitioner is in respect of three orders and notices of the Income-tax Officer as well as the order passed in revision by the Commissioner of Income-tax, but there was no ground mentioned in the petition for any writ being issued in respect of the order passed by the Commissioner which was one of merely dismissal of revision application :

Held, that there was no ground for any writ being issued in respect of the order passed in revision as the only operative or enforceable order which the petitioner challenged was that of the Income-tax Officer and hence the petition was not maintainable. (1959) 36 I T R 527 (Bom).

——Art. 226—Delay—Other remedy open — Principles of taxation adopted by authorities being wrong — Matter being recurring one — Writ not to be refused.

The matter of assessment under the C. P. and Berar Panchayat Act is a recurring one and if one of the principles adopted by the taxing authority is wrong, then it would not be proper for the High Court to refuse to quash the decision of the taxing authorities based on a wrong principle merely on the ground of delay or the existence of an alternative remedy. 1960 M P C 82 : 1960 M P L J 265 : 1960 Jab L J 369.

——Art. 226 — Road Transport Corporation is not State Department—It is taxable as 'individual' under

S. 3, I. T. Act — Corporation has not been established for any religious or charitable purpose — Writ jurisdiction cannot be invoked as regards claim in regard to remainder of net profits which have to be made over to State Government for road development —Interpretation of exemption provisions of I. T. Act. See Road Transport Act (1950), S. 3. AIR 1964 Punj 178 (DB).

——Arts. 226, 265 and 286 - Constitutional remedies for illegal taxation.

Where there is infringement of the rights of a citizen by levying a tax which is ultra vires of the Legislature the remedy under Art. 226 is available to the citizen. A I R 1954 S C 403 and A I R 1955 S C 661, Rel. on. (1956) 7 S T C 586 : 58 Punj L R 399 : AIR 1956 Punj 177 (181) (Pt B) (Pr 28) (DB).

——Art. 226—Bar of alternative remedy.

Where a Municipal Board is acting without due authority of law and without any jurisdiction or in excess of its legitimate jurisdiction in recovering the municipal taxes, the High Court is not fettered, by the circumstance that an alternative remedy exists, in issuing an order in the nature of prohibition. A I R 1951 Raj 94 (2); A I R 1952 Raj 144, Rel. on. 1954 Raj L W 43 : ILR (1953) 3 Raj 664 : A I R 1954 Raj 162 (166) (Pt C) (Pr 13) (DB).

——Arts. 226 and 265—Delay in making application against illegal levy of tax.

In a case where an illegal tax is being levied, mere delay in making an application against the illegal levy should not deter the High Court from passing an order under Art. 226, if it is proved that the tax is being levied illegally without any authority of law. 1953 Raj L W 335 : ILR (1953) 3 Raj 52 : AIR 1953 Raj 180 (181) (Pt B) (Pr 6) (DB).

——Art. 226—Other remedy open.

Where the levy of tax itself is illegal, or where the law imposing the tax is ultra vires, the High Court will pass an order under Art. 226, even though there may be another remedy open to the applicant. 1951 Raj L W 58 Foll. ILR (1953) 3 Raj 150 : 1953 Raj L W 15 : A I R 1953 Raj 170 (173) (Pt D) (Pr 16) (DB).

——Arts. 226, 265 — Scope — Infringement of right under Art. 265 — Relief under Art. 226 if can be granted.

The scope of the jurisdiction of the High Court under Art. 226 of the Constitution of India is much wider than the scope of functions of the Supreme Court under Art. 32 of the Constitution of India. It is competent for the High Court to issue a proper writ or direction not only in cases where fundamental rights of a subject are threatened or infringed but also in other cases as well.

Where a municipality imposes property tax on the petitioner without following the procedure prescribed by law, the right of the petitioner under Art. 265 of the Constitution not to be subject to any tax without the authority of law is infringed and he would be entitled to relief under Art. 226. A I R 1951 Raj 139 (144) (Pt E) (Pr 12) (DB).

——Art. 226 — Writ of certiorari — Order of assessment to profession tax — Interference—(Travancore District Municipalities Act (33 of 1116), S. 133 and Sch II, R. 18 (2)).

Where the petitioner was assessed to profession tax by the Municipal Council and the order was confirmed in appeal by the Appellate Authority relying upon the proviso to R 18 (2) of Sch. II of the Travancore District Municipalities Act which was the appropriate provision.

Held, that in the circumstances of the case interference by the High Court by a writ of certiorari would not be justified. It may be that the assessment authorities were wrong in their calculation or in their interpretation of the provision but that was in itself no ground for interference. A I R 1952 S C 192, Applied. A I R 1955 Trav-Co 85 (87) (Pr 3).

——Arts. 226 and 265 — Illegal levy or collection of tax.

When a levy or collection of tax unauthorised by law under Art. 265 is made, relief may be given to the citizen in appropriate proceedings, not as a violation of fundamental right to property under Art. 31 but as an ultra vires act of the State. Proceedings under Art. 226 of the Constitution are appropriate. A I R 1951 S C 97, Rel. on. ILR (1952) Trav Co 960 : AIR 1953 Trav Co 146 (155, 156) (Pt G) (Pr 27) (DB).

60 (c). High Court's power.

● ——Art. 226 — Works contract — Sale of goods — Contract for installation of coke oven battery and by products plant for all inclusive price—Whether entire and indivisible — Materials supplied in execution of contract if amount to sale and liable to sales tax : Initiation of proceedings by issue of notice under S. 13 (5) — Jurisdiction of High Court to interfere by appropriate writ — Held, as proceedings before Sales Tax Officer had gone on footing that liability of appellant arose under the contract, proceedings for imposition of sales tax on supplies of materials pursuant to the contract were illegal and must be quashed. 1958 9 S T C 639 (Pat), Reversed. See Sales Tax —Bihar Sales Tax Act (19 of 1947), S. 2 (g). A I R 1961 S C 1615.

——Arts. 226, 31 and 13—Taxing statutes—Point of hardship—Consideration of.

The point whether a particular tax is burdensome and whether it would cause hardship to the tax-prayer cannot be decided by Courts, if the taxing statute is constitutional, and its legality cannot be questioned. (1962) 1 Andh W R 56 : ILR (1962) Andh Pra 853 : AIR 1962 Andh Pra 415 (416) (Pt B) (Pr 15) (DB).

——Art. 226 — Scope — Petition under, objecting to assessment of tax as irregular and illogical—Matter is of merits and not of jurisdiction — Petition is not maintainable. 1959 S C J 250, Rel. on. (1960) 11 S T C 782 (Andh Pra).

——Art. 226—Jurisdiction — Remand of case to give opportunity to party to adduce evidence.

When it is clear that the taxing authorities were not in breach of any duty cast on them, nor guilty of any contravention of law or form of procedure so that their order may be vitiated there is no justification for quashing the order. Nor does the writ jurisdiction extend to giving direction to the taxing authority by remanding a case to finalise the assessment after giving an opportunity to adduce evidence on the ground that the assessee had failed when the case was before the taxing authority to adduce evidence on the mistaken impression that the onus did not lie on him. (1959) 10 S T C 394 : AIR 1960 Andh Pra 198 (203) (Pt C) (Pr 14) (DB).

——Art. 226 — Application for writ on ground that demand of certain sum from applicant was not warranted by S. 23, Madras Estates (Abolition and Conversion into Ryotwari) Act — High Court cannot decide as to what exactly is the rent payable— (T. L. Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), Ss. 23 and 6 (2)). 1955 Andhra W R 902.

——Arts. 226 and 286 (2) — Powers of Court — Coercive provisions of law held to be illegal— Issue of writ against said provisions being utilised to peti-

tioner's prejudice — Sales Tax — Assam Sales Tax Act (XVII of 1947), S. 15 (1) (b) (as amended by Assam Act (IV of 1950)— (Sales Tax — Assam Sales Tax Rules (1947), R. 90 (inserted in 1941).)

The High Court while holding thatthe amendment to S. 15, Assam Sales Tax Act and R. 80 are illegal, can give relief to the petitioner by issue of an appropriate writ against the said coercive provisions being utilised to his prejudice by the taxing authorities where the petitioner has been compelled, by virtue of R. 80, to give a declaration that he has to purchase the tea for re-sale in the State, and there are not adequate materials to pronounce finally whether the transactions carried on by him come within the purview of the expression "in the course of inter-State trade or commerce." ILR (1956) 8 Assam 384: AIR 1956 Assam 177 (179, 180) (Pt B) (Pr 7) (DB).

[Reversed on another point in AIR 1962 SC 107.]

——Art. 226 — Wealth Tax Act (XXVII of 1957), S. 19—Tax levied on executors of deceased owner illegally — Wealth Tax Officer overruling objection — In revision Commissioner also rejecting objection —Objector's writ petition was opposed on ground that order was administrative order and it was not permissible for High Court to strike it as illegal in writ petition relying on 64 Bom L R 201.

Held, that High Court had jurisdiction to make the order as it was without jurisdiction. AIR 1961 S C 372, 58 Bom L R 184, Rel. (1965) Mah L J (Notes) 55.

——Arts. 226 and 265—Another remedy open against illegal levy of tax.

Where a tax is being illegally levied, the High Court should not deny relief under Art. 226, even though there may be another remedy open to the applicant. It is of the utmost importance that the High Court should intervene at the earliest stage to stop illegal exactions. The prayer for refusal of the amount already paid cannot, however, be granted in proceedings under Art. 226: AIR 1952 Raj 112, Distinguished. ILR (1953) 3 Raj 52 : 1953 Raj L W 335: AIR 1953 Raj 180 (181, 182) (Pt D) (Pr 8) (DB).

——Arts. 226 and 276 — Licence fee — Validity — Determination of—Question whether levy is reasonable — Cannot be gone into in writ petition.

The question whether the levy of a particular licence fee is valid or not depends not so much upon whether it is a tax intended for meeting the general revenues of the Municipality or for meeting the expenses of regulating the trade, but, provided the levy is reasonable it must be upheld if it has been validly prescribed under the powers conferred upon the Municipality by the Act after following the procedure prescibed for it. The question whether the levy is reasonable or not is one which cannot ordinarily be conveniently gone into in a writ application for it would mean embarking upon an inquiry into the receipts and expenses of the Municipality and its budget allocations. (1956) 9 Sau LR 159.

——Art. 226—Proceedings for recovery of sales-tax—Exports outside India as also other items assessed to sales-tax—Assessment on exports being illegal proceedings could be quashed and recovery of tax prohibited to the extent that they related to exports. See Sales-tax—Travancore-Cochin General Sales Tax Act (XI of 1125), S. 26. AIR 1953 Trav-Co 531.

60 (d). Refund.

——Art. 226—Amount realised in excess of those leviable under Act — High Court cannot direct refund under Art. 226.

It is not the function of High Court in exercising its jurisdiction under Art. 226 of the Constitution to direct refund of the amounts realised in excess of those which are leviable under the Act. ILR (1963) 1 Andh Pra 296.

——Art. 226—Relief—Writ Petition against Sales Tax Authority to forbear from proceeding further in the matter of assessment — Claim for refund of amounts paid by petitioner by way of sales tax not tenable in such proceedings. (1958) 9 S T C 295 (Andh Pra).

——Art. 226 — Interference under, to restore time barred claims — Refund of sales-tax subsequently declared ultra vires — Claim against Government recoverable by suit, but time barred — High Court will not direct refund under Art. 226.

Assessees who have paid sales tax to the Government which is subsequently declared to be ultra vires cannot invoke the jurisdiction of the High Court under Art. 226 if their claim against Government which is recoverable by suit, is time barred under the Limitation Act. Subject to limitation and equitable principles, the High Court can even under Art. 226 direct the State to refund the amounts which the petitioner before it can recover by suit. But the High Court cannot allow its powers under Art. 226 being exploited by a party whose claim against Government is time barred under the Limitation Act. AIR 1959 S C 135, Rel. on.

A writ or direction under Art. 226 is always equitable and the High Court will not grant it, as a matter of course simply because there had been an illegality committed. It will see whether for one thing, it is an appropriate remedy in the circumstances, and for another, a party who could bring a suit is seeking a writ simply to evade limitation or other bar. A petition under Art. 226 is not subject to limitation as such; but can if granted as a matter of course have the result of evading limitation; that should be carefully guarded against. 1963 Jab L J 79 : AIR 1963 Madh Pra 173 (174) (Prs 5, 7) (DB).

——Arts. 226 and 304 (a)—Illegal recovery of tax — Refund by writ petition is maintainable — Sales Tax —M. B. Sales Tax Act (30 of 1950), S. 17.

Where the imposition of sales tax upon the petitioners was found to be illegal being repugnant to Art. 304 (a), High Court can in a writ petition issue writ enjoining the Government to return the same: AIR 1958 M P 220, Foll. Case Law Ref. 1960 M P L J 601 : 1960 Jab L J 656 : 1960 M P C 804 : (1960) 11 S T C 511.

——Arts. 226 and 227 — Mandamus for refund of sales tax illegally levied — Competency—(Sales-Tax —Madras General Sales Tax Act (9 of 1939), S. 18-A).

A petition under Arts. 226 and 227 of the Constitution contained a prayer for the issue of an appropriate Writ, Order, etc., for refund of sales tax illegally exacted from the petitioner in respect of his works contracts turnover.

Held, (i) that the prayer for refund of tax collected on the basis of orders impugned as invalid necessarily involved a prayer for a declaration of the invalidity of the orders before the main prayer for refund could be granted. Secondly, the illegal orders of assessment could not be allowed to stand especially when the petition was not merely under Art. 226 but also under Art. 227 of the Constitution; (ii) that the High Court should not by the issue of a writ of mandamus immediately deprive the State of the liberty of raising such pleas as may be available to it under the law; (iii) that in the instant case the orders of assessment were clearly unsustainable and under S. 18-A of the Madras General Sales Tax Act it was doubtful whether he could take any other proceedings to get the orders set aside. While refusing, therefore, to issue a Writ of Mandamus it was necessary in the interest of justice to quash the assessment orders. AIR 1958 S C 560, Rel. on. A I R 1959 S C 135, Disting. and Expl.

88 Mys L J 384 : I L R (1959) Mys 351 : (1960) 11 S T C 312: AIR 1960 Mys 93 (94, 95) (Prs 6, 7) (DB).

——Art. 226—Tax paid under mistake of law—Refund to assessee — Sum payable as sales tax on earth work and carriage — Project authorities withholding payment to contractor under prohibitory order under O. 21, R. 52, Civil P. C. — Subsequent decision by Supreme Court holding such tax as not legally leviable — Contractor held entitled for refund. See Contract Act (1872), S. 72. **AIR 1962 Orissa 136 (DB).**

——Art. 226—Sales tax case — Sales tax under Bihar Sales Tax Act in respect of works contracts — Certificate issued by authorities for realisation of such tax—In the meantime, Supreme Court decision on liability to sales tax on works contracts delivered—Certificate authorities have no jurisdiction to enquire into petitioner's liability in view of the Supreme Court decision—Petitioner can claim refund under S. 15 of the Bihar Sales Tax Act of paid tax — In the event of refund being time barred, remedy lies in a civil suit—If tax unpaid, cancellation of certificate under S. 44 (1) (b) of Bihar and Orissa Public Demands Recovery Act has to be sought. AIR 1962 S C 1320, Foll. (Sales Tax — Bihar Sales Tax Act (19 of 1959), S. 15) (Bihar and Orissa Public Demands Recovery Act (4 of 1914), Ss. 441 (b), 10 and 62.) **1965 B L J R 314 (DB).**

——Art. 226—Relief against illegal taxation—Assessee not liable to sales tax and paying it by mistake — Application for refund dismissed — Application under Art. 226—Fact that assessee realised the tax from his customers and then paid it to the taxing authorities, is no ground for not interfering under Art. 226. **(1956) 7 S T C 336: AIR 1956 Punj 222 (223) (Pt A) (Pr 2).**

——Art. 226—Writ petition under—High Court can order refund of money illegally recovered by Government—Rajasthan Passengers and Goods Taxation Act (18 of 1959), Ss. 6 and 8.

In a petition under Art. 226 the High Courts have power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law. But the question whether refund should be ordered or not in a particular case is a matter of discretion which would depend on the facts and circumstances of each case and it is neither easy nor desirable to lay down any universal rule in this connection. Such relief should however not be allowed where it has been asked for after unreasonable delay. A I R 1960 S C 1006, Foll.

Applying the above principle held that an order as to refund of the penalties paid to or recovered by the State should be made in these cases. **1965 Raj L W 118 : ILR (1965) 15 Raj 285.**

——Art. 226—Delay in making petition.

Where the levy of taxes is without any authority of law, Art. 265 makes the levy or collection of such taxes absolutely unwarranted after the Constitution came into force and the High Court is bound to take notice of the illegal exaction, and give the necessary relief under Art. 226 to the petitioners to which they are entitled. The fact that the petition is made after great delay does not disentitle the petitioner to a relief from the High Court in the exercise of its extraordinary jurisdiction. **I L R (1953) 3 Raj 664 : 1954 Raj L W 443 : A I R 1954 Raj 162 (165, 166) (Pt B) (Pr 12) (DB).**

60(e). Constitutionality.

●—— Art. 226—Sales Tax—Bengal Finance (Sales Tax) Act (1941) as amended by Bengal Finance (Sales Tax) (Delhi Amendment) Act (17 of 1956), S. 8-A, as in force in Delhi — Powers conferred on Commissioner are not unlimited and unrestricted — Provision for demanding security is not arbitrary or unreasonable restriction — Amount of security — Power to demand is not constitutionally invalid. See Sales Tax—Bengal Finance (Sales Tax) Act (1941) as amended by Bengal Finance (Sales Tax) (Delhi Amendment) Act (17 of 1956), S. 8 A. **(1962) 1 S C R 283.**

——Arts. 226, 19 and 265 — Sales tax imposed illegally—It infringes fundamental right—It also violates Art. 265.

There is an infringement of the fundamental right of an assessee to carry on his trade or business when sales tax is imposed illegally in an arbitrary and capricious fashion. Moreover, in such cases, Art. 265 of the Constitution is also violated, inasmuch as there is no collection of tax by the authority of law when assessments are made in an arbitrary fashion. **1965 Ker L T 803 : I L R (1965) 2 Ker 240 : 1965 Ker L J 866 : AIR 1966 Ker 55 (59) (Pt D) (Pr 21).**

— Arts. 226 and 265 — Relief against illegal taxation—Assessment of double sales tax on same transaction— (Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 3).

The petitioners were wholesale consignees as also wholesale dealers in piecegoods. As wholesale consignees they obtained goods from mills at Ahmedabad during the year 1949-50 for sale to dealers according to their allotments. Certain goods indented for by them were sold directly to wholesalers, i.e., wholesalers clearing the goods allotted to them by the Provincial Textile Commissioner; but goods of the value of about 11 lakhs of rupees were not cleared by the wholesalers with the result that the petitioners had to sell them to retailers. The total turnover of the petitioners for the year was a sum of Rs. 33 lakhs odd, and out of this Rs. 11 lakhs odd represented sales to the retailers. The Deputy Commercial Tax Officer not only levied assessment on the footing of a sale to the extent of Rs. 33 lakhs odd by the petitioners but held that in respect of the sale of goods to the extent of Rs. 11 lakhs odd there was first a notional sale to wholesalers and then a further sale by the petitioners themselves to the retailers with the result that the tax due upon Rs. 11 lakhs odd was duplicated. The matter was taken up by the petitioners to the Commercial Tax Officer, and when they got no relief, they applied to the Board of Revenue in revision and here also their petition was dismissed. They now filed a petition for a writ of certiorari to quash the assessment.

Held, on the facts that there being only one sale involved in the transaction of sale by the petitioners to the retailers and not two sales, one notional and another actual, as construed by the Deputy Commercial Tax Officer the assessment in question could not be sustained on the merits and was illegal.

Held, further, that even if a limited construction of the scope of Art. 226 of the Constitution were to be adopted, the petitioners were entitled to relief under Art. 226 as the petition really involved the ultra vires nature of the tax and further the petitioner's right to property was affected by the illegal imposition of sale tax. The petitioners having exhausted all the remedies which were available to them the General Sales Tax Act, as it then stood, there could be no technical objection to the High Court interfering to quash the assessment. A I R 1954 S C 403, Applied; A I R 1947 P C 78, Disting. **1955 Mad W N 59 : (1955) 1 Mad L J 227 : (1955) 6 S T C 200 : 68 Mad W N 92 : AIR 1955 Mad 363 (364, 365) (Prs 4, 5) (DB).**

61. Industrial Tribunal.

See Notes 5 and 146.

62. Informal committee, writ against.

See Note 5.

63 **Interim relief.**

● ——Art. 226—Right to relief—Income-tax Officer issuing notice on petitioner under S. 34, Income-tax Act — Petition under Art. 226 for issue of writ of certiorari and prohibition — High Court permitting Income tax Officer to assess petitioner, during pendency of petition under Art. 226, on the distinct understanding that the orders would be without prejudice to the contentions of the parties on the several questions raised in the petition and without prejudice to the orders that may ultimately be passed by the Court — Fact that assessment orders have been made does not affect assessee's right to obtain relief under Art 226. Calcutta Discount Co., Ltd. v. Income-tax Officer, Calcutta, **(1961) 2 S C R 241 : (1963) 1 S C J 741 : (1961) 1 S C A 661 : (1961) 41 I T R 191 : AIR 1961 S C 372 (382) (Pt E) (Pr 39).**

● ——Arts. 226 and 132 — **"For any other purpose" —Meaning of — Interim relief without decision on rights — Final order.**

The issuing of writs or directions by the High Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Art. 226 have to be read in the context of what preceeds the same. Therefore the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article.

The Government of Orissa having passed an order cancelling the temporary permits and having directed the respondents to remove their assets appertaining to the mines within a fortnight, the respondents filed an application for a writ of mandamus. The High Court declined to investigate and pronounce on the rights of the parties and expressly kept the determination thereof in abeyance in the suit proposed to be filed by the respondents but held that at the moment the respondents had no alternative legal remedy, equally convenient, beneficial and effectual because the respondents could not file a suit till after the expiry of the period of sixty days required for the purpose under S. 80 of the Civil P. C., and unless protected by the Court in the meanwhile the respondents would undergo irreparable and irremediable loss of possession of the mining leases involving a huge waste of labour, machinery and other resources, of equipments of immense value hardly capable of being remedied by payments of money as compensation. The High Court therefore passed an order that till three months from the day of the order or one week after the institution of their contemplated suit, whichever was earlier, the Government of State of Orissa should refrain from disturbing the petitioners' possession over the mining areas in question and that thereafter the order would cease to have effect.

Held, that (1) with the passing of the order by the High Court the applications of the respondents were completely disposed of and as the directions embodied the final order passed by the High Court an appeal against the order to the Supreme Court was maintainable. The fact that the operation of the order was limited to three months or a week after the filing of the intended suit did not prevent the order being final.

(2) Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application. The directions had been given here only to circumvent the provisions of S. 80 of the Civil P. C., and that was not within the scope of Art. 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a Civil Suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Art. 226 of the Constitution. The language of Art. 226 does not permit such an action : ILR (1951) Cut 398, **Reversed.** State of Orissa v. Madan Gopal, **1951-2 Mad L J 645 : 1952 Mad W N 13 : 1951 S C J 764: 1952-18 Cut L T 45 : ILR (1951) Cut 637 : 1952 S C R 28 : AIR 1952 S C 12 (13, 14) (Prs 3, 5, 6).**

——**Art. 226** — Interim relief — Vacation of interim order on dismissal of writ petition cannot have retrospective effect — Judgment and decree of Broome, J., in Civil Misc. Writ. No 1506 of 1959, Dated 13-8-1963. (All.) **Reversed. 1964 All L J 1073: AIR 1965 All 370 (372) (Pt C) (Pr 6) (DB).**

——**Art. 226 — Appeal — Powers of High Court in — Rules framed by High Court, R. 26 — Scope of R. 26—High Court has power to give interim relief such as issue of temporary injunction pending appeal.**

The wordings of R. 26 of the Rules framed by the High Court relating to application under Art. 226 of the Constitution, make it quite clear that apart from the power of issuing a Rule nisi or summarily rejecting the application, the trial Court is also given power of making such order upon the application as it thinks fit unlike R. 9 of O. 35 of the Supreme Court Rules which limits the power of the Supreme Court in application under Art. 32 of the Constitution, to grant interim relief only after it decides to issue a Rule nisi in such application. Rule 26 of the Rules of the High Court confers a wider power or discretion upon the trial Court. The trial Court can make any order as it thinks fit in the ends of justice, in an application under Art. 226 of the Constitution, and if an appeal is nothing but a continuance of the original proceeding there is no reason why the same wide power as is vested in the trial Court cannot be exercised by the appellate Court. Pending therefore, determination of the rights of the parties in a proceeding under Art. 226 of the Constitution, the High Court has power to make a suitable interim order for maintaining the status quo ante Thus, pending disposal of the appeal from an order dismissing in limine an application to issue a Rule nisi under Art. 226 the appellant can be granted any interim relief such as a temporary injunction on the ground that if such interim relief is not granted the appeal will become infructuous. **AIR 1963 Cal 152 (156, 157) (Pt A) (Prs 11, 13, 15) (DB).**

——**Art. 226** — Interim injunction — Balance of convenience — Writ petition against grant of licence for cinema—Grant of injunction during pendency of writ rule amounting to some financial loss to licensee —Refusal of injunction in case of ultimate success of writ rule amounting to permitting contravention of provisions of West Bengal Cinemas (Regulation) Act (39 of 1954) — If petitioner succeeded ultimately in writ rule and if in the meantime temporary licence was granted under the Act petitioner suffering irreparable injury not measurable in money—Balance of convenience held lay in favour of petitioner and not in favour of licensees. **64 Cal W N 861 : ILR (1961) 1 Cal 317 : AIR 1960 Cal 582 (589) (Pt E) (Pr 32) (DB).**

——Art. 226 — Civil P. C. (1908), S. 107 — Discretionary Order—Discretion may be interfered with in exceptional cases — Interim injunction in writ proceeding — See Civil P. C. (1908), S. 107. **AIR 1960 Cal 582.**

——Art 226 — Interim relief — Power to grant injunction.

When the Court has declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it cannot, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Art. 226 of the Constitution. The language of Art. 226 does not permit such an action : AIR 1952 S C 12 : (1951) 2 Mad L J 645 : 1951 S C J 764, Rel. on. 1957 Ker L T 402 : AIR 1957 Ker 113 (114) (Pt B) (Pr 5).

——Art. 226 — Scope.

An application for getting an interim relief independent of any adjudication of the right to that relief as a kind of step in-aid to enure during the period of notice under S. 80 of the Civil P. C., is not maintainable in law : AIR 1952 S C 12, Applied. AIR 1953 Trav-Co 557 (558) (Pr 5).

——Art. 226—Duty of respondent.

When an application is made for a writ or directions for prohibiting anything being done, and the Court admits the petition and issues notice the respondent should not after getting notice do the very thing sought to be prevented. There need not be any separate order of injunction restraining the doing of it. In cases of urgency, the order of the Court should be taken for the duration of the proceedings or a prayer made for expeditious disposal of the proceedings themselves.

If a party, knowing that his opponent has either approached the Court or is taking steps to approach it for a certain specific relief, does anything to make the grant of the relief, by way of prevention, ineffective, the Court has always jurisdiction to pass orders even in ordinary cases in a mandatory form and to direct restoration of the status quo ante in the manner and to the extent possible. It will be an "a fortiori" case when the relief claimed is for grant of any of the writs or directions contemplated by Art. 226 of the Constitution of India. AIR 1951 Trav-Co 226 (2), Foll. I L R (1952) Trav Co 960 : AIR 1953 Trav-Co 146 (158) (Pt H) (Pr 28) (DB).

64. Interlocutory orders.

See Note 88.

65. Joint application.

See Note 11.

66. Judicial and quasi-judicial authorities.

See Notes 147 and 168.

67. Judicial proceedings, writ in respect of.

(a) Jurisdiction of High Court.

See Notes 68 and 69.

(b) Criminal Court proceedings.

(c) Court or tribunal not duly constituted.

67. Judicial proceedings, writ in respect of.

——Art. 226—Decision of Judge of High Court cannot be challenged in writ petition. **AIR 1965 Cal 3 (10, 11) (Pt B) (Pr 10).**

—Art. 226 — Proceedings under S. 4 of Agency Tracts Interest and Land Transfer Act are judicial and writ can issue—(Agency Tracts Interest and Land Transfer Act (11 of 1917), S. 4). **AIR 1955 N U C (Orissa) 1122.**

67 (a). Jurisdiction of High Court.

See Notes 68 and 69.

——Art. 226—Writ of certiorari—Nature of jurisdiction of the High Court — U. P. Consolidation of Holdings Act (V of 1954), S. 12.

In exercising jurisdiction under Art. 226 of the Constitution the High Court does not act as a Court of appeal but only sees that the inferior Court has acted within the limits of its jurisdiction and has not refused to exercise jurisdiction vested in it.

Thus, where the Consolidation Officer refused to consider an application under S. 5 of the Limitation Act, for extending the period of limitation for filing objections under S. 12 of U. P. Consolidation of Holdings Act, solely on the ground that it was not filed along with the statement but sometime later and in appeal the settlement officer after going into the merits held that it was not a fit case, to extend the period of limitation.

Held, that the order of the Settlement Officer could not be quashed by certiorari because it was not patently illegal. **1962 All W R (H C) 114 : 1962 All L J 145.**

——Art 226 — U. P. Panchayat Raj Act (26 of 1947), S. 85, Partial cancellation of Panchayat Adalat's Order—Magistrate has no such power under S. 85—There is no such restriction on powers of High Court under Art. 226. **AIR 1955 N U C (All) 1736.**

67 (b). Criminal Court proceedings.

——Art. 226 — Scope — Prosecution by Magistrate having jurisdiction—No proceedings under Art. 226 can be taken.

A person cannot claim that he is immune from any prosecution. Where a person is being prosecuted for offence under S. 366, Penal Code by a Court having jurisdiction, the question whether he has committed the offence, being a question of fact, cannot be investigated in proceedings under Art. 226. If and when proceedings in respect of any offence are instituted against him he will have a right to defend himself, take the plea of want of jurisdiction and avail himself of the remedy provided by the Cr. P. Code itself. **Madh B L R 1954 Cr 160 : 1955 Cr L J 276 : Madh B L J 1954 H C R 1070 : A I R 1955 M B 20 (21) (Pt B) (Pr 4) (DB).**

——Art 226—Criminal P. C. (1898), S. 107—Proceedings under S. 107 — Magistrate embarking upon enquiry to adjudicate upon questions of title or possession — Proceedings not covered by S. 107 — Order quashed. See Criminal P. C. (1898), S. 107. **1953 Cr L J 1843 : I L R (1953) 3 Raj 189 : AIR 1953 Raj 202 (DB).**

67 (c). Court or tribunal not duly constituted.

● ——Art. 226 — Defective constitution of Bench — —Objection does not go to root of jurisdiction—Point not open in writ petition See Panchayats—U. P. Panchayat Raj Act (26 of 1947), S. 49 (2). **1955 Cri L J 296 : AIR 1955 All 113 (FB).**

——Arts. 226 and 227—Power of High Court—(Panchayats — Bihar Gram Panchayat Raj Act (VII of 1948), Ss. 70 and 73).

The High Court will not compel the trial Court necessarily to divest itself of jurisdiction on the view that the facts make out an offence of a graver nature not triable by the Court in seizin of the case, unless the offence disclosed is necessarily a distinct one. Where, however, the facts on behalf of the prosecution are such that the offence may fall under a section triable by the Court on a reasonable view of the matter, the High Court will not order that Court to be divested of jurisdiction.

Where the accused, who were on trial before a Gram Cutcherry on complaint that they stealthily entered the complainant's room and committed theft, applied under Ss. 70 and 73 of Bihar Gram Panchayat Raj Act and on rejection of that application, moved the High Court under Arts. 226 and 227 of the Constitution for quashing the trial and directing transfer of the case, the application was held not maintainable. **1959 Cr L J 1099 : AIR 1959 Pat 423 (424, 425) (Pr 2).**

68. Jurisdiction and power conferred by Art. 226.

See also Notes 69 and 79.

——Art. 226—Jurisdiction of Judicial Commissioner's Court, Bhopal to entertain and decide application under Art. 226.

The Judicial Commissioner's Court, Bhopal declared as a High Court, under the Judicial Commissioners' Courts (Declaration as High Courts) Act, 1950, has jurisdiction to entertain hear and decide an application under Art. 226, Constitution of India. AIR 1950 M B 60, Dissent; Misc. Cases Nos. 78 & 79 of 1950-51, D/- 4-10-50 (Bhopal), Approved. **1952 Cri L J 683 : AIR 1952 Bhopal 6 (8) (Pt A) (Pr 7).**

——Art. 226—Jurisdiction—Judicial Commissioner's Court of Bhopal — Power to issue writs, orders and directions—Judicial Commissioner's Court (Declaration as High Courts) Act, Ss. 5 and 6.

By reason of the enactment of the Judicial Commissioners' Courts (Declaration as High Courts) Act, 1950, the Judicial Commissioner's Court of Bhopal is on the same level as a High Court and has jurisdiction to issue writs or directions contemplated by Art. 226 of the Constitution. The combined effect of Ss. 5 and 6 of the Act is that so far as the issue of the high prerogative writs or directions or orders mentioned in Art. 226 is concerned a Judicial Commissioner's Court in a Part C State has been treated on the same level as any other High Court. **1952 Cr L J 660 : AIR 1952 Bhop 1 (4, 5) (Pt C) (Pr 18).**

69. Jurisdiction of High Court.

(a) Appellate or revisional.

(b) Nature of.

See Note 79.

(c) Under Art. 226.

(d) Visitorial and supervisory.

69. Jurisdiction of High Court.

● **——Art. 226 — Scope — Nature and effect of jurisdiction under.** See Ibid, Art. 225. **AIR 1953 Cal 433 (SB).**

——Art. 226—Nature of Art. 226.

Art. 226 is of a remedial nature; it does not relate to procedure, but confers on the High Court powers to interfere in certain cases. Case law referred. **ILR (1955) Hyd 370 : AIR 1955 Hyd 168 (170) (Pt B) (Pr 8) (DB).**

——Art. 226 — Jurisdiction under — Scope of. See Madras Estates Land (Reduction of Rent) Act (30 of 1910). **ILR (1953) Mad 47 : (1952) 1 M L J 206 : AIR 1952 Mad 589 (DB).**

——Art. 226 — Power of High Court under Article. See Bihar Bakasht Disputes Settlement Act (13 of 1957), S. 3. **1956 B L J R 346.**

——Arts. 32 (3), 225, 226 — Powers of High Court under Art. 226.

It cannot be said that Art. 226 is to be read with and subject to Art. 225. The subject of Art. 225 is jurisdiction of existing High Courts, and that of Art. 226, powers of High Courts to issue certain writs. The power of High Courts to issue writs under Art. 226 is not in any way governed by the provisions of Art. 32 (3), which in any case, does not even refer specifically to High Court, but seems to indicate that Parliament may give powers to issue writs, orders and directions even to subordinate Courts. Power and jurisdiction are not two quite separate matters but merely different aspect of the same thing. Hence in Art. 226 the power given to the High Courts to issue writs and similar orders also includes jurisdiction. Majority view in A I R 1950 Madh B 60, Diss. from. **ILR (1951) Punj 438 : 53 Pun L R 391 : AIR 1952 Punj 70 (72, 73) (Pt A) (Prs 3, 4) (DB).**

69 (a). Appellate or revisional.

● **——Arts. 226 and 227—Findings in departmental enquiry—High Court has no power to re-appreciate evidence.**

In proceedings under Arts. 226 and 227 the High Court cannot sit in appeal over the findings recorded by a competent tribunal in a departmental enquiry so that if the High Court has purported to re-appreciate the evidence for itself that would be outside its jurisdiction. However, if it is shown that the impugned findings recorded by the Administrative Tribunal are not supported by any evidence the High Court would be justified in setting aside the said findings. ILR (1959) Cut 425, Reversed. State of Orissa v. Murlidhar Jena, **AIR 1963 S C 404 (405, 408) (Pt A) (Prs 3, 14, 15).**

——Art. 226—Powers of the High Court—Objection to scheme of nationalisation of road transport under S. 68-D, of the Motor Vehicles Act (1939) — Objection on public grounds raised under allegation of certain facts — Objection specifically dealt with by the officer and rejected—High Court; while exercising writ jurisdiction does not sit in judgment over the officer and cannot go into the question whether the conclusion arrived at by bim was or was not correct —High Court cannot arrogate to itself the function of an appellate Court in such matter. ILR (1963) 2 **All 448 : AIR 1964 All 329 (336) (Pt D) (Pr 15) (DB).**

——Art. 226—Jurisdiction of High Court.

High Courts do not usurp the function and power of a Court of Appeal while entertaining petitions under Art. 226 of the Constitution of India. They merely exercise jurisdiction to correct any error in the exercise of jurisdiction by the subordinate authority. They, therefore, merely consider whether the order which is being challenged was within the jurisdiction of the subordinate authority or that authority had exceeded the jurisdiction or committed an error in the exercise of jurisdiction which is apparent on the face of the record. **AIR 1960 All 247 (250) (Pt C) (Pr 15).**

——Art. 226 — Jurisdiction of High Court — Extent of.

In a writ petition, the High Court is not sitting as a Court of appeal over the decision of the Tribunal and can interfere with that decision only if there is any patent or manifest error in it. **AIR 1957 All 719 (722) (Pt B) (Pr 13) (DB).**

——Art. 226—Nature of proceedings.

In a writ petition under Art. 226, the High Court does not sit in appeal over the order of the competent officer under the evacuee law sought to be quashed and has no power to set aside his findings of fact. **1957 All WR (HC) 573 : 1957 All L J 509 : AIR 1957 All 561 (574) (Pt N) (Pr 27) (DB).**

——Art. 226—Questions of fact.

In a petition under Art. 226 of the Constitution for the issue of a certiorari the High Court does not function as a Court of Appeal. In a petition filed by a public servant against the punishment (of compulsory retirement) imposed upon him, the High Court cannot go into questions of fact or review the evidence : AIR 1960 Andh Pra 15, Foll.; (1952) 1 K B 338, Rel. on. (1960) 2 Lab L J 285 : AIR 1961 Andh Pra 289 (292) (Pt B) (Prs 9, 11).

——Art. 226—Powers of High Court.

In a petition under Art. 226 where the High Court is asked to quash the orders of quasi-judicial authority like an education authority, the High Court does not sit as a Court of Appeal reviewing the evidence and the probabilities of the case. The scope of the High Court's interference is limited to cases where that authority has clearly exceeded its jurisdiction or has committed an error which is patent on the record or has done something which is manifestly opposed to the principles of natural justice. The High Court will not substitute its decision on the ground that the basis upon which the authority proceeded, is not a correct or proper basis. The High Court ought to be slow to interfere with the discretion and the autonomy of statutory bodies unless it is established that the decision of the authorities is capricious, arbitrary or influenced by extraneous consideration and oblique motives. AIR 1961 Andh Pra 46 (49, 50) (Pt B) (Prs 13, 15, 16).

——Art. 226 — Certiorari, writ of — Powers of High Court — Nature of — Circumstances in which High Court will interfere with decision of subordinate tribunals.

In an application under Art. 226 the High Court does not exercise the powers of a Court of Appeal. It is not its function to review the facts and the evidence and to investigate whether the conclusions to which the tribunal had come are sustained by cogent evidence. The jurisdiction of the High Court is confined to cases where the subordinate tribunals exceed their jurisdiction, or act without legal authority or perpetrate an error of law patent on the record or violate some principles of natural justice. Where none of these circumstances is present, the High Court will not interfere with the award, which the tribunal had made after a fair survey of the material placed before it. 1960 Lab L J 604 (AP).

——Art. 226—Jurisdiction of High Court—If Court of appeal—Error of law.

It is true that the High Court, while exercising its writ jurisdiction, does not act as a Court of appeal. It is equally true that a writ will issue only in aid of justice. Certiorari does not issue as a matter of course. If the High Court is satisfied that the order that it sought to be removed has not resulted in any injustice to any of the parties, it would be very slow to interfere with it. It is not every error of law that should be a ground for the issue of a writ of certiorari. AIR 1959 Andh Pra 487 (492) (Pt G) (Pr 24) (DB).

——Art. 226 — Powers of High Court — Decision of District Judge under S. 51, Madras District Municipalities Act—Interference with—High Court cannot assume powers of an appellate Court and decide whether the evidence is sufficient in quantity to support a finding of fact arrived at by the District Judge—(Municipalities — Madras District Municipalities Act (5 of 1920), S. 51). 1955 Andh WR 972 : ILR (1956) Andh 127: AIR 1957 Andh Pra 900 (903) (Pt C) (Pr 15) (DB).

——Art. 226 — Nature and scope of High Court's power.

Howsoever wide the powers of High Court under Art. 226, may be, it should not constitute itself as an appellate Court and sit on judgment over the decision given by the Regional or State Transport Authority. It has only to see whether the Authorities concerned have acted in accordance with law and according to the principles of natural justice and that there is no want of jurisdiction in those bodies in making the orders impugned. The High Court cannot therefore interfere with the merits of their orders or the reasons given by them in refusing to grant permits to the petitioners. ILR (1955) 7 Assam 23 : AIR 1954 Assam 219 (221, 222) (Pt B) (Pr 4) (DB).

——Art. 226 — Bombay Tenancy and Agricultural Lands (Vidarbha Region) (Amendment) Act (44 of 1963), S. 6 — The jurisdiction that the High Court exercises or is called upon to exercise when its jurisdiction under Art. 226 or 227 is invoked, is not an appellate jurisdiction. It is an extra-ordinary jurisdiction, and if powers under Art. 227 are invoked, it has also the superintending jurisdiction. See Tenancy Laws — Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act (99 of 1958), S. 38. AIR 1965 Bom 76 (DB).

——Art. 226—Power of High Court.

The High Court has, in an application under Art. 226, Constitution of India, no jurisdiction to hear the application as if it were an appeal. 59 Bom L R 413 : (1957) 2 Lab L J 37 : (1958-59) 14 F J R 114 : ILR (1958) Bom 49 : AIR 1957 Bom 188 (192, 193) (Pt E) (Pr 11) (DB).

——Arts. 226, 311 and 313—High Court exercising jurisdiction under Art. 226—Does not sit as a Court of appeal — Power to go behind order impeached—Violation of rules made by Government—Accrual of cause of action—Civil Services (Classification, Control and Appeal) Rules.)

If there is no error patent on the face of the order the High Court is not entitled to go behind it and look into the departmental enquiry and weigh the evidence and say that the judgment arrived at by the officer was wrong. As long as there is no violation of a constitutional safeguard, but merely violation of Rules made by Government, no cause of action accrues to a petitioner and that would be so especially where a party comes before the Court for a writ of certiorari. AIR 1955 Mad 182, Dissented from. AIR 1956 Bom 483 (485 to 488) (Pt A) (Prs 6, 7, 8).

——Art. 226—Jurisdiction under, is supervisory and not appellate—Tribunal committing errors in appreciation of evidence and in drawing inferences therefrom — Writ — Court cannot correct those errors which are not errors apparent on face of record.

The Court issuing a Writ of Certiorari acts in exercise of supervisory and not appellate jurisdiction. As a consequence of this the Court will not review findings of fact arrived at by the inferior Court or Tribunal, even though they be erroneous unless the error is a manifest error apparent on the face of the proceedings. While a finding based on no evidence is an error of law apparent on the face of the record, errors in appreciation of documentary evidence or in drawing inferences are not such errors and cannot be corrected by a Court acting under Art. 226. AIR 1955 S C 233 and AIR 1958 S C 398 and AIR 1960 S C 1168 and AIR 1964 S C 477, Foll. Therefore, the High Court while exercising jurisdiction under Art. 226, would exceed its powers in pronouncing upon the merits of a controversy which the Legislature has thought fit to leave it to the tribunal to decide if it corrects what are mainly errors in appreciation of oral and documentary evidence and errors in drawing inferences of a tribunal. Order of Banerjee, J. in (1964) 2 Lab L J 172 (Cal), Reversed. AIR 1966 Cal 31 (39) (Pt A) (Prs 44, 46, 48) (DB).

——Art. 226 — High Court does not sit in appeal over decision of tribunal in dealing with application under Art. 226 — Powers of Tribunal cannot be taken away in application under Article.

The High Court in dealing with an application under Art. 226 of the Constitution does not sit in appeal over the decision of the Tribunal which is impugned, nor is it for the High Court to appreciate evidence on which the Tribunal acted in arriving at the decision. The correctness of the decision of the Tribunal cannot be rectified merely on the ground that there is an error of fact on the records or that the decision has been vitiated by an incorrect appreciation of the evidence by the Tribunal. The Sea Customs Act has imposed a duty on the Customs authorities to deal with question of misdeclaration, confiscation of goods and impositions of fine by way of penalty for violation of the provisions of the Statute. It is for the Customs authority to adjudicate on such matters and this Court does not sit in appeal over the decision of the Tribunal. The Court cannot substitute its own decision for that of the Tribunal, unless there is an error of law apparent on the face of the records or there has been a violation of the principles of natural justice. But even if the decision is vitiated by an error of law on the face of the record or by the violation of the principles of natural justice, the Tribunal's power and the duty to adjudicate, cannot be taken away by the High Court in an application under Art. 226 of the Constitution. AIR 1954 S C 440; AIR 1952 S C 192; AIR 1961 S C 264; AIR 1964 S C 477; AIR 1964 S C 1519 and AIR 1963 S C 405, Rel. on. ('65) 69 Cal W N 439.

——Art. 226—Writ of certiorari — Jurisdiction of High Court to issue—Nature of.

The Court issuing a Writ of Certiorari acts in exercise of a supervisory and not appellate jurisdiction. Consequently, the High Court will not review findings of fact reached by the inferior Court or Tribunal even if they be erroneous. The principle is, that a Court or Tribunal which has jurisdiction over a subject-matter has jurisdiction to decide wrongly as well as rightly and when the Legislature has not thought fit to confer upon any Court a right of appeal against that decision, the Superior Court exercising only a supervisory jurisdiction will not be justified in rehearing the case on the evidence and substitute its own findings in certiorari proceedings. AIR 1964 Cal 486 (489, 490) (Pt B) (Prs 15, 18) (DB).

——Art. 226—Writ of certiorari—Extent of exercise of jurisdiction—High Court does not sit as Court of Appeal.

The scope of review of certiorari has its own limitations. In the name of such review the appellant in a writ appeal cannot ask for and obtain reappraisal of the evidence. The High Court does not sit as a Court of Appeal from the decision of the officer or Tribunal. AIR 1963 Cal 26 (36) (Pt E) (Pr 45) (DB).

——Art. 226 — Writ Petition — Writ Court is not Court of appeal — Cannot go into truth or falsity of charges—Extent of jurisdiction.

Writ Court is not a Court of appeal and does not go into the truth or falsity of charges, unless of course the findings on the charges are based on no evidence whatsoever or are highly perverse. (1963) 1 Lab L J 708 : (1963) 6 Fac L R 26 (Cal).

——Art. 226—Petition under — Court does not function as Court of Appeal nor can enquire into sufficiency of evidence for particular findings by lower Court. (1951) 1 K B 711, Rel. on. AIR 1955 N U C (Cal) 401.

——Art. 226—Petition under—Court does not function as Court of Appeal—Nor can enquire into sufficiency of evidence for particular findings by lower Court. (1951) 1 K B 711, Rel. on. ('53) 57 Cal W N 157 : AIR 1955 N U C (Cal) 40.

——Art 226 — Proceedings for prerogative writs—Extent of Court's powers.

In proceedings for Writs of Mandamus or Certiorari the Court does not constitute itself a Court of appeal and it cannot go into the merits of the conclusion of the inferior Court or Tribunal. Where therefore the lower Court or Tribunal has not acted in an arbitrary manner or has not exceeded its jurisdiction, the High Court cannot interfere with its decision on the ground that it is erroneous on the merits. 87 Cal L J 391 : 1953 Cri L J 1745 : AIR 1953 Cal 753 (754) (Pt A) (Pr 14).

——Art. 226—Certiorari—Issue of writ—Jurisdiction of High Court.

The High Court while exercising its jurisdiction under Art. 226 of the Constitution does not function as a Court of appeal. It is only when the order of the inferior Tribunal or body is a Speaking Order and there is an error of law on the face of the record that the High Court has power to quash it by certiorari. 1952 Cr L J 1651 : AIR 1952 Cal 789 (794, 795) (Pt D) (Prs 29, 30, 31, 34, 35).

——Arts 226 and 227 — High Court's power — Its extent.

The High Court in exercising its powers under Arts. 226 and 227 of the Constitution is not entitled to sit in appeal over the decision of an Industrial Tribunal. It is not entitled to act as if it had appellate jurisdiction in the matter. It has to see whether there is any illegal exercise of jurisdiction or whether there is any error of law apparent on the face of the record. An error of fact, however apparent, is not one which calls for interference at the hands of the High Court. Where the finding of a Tribunal is not supported by any evidence then it could be regarded as an error of law and if such error of law is apparent on the face of the record the High Court would have a right to interfere in the exercise of the powers conferred upon it. (1963) 2 Lab L J 527 : (1963) 4 Guj L R 622 : AIR 1963 Guj 283 (290) (Pt D) (Pr 13) (DB).

——Art. 226 — Powers of High Court — High Court cannot convert itself into Court of appeal. ILR (1956) Hyd 630 : AIR 1957 Hyd 19 (21) (Pt C) (Pr 7) (DB).

——Art. 226 — High Court does not act as Court of appeal.

The Writs under Art. 226 can only be issued in very grave cases. If any irregularity in procedure is relied upon it must be shown that it affects the jurisdiction or results in manifest, and grave injustice. But the powers do not enable the Court to constitute itself a Court of appeal, and examine the correctness of the decision or act challenged.

Note.—It was held in this case that in conducting an enquiry against the subedar (the dismissed applicant in the case) under the Public Servants (Departmental Enquiry) Regulation (XI of 1358F), the Regulations were not infringed and the Board of Departmental Enquiry did not exceed the jurisdiction, or act contrary to the principles of natural justice. ILR (1955) Hyd 370 : AIR 1955 Hyd 168 (170, 171) (Pt D) (Prs 9, 14) (DB).

——Art. 226—Nature and extent of jurisdiction.

The jurisdiction exercised by High Court under Art. 226 is both of revisory and superintending nature—It is not appellate and it is doubtful whether it has power to remand the proceeding—Nature and scope of proceedings distinguished from that of

appeal and revision: Case law referred. I L R (1953) Hyd 191 : A I R 1953 Hyd 209 (211, 212) (Pt D) (Pr 7).

——Arts. 226 and 311 (2) — Departmental inquiry against Government servant—Order made in—Writ petition against order — Nature of proceedings in Court.

Proceedings in Courts canvassing the legality of disciplinary actions of administrative tribunals should not be treated as appeals from or rehearings of trials held by the disciplinary authorities, rather than as invocation of the limited jurisdiction of the Courts to restrain the abuse of quasi-judicial proceedings, where the sole issue is whether the result, be it right or wrong, was arrived at with due regard to the principles of natural justice. I L R (1961) 1 Ker 153: 1961 Ker L J 315 : (1961) 2 Lab L J 50 : 1961 Ker L T 486 : A I R 1962 Ker 43 (45) (Pt B) (Pr 6) (DB).

——Art. 226 — High Court does not act as appellate Court. 1956 M B L J 1284 : A I R 1957 Madh B 15 (17) (Pt B) (Pr 15) (DB).

[Reversed on another point in A I R 1981 S C 1070.]

——Art. 226 — M. B. Panchayat Act (53 of 1949), S. 20—Writ of certiorari — High Court is not Court of Appeal.

The Government has under S. 20, Panchayat Act, jurisdiction to decide the question whether there was sufficient reason for the dismissal of the Panchayat. The High Court cannot convert itself into a Court of Appeal and enter into the question of sufficiency or adequacy of the ground for the dissolution of the body. M B L J 1955 H C R 569 : A I R 1955 Madh B 173 (176) (Pt E) (Pr 8) DB).

——Art. 226—Petition under—Powers of High Court —Remand — High Court not an appellate Court. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3) (i). 1959 M P C 140 : 1959 M P L J 440 : 1959 Jab L J 525.

——Art. 226—Certiorari — Power of High Court to take notice of facts not appearing on face of record —Industrial dispute — Delay on part of workers or union to raise dispute — Employer raising specific plea of laches —Labour Court not dealing with same —Power of Court to consider question of laches on facts outside record and to grant relief irrespective of laches and to direct payment of back pay up to time of raising of dispute — Industrial dispute— Laches — Delay on part of workers or union to raise dispute — Relevancy in considering relief to be granted —Function of Labour Court.

The High Court in certiorari proceedings cannot take notice of any fact which does not appear on the face of the order sought to be quashed. Where in an Award of the Labour Court under the Industrial Disputes Act there is no specific treatment of a question of laches on the part of the workers in raising a dispute, though the employers in their statement before the Labour Court specifically pleaded that the delay and laches on the part of the workers and the union in raising the dispute disentitled the workers to any relief it is not within the jurisdiction of the High Court in certiorari proceedings to dispose of that ground on facts outside the award itself and not specifically adverted to therein. It is the Labour Court that has to be directed to deal with that point upon the merits. Unreasonable and unjustifiable delay in raising dispute would no doubt be a relevant factor for the consideration of the Court and might even entitle the Court to decline relief altogether; but the mere circumstance that the workmen did not raise a dispute for a long time cannot be a sufficient ground for declining relief. The true position is that while the time that subsequently elapses once the industrial dispute has been raised, would, of course, be quite irrelevant on the consideration of relief; the delay that might have occurred between the occasion for the dispute and the agitation or complaint by labour which leads to the reference would be a relevant circumstance in shaping the relief. Everything would depend on the period of delay, the facts which occasioned the delay and the degree of negligence with which organised labour could be rightly taxed. But that is entirely a matter for the Labour Court to decide, upon the facts and in the light of the guiding principles governing the matter. When this ground was raised in the averments of the record; but the Labour Court did not deal with this ground, the High Court has really no jurisdiction to proceed with it in a matter of certiorari and to hold that laches did not disentitle the concerned party to relief or to direct payment of back wages up to the time that the dispute was raised, as that is a matter primarily for the decision of the Labour Court. 78 Mad L W 252 : (1965) 2 Mad L J 298 : A I R 1965 Mad 454 (456, 457) (Pt B) (Prs 6, 8) (DB).

——Art. 226—Certiorari — Nature of jurisdiction of High Court—It is corrective and not appellate and is confined to errors of law or of jurisdiction on face of record.

The jurisdiction of High Court under Art. 226 of the Constitution is not appellate in character and it will not, therefore, review evidence as in appeal and come to its own findings on the materials on record. Its jurisdiction under certiorari is corrective and is confined to find if the proceedings or order sent up before it suffer from any error of law or of jurisdiction on the face of the record.

Once the High Court finds that the Labour Court has informed its mind of the correct tests and has properly applied them to the facts of the case, its conclusion cannot be successfully assailed in a writ of certiorari. I L R (1965) 1 Mad 379 : (1965-66) 28 F J R 122 : (1964) 2 Lab L J 413 : A I R 1965 Mad 364 (368) (Pt B) (Pr 15).

——Art. 226 — High Court's jurisdiction under — Order of subordinate civil Court susceptible to appeal or revision cannot be quashed in certiorari—Writ of prohibition cannot be issued to restrain it from exercising jurisdiction.

Article 226 does not clothe the High Court with jurisdiction to quash the orders of a subordinate Court. An order of the Assistant City Civil Judge, susceptible of an appeal or revision cannot be quashed by a writ of certiorari and a writ of prohibition restraining or forbearing it from proceeding to exercise jurisdiction in any matter before it cannot be issued.

For the jurisdiction to issue writ it does not matter whether it is the Supreme Court exercising its powers under Art. 32 or whether it is the State High Court exercising its powers under Art. 226 is not the cloak of an appeal in disguise. The exercise of jurisdiction is only an original jurisdiction quite distinct and separate from the exercise of appellate jurisdiction. The Constitution has not in any way enlarged the scope and content and nature and operation of the prerogative writs. The phraseology adopted in Arts. 226 and 227 of the Constitution would seem to indicate that judgments of subordinate Courts should not form the subject-matter of writs under Art. 226 presumably because the suitor or party aggrieved by such judgments and orders has got remedies by way of appeal and revision as efficacious as the remedy by way of writs. 1961 Mad W N 808 : 75 Mad L W 316 : I L R (1962) Mad 744 : A I R 1962 Mad 458 (469, 470) (Pt A) (Prs 26, 28, 30, 31) (DB).

——Art. 226 — Power of High Court — Function of Industrial Tribunal — Nature of — Award based on minimum living wage for workman — Quantum of

wages if within the purview of High Court's jurisdiction. See Industrial Disputes Act (1947), S. 7 (1). (1957) 2 Mad L J 135 : A I R 1957 Mad 688.

——Art. 226—Certiorari, writ of—Power of enquiry.

It is not for the High Court in certiorari to embark on an enquiry and find whether particular charges have or have not been made out. 1951-1 M L J 285 : AIR 1951 Mad 775 (777) (Pt C) (Pr 8) (DB).

——Art. 226 — Writ of certiorari — Jurisdiction of High Court to issue—Finding of fact — Writ in respect of — When can be issued.

The tribunal is the final authority for deciding questions of fact and law arising under the Motor Vehicles Act. The conclusion reached by the Tribunal on the basis of the material before it is not open to review by the High Court. The Certiorari jurisdiction of the High Court is a reasonably well defined jurisdiction. While exercising that jurisdiction the High Court does not act, as a Court of appeal. It merely exercises a supervisory jurisdiction. In exercise of its extraordinary jurisdiction the High Court cannot examine the correctness of question of fact and law decided by the inferior Courts or Tribunals. A Writ of Certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals, namely, where orders are passed by inferior Courts or Tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise its jurisdiction. A writ can, similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. An error of law which is apparent on the face of the record can be corrected by a Writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunals, a Writ of Certiorari can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a Writ of Certiorari. An error of law which can be corrected by a Writ of Certiorari must be one which is apparent on the face of the record. AIR 1964 S C 477, Applied. (1964) 2 Mys L J 373 : (1965) 1 Law Rep 219 (DB).

——Art. 226—Scope of inquiry — Powers of High Court.

A petition under Art. 226 cannot be made to serve the purpose of a regular appeal, nor can the High Court be called upon to sit as a Court of appeal to correct every error which a statutory authority might have committed while functioning within the limits of its jurisdiction. 37 Mys L J 228 : ILR (1959) Mys 135 : (1959) 1 Lab LJ 531 : AIR 1959 Mys 235 (235, 236) (Pt A) (Pr 2) (DB).

——Art. 226—Nature of jurisdiction under.

Article 226 does not mean that any party who thinks that a wrong order has been passed under any of the statutes can come up to the High Court and ask that it should convert itself into Court of Appeal sitting in judgment over such orders. If the authority had jurisdiction to pass those orders and those orders fell within the ambit of such jurisdiction and powers the mere fact that the order is wrong in the opinion of the Court would not justify the High Court to issue writs. But where jurisdiction is totally wanting or is not exercised or is exercised without reference or contrary to the statute under which such jurisdiction is given the High Court can and ought to interfere. Sampu Gowda v. State of Mysore, I L R (1953) Mys 440 : 32 Mys L J 12: AIR 1953 Mys 156 (166) (Pt k) (Pr 42) (FB).

——Art. 226—Powers of High Court — Function as appellate Court.

The High Court when it exercises the functions under Art. 226 of the Constitution does not function as an appellate Court. But the powers granted by Art. 226 are intended to enable the High Court to issue the writs mentioned in that article when there is an error apparent on the face of the record, and any act, omission, error or excess committed by subordinate tribunals, bodies or officers has resulted in manifest injustice. A I R 1952 S C 192, Foll. 1956 Nag L J 66 : A I R 1956 Nag 235 (237) (Pt A) (Pr 7) (DB).

[Reversed on another point in AIR 1957 S C 232.]

——Arts. 226 and 227—Scope—Decision of Appellate Authority constituted under R. 73, Motor Vehicles Rules—High Court acting under Arts. 226 and 227 cannot exercise appellate jurisdiction—(Motor Vehicles Rules, R. 73).

Both under Art. 226 as also Art. 227 the jurisdiction whatever its extent, has not to be confused with an appellate jurisdiction which is normally co-extensive with the jurisdiction of the inferior tribunal. What the High Court has to find out is that there has been an error of jurisdiction or an error of law apparent on the face of the record or the decision is otherwise manifestly unjust. If there has been a substantial error of law resulting in a miscarriage of justice, or the order is manifestly unjust, then interference can be made by the High Court, but not otherwise. AIR 1952 S C 192 : AIR 1954 S C 440 : AIR 1955 S C 223, Rel. on. ILR (1955) Nag 977 : 1955 Nag L J 590 : A I R 1955 Nag 199 (201) (Prs 8, 10, 11) (DB).

——Art. 226 — Extent of High Court's jurisdiction under Article.

The High Court sitting under Art. 226 cannot function as a Court of appeal and thus look into the correctness of the decisions of the Courts particularly created by the statute. Its jurisdiction extends only to seeing that the statute is being properly administered and that the Courts created by the statute did not exceed their powers. 1954 Nag L J 120: ILR (1954) Nag 169 : AIR 1954 Nag 81 (82) (Pt B) (Pr 6) (DB).

——Art. 226 — Order of Rent Controller and of Appellate authority ignoring specific provisions of statute — Writ of certiorari — If can issue — Proper form of order —C. P. and Berar Letting of Houses and Rent Control Order, 1949, Cl. 13 (3).

Where the order of the Rent Controller and of the appellate authority, in rejecting an application made by the landlord, ignored the specific provisions of Cl. 13 (3) (vi) (a) of the C P. and Berar Letting of Houses and Rent Control Order, 1949, the High Court can issue a writ of certiorari under Art. 226 of the Constitution quashing the order.

When exercising its extraordinary powers under a writ of certiorari the proper order for the High Court to pass is to quash the order and to leave the authorities to pass the right order and not for that Court to substitute its own orders, because the High Court does not exercise the jurisdiction of an appellate Court which has always the authority of substituting its own operative orders for those of the lower Court. The function of the High Court in its extraordinary jurisdiction under Art. 226 of the Constitution must be confined to pointing out the true legal position and either quashing the orders or letting those orders stand, as the case may be. It is not for the High Court

to exercise such powers as are ordinarily exercisable in its appellate or revisional jurisdiction. The Court, while entertaining application for a writ of certiorari, does not act either under its appellate or its revisional jurisdiction. 1951 Nag L J 566 : ILR (1951) Nag 769 : AIR 1952 Nag 4 (6) (Pt B) (Pr 12) (DB).

——Art. 226 — Whether a particular act is wilful or not depends upon facts of each case and onus is on person who asserts that that is not so. It is to be inferred from circumstances—Nothing on record to show that acts of omission and commission alleged against petitioner are mere acts of inadvertence — Matter requiring investigation of facts — High Court in its writ jurisdiction cannot take upon itself function of appellate Court and scrutinise materials and substitute its own discretion and judgment. Cass law discussed. ILR (1965) Cut 677 : 32 Cut L T 272.

——Art. 226 — Order in revision under S. 26 (1) Administration of Evacuee Property Act — Interference by High Court — (Administration of Evacuee Property Act (1950), S. 26 (1)).

Where the Additional Custodian interferes under S. 26 (1), with the order of the Assistant Custodian even when there is no illegality or impropriety in the order, that would not justify interference by the High Court under Art. 226, because when exercising powers under that Article the High Court is not a Court of appeal. I L R (1955) Patiala 529 : A I R 1955 Pepsu 142 (143, 144) (Pt D) (Pr 9).

——Art. 226— Powers of High Court — C. P. Code (1908), S. 115.

The power of the High Court under Art. 226 under which writs are issued is different from the powers of revision given to it by S. 115 of the C. P. Code.

The High Court when exercising jurisdiction to issue a writ of certiorari does not act either as the Court of appeal or that of revision and it has no power to correct either findings of fact or even errors of law except where the error of law is patent on the face of the record. A I R 1951 Bom 303; A I R 1952 Nag 4, Rel. on.

Where the decision of the Appellate Authority on the question of limitation is not only erroneous but there is a mistake apparent on the face of the record inasmuch as the Authority failed to take notice of the provisions of S. 4, Limitation Act, with the result that the appeal is dismissed as barred by limitation, it is a proper case in which relief by way of writ of certiorari should be granted. ILR (1952) Patiala 242 : AIR 1954 Pepsu 76 (77, 78) (Pt C) (Prs 5, 6).

——Arts. 226 and 227 — Writ jurisdiction, nature of —It is not appellate jurisdiction — Decision of subordinate tribunals not reviewable to find out whether they are based on substantial evidence as against absence of legal evidence — American and English law compared.

Writ jurisdiction is not appellate jurisdiction and it is not possible for a High Court on writ side to appraise or evaluate the evidence for itself. Under the "substantial evidence" rule of American administrative law, decisions can be reviewed to discover whether or not they are based on substantial evidence. There is no counter part of this rule in English laws. In India unless it can be established that the impugned decision is based on no evidence or has been given upon irrelevant considerations, the High Court would normally be bound by the conclusion on fact arrived at in the impugned order however, erroneous on merits it may be. 1965 Cur L J 561 : ILR (1965) 2 Punj 348.

——Arts. 226 and 227— Notaries Rules (1956), R 13 (12) —Infraction of — Quantum of punishment for— Government alone is competent to decide — Court cannot act as Court of Appeal for determining quantum, in petition under Arts. 226, 227. See Notaries Act (1952), S. 15. AIR 1965 Punj 220.

——Art. 226 -Certiorari — Jurisdiction — Industrial Disputes — Award — Powers of High Court under Art. 226.

High Court does not function as a Court of appeal over the awards made by the Industrial Tribunals. It can only examine the awards to find out whether the Tribunal has acted within its jurisdiction or if there is any error patent on the face of the award. In other words, the jurisdiction of High Court is limited to what it can examine under Art. 226 of the Constitution. Therefore, High Court cannot pronounce on the merits of the award.

Held, on facts that there was no merit in the contention that there was no evidence on which the Tribunal could go against the report of the assessor appointed to decide as to under which category the particular type of workers should be put. A I R 1960 S C 985, Dist. (1963-64) 24 F J R 30 (Punj).

——Arts. 226, 227 — Powers of High Court — In the proceedings under Arts. 226 and 227 the High Court does not act as a Court of appeal and would not interfere where the subordinate tribunal had acted within its jurisdiction. (1961-62) 21 F J R 29 : 1961 Cur L J 15 : ILR (1962) 1 Punj 1 : 64 Punj L R 400 : (1962) 1 Lab L J 568 : AIR 1962 Punj 93 (94) (Pt A) (Pr 8).

——Art. 226—Powers of High Court under.

The High Court cannot possibly take the place of a Court of appeal nor can the powers under Art. 226 of the Constitution be regarded such as to give a right to an aggrieved party to approach a superior authority and ask for review of the decision appealed against on the merits. 64 Punj L R 213 : I L R (1962) 2 Punj 74 : 1962 Cur L J 49.

——Art. 226—Powers of High Court — Extent of.

The writs referred to in Art. 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, ommission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made : A I R 1952 S C 192, Rel. on. 63 Punj L R 327 : A I R 1961 Punj 275 (277) (Pt C) (Pr 9) (DB).

——Arts. 226, 311—Power of High Court — Interference.

The High Court in an application under Art. 226 is not sittting in appeal over the findings of the Inquiry Officer in a departmental inquiry and as long as it is satisfied that he has acted within his jurisdiction and has given reasonable opportunity to the petitioner to defend himself, it cannot upset his findings. It is for the Government to accept or reject his findings. AIR 1960 Punj 646 (652) (Pt K) (Pr 19) (DB).

——Art. 226—Powers of High Court — Setting right technical mistakes.

Under Art. 226, the High Court is not to act as a Court of appeal or revision so as to set right technical mistakes or mere errors of law. One of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. 59 Punj L R 251 : ILR (1957) Punj 1334 : A I R 1957 Punj 155 (158) (Pt G) (Pr 10) (DB).

——Art. 226—Scope of High Court's power — Court can only examine order and cannot look into evidence to show that conclusion was arrived at by erroneous reasoning or by admission of inadmissible evidence. AIR 1955 N U C (Punj) 4999.

——Art. 226—High Court is not Court of appeal.

Under Art. 226, High Court is not a Court of appeal against the administrative Tribunal. A I R 1952 S C 192 : 1952 S C J 261 : (1952) 1 M L J 806 (S C), Rel. on. ILR (1955) Punj 459 : 57 Punj L R 63 : A I R 1955 Punj 161 (164) (Pt F) (Pr 10) (DB).

——Art. 226—Nature and scope of proceeding under —Procedure.

The High Court exercising powers under Art. 226 of the Constitution of India is not concerned with the weight of the evidence. The judicial review goes no further than to ascertain whether there is evidence to support the findings, and the question of the weight of the evidence in determining issues of fact lies with the statutory authority. (1935) 298 U S 38, Ref. I L R (1955) Punj 639 : 56 Punj L R 449 : AIR 1955 Punj 5 (11, 12) (Pt G) (Pr 29) (DB).

[Reversed on other points in AIR 1962 S C 646].

——Art. 226— Powers of High Court — Nature of jurisdiction.

High Court in an application for writ cannot sit as an appellate body scrutinizing every detail of the question in the light of the materials produced by the parties. 1961 Raj L W 326 : I L R (1961) 11 Raj 206.

——Art. 226— Nature and scope of High Court's power under —High Court does not sit in appeal over Board of Revenue—Finding of fact based upon consideration of evidence will not be interfered with. AIR 1955 N U C (Raj) 3451.

——Art. 226—Extent of jurisdiction under.

In the extraordinary proceedings under Art. 226, the High Court cannot turn itself into an appellate Court in respect of the proceedings before the lower Court. 1954 Raj L W 268 : ILR (1954) 4 Raj 274 : AIR 1954 Raj 117 (121, 122) (Pt E) (Pr 12) (DB).

——Art. 226—Exercise of powers under.

Where the Revenue Board in revision having taken into consideration all the relevant provisions and decided the matter of reinstatement of tenants under U. P. Act (10 of 1947) the High Court cannot exercise its powers under Art. 226 as a Court of appeal and decide whether the evidence was sufficient or not. 1952 R L W 374 : AIR 1954 Raj 40 (41) (Pr 2) (DB).

——Art. 226—Jurisdiction under—Nature of.

The jurisdiction of the High Court to issue a writ of certiorari is a limited jurisdiction. The Court is not a court of appeal nor is it a Court of revision. It has no power to correct either findings of fact or even errors of law. Its sole function is to correct persons or tribunals exercising judicial or quasi-judicial functions when they do not possess or when in the exercise of their jurisdiction, they violate principles of natural justice. But when the court has been empowered to determine certain questions and jurisdiction has been conferred upon it to determine those questions, then the determination by the Court of those questions, however erroneous in fact or law, cannot call into question the jurisdiction of the High Court under its high prerogative of issuing a writ of certiorari. There are two well-recognised exceptions to the above limits. The superior Court will interfere (1) when an error of law is patent on the face of record, and (2) when the determination is arrived at mala fide in which case it will not be a determination at all. Fraud or mala fides will vitiate any decision however arrived at. AIR 1951 Bom 303, Rel. on. 1952 Raj L W 154 : ILR (1951) 1 Raj 815 : AIR 1952 Raj 162 (163, 164) (Pt A) (Prs 5, 6) (DB).

——Art. 226 — Suit for declaration of occupancy rights — Mistake in computation of period, if affects jurisdiction of revenue court—High Court does not sit as a court of appeal while exercising jurisdiction under Art. 226—It cannot correct every mistake committed by Courts or tribunals. See Bharatpur Land Revenue Code, S. 30 (2). 1951 Raj L W 409 : I L R (1951) 1 Raj 323.

——Art. 226—Scope of petition for writ of certiorari —Finding of the Tribunal—Interference.

The scope of a petition for a writ of certiorari is limited and the High Court cannot be treated as a Court of appeal and called upon to determine whether the findings of the Tribunal concerned have been correctly arrived at. It is well established that a writ of certiorari is a corrective remedy used for re-examination of some action of an inferior Tribunal and is issued where the body of persons constituting it has either usurped jurisdiction or authority beyond that possessed by it. A great difference exists between the findings of a Court of law and those of a domestic Tribunal. The decision of a domestic Tribunal cannot be attacked on the grounds on which the decision of a Court of justice can be. All that is required is that there must be due enquiry and the person proceeded against must have had notice of the proceedings and an opportunity of being heard. 1950 R L W 351 : A I R 1951 Raj 51 (54, 55) (Pt A) (Prs 4, 5) (DB).

——Art. 226—Jurisdiction of High Court—Nature of —Weighing of evidence before lower Court—(Saurashtra District Police (Amendment) Act (23 of 1951), S. 47).

The proceedings under S. 47 of the Saurashtra Act (23 of 1951) are initiated by a very responsible officer and the petitioner must remain satisfied with his decision. All that the High Court is entitled to consider is whether the authority entrusted with the duty of making the order has followed the procedure laid down by law and has applied its mind to the materials produced before it. The High Court cannot sit in appeal against its order and entertain the objection that the evidence produced before it was perjured evidence. 1955 Cr L J 267 : 6 Sau L R 507 : AIR 1955 Sau 16 (18) (Pt C) (Pr 6) (DB).

——Art. 226 – Certiorari—Nature of jurisdiction.

In issuing writ of Certiorari, the High Court does not act as a Court of appeal. Its only object is to prevent usurpation of jurisdiction by the inferior tribunal, and to ensure observance of the rules of natural justice. It exists only to quash the order or decision if there is an error apparent on the face of it or where absence or excess of jurisdiction is shown. AIR 1958 S C 398, Rel. on. AIR 1959 Tripura 16 (17, 18) (Pt A) (Prs 7, 9).

69 (b). Nature of.

See Note 79.

69 (c). Under Art. 226.

See also Note 68.

● ——Art. 226—Scope of proceedings under Art. 226.

Art. 226 confers on High Courts power to issue appropriate writs to any person or authority within their territorial jurisdiction, in terms absolute and unqualified. Election Tribunals functioning within the territorial jurisdiction of the High Courts fall within the sweep of that power. If the High Courts are to recognise or admit any limitation on this power, that must be founded on some provision in the Constitution itself. Hari Vishnu v. Ahmad Ishaque, 1955 Mad W N 449 : (1955) 1 M L J (SC) 157 : 1955 S C

J 267 : 1955 Andh W R (SC) 157 : 1955 All W R 839 : 1955 S C R 1104 : 1955 Nag L J 1 : 1955 S C A 105 : AIR 1955 S C 233 (238) (Pt A) (Pr 6).

——Art. 226—Interference—Grounds—Hardship.

If the High Court has no jurisdiction it cannot interfere merely on the ground of hardship. **I L R (1957) 1 All 278.**

——Arts. 226 and 227 — Powers of High Court — Extent and scope of.

Except for the territorial limitation placed upon it by the Constitution, there is no limit upon the right or the power of the High Court to issue a writ under Art. 226 or Art. 227. Undoubtedly, the Courts for their own guidance have put limitations upon their very wide power, but those are self-imposed limitations, they are not legal or constitutional limitations. There are only two limitations placed upon the exercise of such powers by High Court :

(i) The writs issued by the Court cannot run beyond the territories subject to its jurisdiction.

(ii) The other is that the person or authority to whom the High Court is empowered to issue writs must be amenable to its jurisdiction either by residence or location within those territories.

Apart from those two limitations, it is for the High Court to decide whether in a particular case it will or it will not issue a writ. AIR 1954 S C 207, Foll. **58 Bom L R 184 : (1956) 29 I T R 856 : ILR (1956) Bom 374 : A I R 1956 Bom 530 (533) (Pt B) (Pr 8) (DB).**

[Reversed on another point in AIR 1963 S C 1356.]

——Art. 226 — Jurisdiction and scope of powers under—Orders of Sea Customs authorities. See C. P. Code (1908), S. 9. **AIR 1955 Mad 187 (DB).**

——Art. 32 — Discrimination in assessment of land revenue on similar lands — Classification— Power of High Court under Constitution. See Ibid, Art. 14. **(1954) 2 M L J 636 : AIR 1954 Mad 1078 (DB).**

——Art. 226 — Scope — Power is much wider than that of King's Bench Division and old chartered High Courts — Administrative or executive orders can be dealt with — Rights other than fundamental can be enforced.

The jurisdiction of the High Courts is much wider than that of the King's Bench Division and even when none of the specified writs can issue, the High Court has power to make a direction or order appropriate to the circumstances of the case. A I R 1951 Nag 33; A I R 1950 Bom 363 (FB); A I R 1950 Pat 387 (FB); A I R 1951 Orissa 863 and A I R 1951 Bom 25 (FB), Foll.

Article 226, Constitution of India, aims at enforcement of rights no matter whether the necessity for such enforcement arises out of an action of executive or of the legislature. Rights other than fundamental rights will also be enforced under Art. 226 if the necessity for doing so arises out of the action of the executive. A I R 1951 S C 41, Rel. on. 53 Bom L R 1, Dist.

The powers conferred upon the High Court by Art. 226 are very wide and matters which could not be reached even by the old Chartered High Courts can now be brought up before the High Court under this provision. So excessive a power has necessarily to be exercised with the utmost care and circumspection. The power itself is discretionary and a few limitations on the exercise of the power have already been indicated in cases decided so far. In doing so the High Court has accepted some of the principles of general applicability laid down by the King's Bench Division, the Court of Appeal and House of Lords. **1951 Nag L J (Notes) 182 (DB).**

●——Art. 226 — Power and jurisdiction under — Relative position of Art. 226—Effect—High Court has jurisdiction to issue writs.

Per Hidayatullah J : — When power is unconditionally granted by the people to certain legislative and other bodies, in a solemn constitution, the power is to be used eo instanti, unless otherwise provided, for the purpose for which it is granted. Every grant of power carries with it a jurisdiction to exercise that power.

The fact that Art. 226 is sandwiched between Arts. 225 and 227 has not much relevance. The collocation of articles in the Constitution is not decisive, though it has some relevance in the matter of amendment thereof. In any event the position of Art. 226 has not the same quality as the placing of Art. 32 in the Chapter on fundamental rights.

Held, that the High Court is invested with a jurisdiction as well as a power to issue writs, directions or orders as laid down in Art. 226 in appropriate cases.

Per Mangalmurti and Mudholkar JJ :—Article 225, which is subject to the other provisions of the Constitution, does not restrict the jurisdiction of the High Court but merely preserves its existing jurisdiction and Arts. 227 and 228 confer some additional jurisdiction on it. Article 226 which finds place in between Art. 225, on the one hand and Arts. 227 and 228 on the other hand, cannot reasonably be regarded as having nothing to do with jurisdiction. It clearly states that the territorial limits of the exercise of the powers conferred by it on the High Court are those within which the High Court exercises jurisdiction. The power to do a thing necessarily implies jurisdiction to do it, otherwise the conferral of such power is pointless. There is nothing in Art. 226 which warrants the limitation of the jurisdiction of the High Court to act only on the appellate or revisional side. Furthermore, if the power to issue a writ, direction, etc., can be exercised only on the appellate or the revisional side, it seems difficult to appreciate how at all it could be so exercised because no law confers upon subordinate Courts the power to issue writs, orders, etc.

Held, that the Nagpur High Court has original jurisdiction to entertain a petition under Art. 226. A I R 1950 Pat 387; A I R 1951 All 1 (FB); A I R 1950 Bom 363 (FB) and A I R 1951 Mad 70, Rel. on. Majority view in A I R 1950 Madh B 60 (FB), Dissented. Sheoshankar v. State Government of Madhya Pradesh, **52 Cri L J 1140 : ILR (1951) Nag 646 : A I R 1951 Nag 58 (65, 77, 78) (Pt B) (Prs 37, 41, 129, 130, 141) (FB).**

——Art. 226—Exercise of statutory powers — (C. P. Code (1908), S. 9).

The exercise of the statutory power is open to challenge broadly on three grounds : (1) non-observance of mandatory statutory procedure, (2) non-existence of the basic facts with reference to which the power is vested, and (3) an abuse of the discretion for collateral purpose or an arbitrary exercise thereof. Grounds 1 and 3 are always open to examination by Courts. But so far as the second ground is concerned, if the decision of the collateral facts with reference to which the power is vested in the authority concerned is vested in that authority itself by the statute, the Court will be precluded from canvassing the correctness of that decision except for the purpose of satisfying itself that there has been a fair and judicial determination of these facts. Occasionally, however, the statute by its very terms indicates that the existence of the basic facts which give the power is left to the subjective satisfaction of the authority concerned and not to the judicial determination thereof by the said authority. In such a case, unless there is

material on which the factum or the bona fides of that subjective satisfaction can be challenged, the Court is not in a position to canvass the existence of the basic facts which give rise to the statutory power. Case-law Rel. on. ILR (1952) Cut 529 : A I R 1953 Orissa 121 (127, 128) (Pt A) (Pr 10) (DB).

——Art. 226—Powers of High Court.

It is not open to the High Court to try to justify an order made by a Tribunal on the ground that it could have been made under some other provision of law when the Tribunal concerned had not decided the case on the basis of that provision of law. Though the label given to a decision is not final and it is open to the High Court to look at the substance of the order and to determine under which provision of law it is made where the Deputy Custodian General has not purported to hold that the transaction is not to be confirmed for any other reason as given in sub-s. (4) (c) of S. 40 of the Administration of Evacuee Property Act (1950) the High Court in proceedings under Art. 226 of the Constitution cannot uphold the order under sub-cl. (a) on the ground that it could have been made under sub-cl. (c). 63 Punj L R 57 : ILR (1961) 1 Punj 20 : A I R 1961 Punj 472 (475) (Pt D) (Pr 16).

——Art. 226—Scope.

Such writs as are referred to in Art. 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. ILR (1952) Trav-Co 923 : 1952 Ker L T 652 : AIR 1953 Trav-Co 102 (103, 104) (Pt B) (Pr 2) (DB).

69 (d). Visitorial and supervisory.

——Art. 226 — Remedy by way of certiorari open for quashing conviction — Petition under Art. 227 is not maintainable — Supervsiory jurisdiction of High Court will not be invoked. A I R 1963 All 585 (587) (Pt B) (Pr 7) (DB).

——Art. 226—Nature of writ jurisdiction — Is supervisory and not appellate—Question of fact—No interference. A I R 1961 Manipur 28 (30) (Pt A) (Pr 7).

——Art 226 — Abuse of process of law — Power of High Court to intervene. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 24. A I R 1954 Nag 107 (DB).

——Arts. 226 and 227 — Civil P. C. (1908), S. 9 — Ouster of Civil Court's jurisdiction — Suit for refund of stamp duty and penalty paid under Stamp Act — Maintainability—Jurisdiction whether ouster because of Arts. 226 and 227 of Constitution — Burden of proof — (Stamp Act (1899), Ss. 40, 45, 56 and 57)—(Evidence Act (1872), Ss. 101 to 104). See Civil P. C. (1908), S. 9. A I R 1959 Orissa 144.

——Art. 226 — Criminal P. C (1898), S. 96 (1) (iii)—Warrant for general search before investigation under Code—Magistrate should reasonably be satisfied that search is likely to be a link in chain normally leading to inquiry under Code — Writ petition — High Court has to see whether as a fact there were sufficient grounds for issue of search warrant and whether Magistrate has applied his mind judicially and whether he had relevant and adequate material for the purpose and that the warrants were not arbitrarily asked for and issued — High Court will not sit in judgment over his opinion. See Criminal P. C. (1898), S. 96 (1) (iii). AIR 1953 Orissa 153.

——Art. 226—Civil Courts—Powers of—Civil Courts cannot issue directions regulating proceedings of administrative authorities apart from recording finding on rights of parties.

In dealing with writ applications, the High Court exercises a sort of supervisory jurisdiction over the administrative proceedings. The High Court's jurisdiction is recognised even where the jurisdiction of the Civil Courts is barred. The position of a Civil Court is fundamentally different. The Civil Court does not sit in appeal over the judgments of the administrative authorities. It is mainly and primarily concerned with the determination of the legal rights and a civil Court cannot issue directions regulating proceedings of the administrative authorities apart from recording findings on the rights of the parties. AIR 1954 Raj 207 ; AIR 1956 Raj 28, Dist. 1960 Raj L W 385 : ILR (1960) 10 Raj 952.

——Art. 226—Nature and scope of High Court's power—Writ of certiorari.

Where the High Court issues a writ of certiorari, it acts in the exercise of a supervisory and not appellate jurisdiction so that broadly speaking it is not for the Court issuing the writ to review findings of fact reached by the inferior Court or tribunal. 1959 Raj L W 571 : ILR (1959) 9 Raj 625.

70. Laches.

See Note 35.

71. Legal right.

See also Notes 8 and 237.

(a) Right to vote.

See Note 44.

71. Legal right.

See also Notes 8 and 237.

● ——Art. 226 — Jurisdiction under — Not confined to invasion of only fundamental rights—But existence of right alleged to be invaded must be established —Government resuming grant resumable under its terms—Grantee not entitled to a writ to protect his mere right of possession against the grantor.

Under Art. 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Art. 226 is not confined to cases of illegal invasion of his fundamental rights alone. Though the jurisdiction of the High Court under Art. 226 is wide in that sense, the concluding words of the Article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be estalisbhed that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Art. 226. Thus, ordinarily, where property has been granted by the State on conditions which make the grant resumable, after resumption it is the grantee who moves the Court for appropriate relief, and that proceeds on the basis that the grantor State which has reserved to itself the right to resume may after exercising its right, seek to recover possession of the property without filing a suit. Where, therefore, in such a case the grantee moves the High Court under Art. 226 for a writ against the State and the High Court comes to the conclusion that the question of title cannot be tried in the writ proceedings, it follows that no right can be postulated in favour of the grantee on the basis of which a writ can be issued in their favour under Art. 226.

Further, in such a case the High Court is not justified in issuing a writ to protect the right of possession of the grantee, because mere possession of the property for however long a period it may be, will not clothe the possessor with any legal right if it is shown that the possession is under a grant from the State which is resumable. Such long possession may give him a legal right to protect his possession against third parties, but as between the State and the grantee, possession of the grantee under a resumable grant cannot be said to confer any right on the grantee which would justify a claim for a writ under Art. 226 where the grant has been resumed. AIR 1957 Orissa 80, Reversed; AIR 1952 S C 12, Rel. on. State of Orissa v. Ram Chandra Dev, (1964) 1 S C W R 186: 1964 S C D 278: 30 Cut L T 213: (1964) 2 S C A 356; AIR 1964 S C 685 (688, 689) (Pt B) (Prs 8, 11, 12, 13).

● ——Art. 226—Article 320 (3)(c) is not mandatory—Irregularity in consultation with Public Service Commission does not entitle him to relief under the special powers of a High Court under Art. 226 or of the Supreme Court under Art. 32. See Ibid, Art. 320 (3) (c). (1958 Mad L J (Cr) 85 : (1958) S C J 150 : A I R 1957 S C 912.

——Art. 226—Existence of right is basis of application—Petition by allottee against order in favour of owner under R. 6, U. P. (Temporary) Control of Rent and Eviction Rules (1949) — By allottee's petition cause of action accrues to owner of house and his petition can also be maintained. Owner need not wait till the result of allottee's petition. 1964 All W R (H C) 732.

● ——Art. 226—Writ under when can be issued—There must be infringement of legal right—Law cannot take note of mental injury—Orders of recommendatory nature cannot constitute infringement of legal right.

Relief by way of writ is a discretionary one. Under the second part of Art 226, a writ is usually issued only if the applicant has a legal right, and that legal right is found by the Court to have been infringed. With certain exceptions, as in the case of habeas corpus or quo warranto, a Court exercising writ jurisdiction would be disinclined to grant relief unless the petitioner is able to make out that he is an aggrieved party, i.e., his own rights are affected. This principle would be particularly applicable in a case, where the question of the validity of a piece of legislation is raised. The only injury that law can recognise is legal injury. AIR 1952 S C 12 and AIR 1951 S C 41, Rel. on.

Held, on facts that the orders in question were merely of a recommendatory nature and had obviously no binding effect on the institution. The latter was at perfect liberty to ignore or disregard them. The orders did not affect the legal right of the institution to dismiss the Principal. The orders did not also constitute any threat to the legal right of the institution. Merely because the orders were hurtful to the feelings of the institution no relief could be granted under Art. 226. Sri Durga Gita Vidyalaya v. State of U. P., 1962 All L J 329 : 1962 All W R (H C) 243 : ILR (1962) 1 All 737 : A I R 1962 All 187 (190, 191) (Pt C) (Prs 10, 11, 13) (FB).

——Art. 226—Practice—Mutation—Order of Board of Revenue entering name of certain person in record of rights—Petition under Art. 226.

It has been the consistent practice of Allahabad High Court not to interfere with orders made by the Board of Revenue in cases in which the only question at issue is whether the name of the petitioner should be entered in the record of rights. .Such an entry does not ordinarily confer upon the person in whose favour it is made any title to the property in question. 1956 All L J 807 (1) : AIR 1957 All 205 (205, 206) (Pr 3) (DB).

——Arts. 226 and 227 — Grant of mining lease — Administrative rules, framed by Government, governing the grant contained in Madras Mining Manual — Infringement of rules does not afford any legal basis for seeking redress — AIR 1960 S C 606, (1962) 1 Andh W R 263, AIR 1955 Mad 805 (FB), Distinguished; AIR 1953 Mad 583, AIR 1952 S C 16, Rel. on. (1964) 2 Andh W R 155.

——Art. 226 — Relief refused — (Municipalities — Assam Municipal Act (1 of 1923), S 291)

Where the petitioner seeks under Art. 226 removal of the ban imposed by the order of the Deputy Commissioner passed under S. 291, Assam Municipal Act, suspending the operation of the resolution of the Municipal Board approving of the settlement of the Market with the petitioner, the High Court will not be justified in issuing a writ in view of the fact that the petitioner's right to such relief is not beyond dispute, even if not non-existent. Case-law Ref. I L R (1953) 5 Assam 263 : AIR 1953 Assam 145 (148, 149) (Pt D) (Pr 22) (DB).

——Art. 226—Civil servant officiating in higher post—Reversion to substantive post by way of penalty for certain period—No right to be promoted to higher post after expiry of period — Mandamus to direct promotion cannot issue. See Ibid, Art. 311. AIR 1960 Madh Pra 216 (DB).

——Art. 226—Rules under Bar Councils Act by Madras Bar—Rule 28—Refusal of Bar Council to give permission under R. 28 — Advocate has no grievance — He can practice — There is no sanction behind Bar Council Rules — They embody only sound advice — Non-compliance with them does not affect status or legal right of Advocate. See Bar Councils Act (1926), S. 10. AIR 1954 Mad 400 (DB).

——Art. 226—"Any other purpose"—Interpretation.

The words "any other purpose" in Art. 226 of the Constitution have been interpreted to mean "a legal right". Therefore, before the High Court can issue directions, orders or writs, it must be satisfied that a fundamental right of the petitioner has been infringed. I L R (1953) Nag 110 : 1953 Nag L J 33 : AIR 1952 Nag 353 (353) (Pt A) (Pr 2) (DB).

[Overruled on another point in AIR 1966 S C 156.]

——Art. 226—Words "any other purpose mean "legal right"—Before issuing writ, order or direction, High Court must be satisfied that a fundamental right or any other legal right has been infringed. I L R 1953 Nag 110 : 1953 Nag L J 33 : AIR 1952 Nag 353 (353) (Pt A) (Pr 2) (DB).

——Art. 226—"For any other purpose" — Right of private person to question legality of appointment of Advocate General.

The power under Art. 226 is given not only, for the enforcement of the fundamental rights conferred by Part III of the Constitution but also for any other purpose. The enforcement of legal right and the performance of legal duty cannot be exhaustive of the purposes for which the Court may issue any order, direction or writ under Art. 226. The words "for any other purpose" must receive their plain and natural meaning, namely, for any other object which the Court considers appropriate and calls for the exercise of the powers conferred upon it. Though the power of the Court under Art. 226 is ordinarily exercisable for enforcement of right or performance of duty, it cannot necessarily be limited to only such cases. Such a limitation cannot be reconciled with the power to issue a writ in the nature of quo warranto which power has been expressly conferred on the Court. In proceedings for a writ of quo warranto the applicant

does not seek to enforce any right of his as such, nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from that office. There is no reason to refuse a citizen under a democratic republican Constitution to move for a writ of quo warranto for testing the validity of a high appointment under the Constitution. The office of the Advocate-General is of a public nature. From every point of view, it is a matter of grave public concern that the legality of the appointment to a high office under the Constitution is not left in doubt. AIR 1950 Pat 387 (FB), Dissent. (1916) 1 K B 595, Rel. on. **ILR(1952) Nag 409 : A I R 1952 Nag 330 (334, 335) (Pt G) (Prs 14, 18, 19, 21) (DB).**

——Art. 226—Petitioner must show that he has legal right—This cannot be decided in proceedings under Art. 226 — [Constitution of India, Arts. 311 (2) and 320].

Seriously disputed questions of fact cannot be satisfactorily determined in the summary proceedings where the only evidence relied upon consist of pleadings of the parties, their affidavits and certain documents produced by them. Use of the words "shall have power" in Art. 226 emphasises the fact that the issue of writs, directions and orders in question is entirely a matter for the discretion of the Court. And one of the grounds against the exercise of this discretion may be that the right claimed by the petitioner is not capable of being established in summary proceedings under the said article.

The petitioner failed affirmatively to establish that he was substantively appointed in Class 1, Grade 1 and had therefore, failed to prove his indefeasible right, as put forward in the petition, to demand notice of reasonable time under Art. 311 (2) and the corresponding duty of the respondent State to consult the Public Service Commission under Art. 320 of the Constitution of India, before his alleged reduction to Class I, Grade 2 service. **I L R (1954) Patiala 105 : AIR 1954 Pepsu 98 (102, 103) (Pt B) (Prs 9, 10).**

■ **——Art. 226 (1)—Infringement of legal right.**

The High Court will not take action under Art. 226 unless it is completely satisfied that the petitioner has a legal right which has been infringed or is about to be infringed or some illegal wrong has been inflicted upon him or is about to be inflicted upon him. Harnam Singh v. State of Punjab, **55 Punj L J 257 : ILR (1953) Punj 655 : A I R 1953 Punj 176 (176) (Pr 4) (FB).**

——Art. 226—Appointment of temporary Khateeb for Idgah by Wakf Board — Fundamenal or legal right of the members of the congregation of Muslims entitled to offer prayers at Idgah not infringed—High Court will not issue writ under Art. 226. See Ibid, Art. 26. ILR (1964) 14 Raj 497.

71 (a). Right to vote.
See Note 44.

72. Legislature, writ against.
See Note 5.

73. Letters Patent Appeal.
See Note 10.

74. Limitation.
See Note 35.

75. Mandamus.
See under Part D (Notes 224 to 275).

76. Military authorities.
See Note 5.

77. Municipal election.
See Note 44.

78. Natural justice.
See also Notes 5, 23 and 45.

(a) Right to be heard.
(i) Disciplinary proceedings against students.
See also Note 5 (g).
(ii) Disciplinary proceedings against servants.
(iii) Labour disputes.
(iv) Hearing and decision by different bodies.
(v) Defence.
(vi) No infringement.
(vii) Miscellaneous.
(b) Right to cross-examine.
(c) Enquiry by person having interest.
See also Note 129.
(d) Right to know charge.
(e) Bias.
See Note 129.
(f) Notice.
(g) Evidence and procedure, rules of.

78. Natural justice.
See also Notes 5, 23 and 45.

■ **——Art. 226 — Natural justice — Contravention of principles—Cancellation of licence on ground that it was obtained by fraud — Reasonable opportunity to be heard—There is no invariable standard of reasonableness, except that Court's conscience must be satisfied that the person had fair chance to convince the authority that the grounds for the action are non-existent or that they do not justify the proposed action — Decision of this question would depend on facts — Held that the opportunity given to licensee was reasonable one. See Imports Control Order (1955), Cl. 10. AIR 1960 S C 415.**

● **——Arts. 32 and 226—Natural justice.**

The rules of natural justice vary with varying constitutions of statutory bodies, and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any pre-conceived notion of what they may be but in the light of the provisions of the relevant Act. AIR 1957 S C 232 and AIR 1958 S C 398, Foll.; Gullapalli Nageswara Rao v. Andhra Pradesh Road Transport Corpn., **(1959) 2 Mad L J (SC) 156 : (1959) 2 Andh W R (S C) 156 : 1959 S C J 967 : 1958 Andh L T 1014 : (1959) 1 S C R (Sup) 319 : AIR 1959 S C 308 (326) (Pt G) (Pr 29).**

■ **——Arts. 226 and 227—Natural justice—Violation of—Test.**

The rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Act under which they function. The question whether or not any rules of natural justice had been contravened should be decided in the light of the statutory rules and provisions. Where no such rule is brought to the notice of the Court there is no ground for interference either under Art. 226 or 227 simply because the tribunal had reviewed the matter in a light which is not acceptable to the Court. Nagendra Nath Bora v. Commissioner of Hills Divi-

sion and Appeals, Assam, 1958 S C A 572 : 36 Mys L J 389 : 1958 S C J 798 : 1958 S C R 1240 : AIR 1958 S C 398 (409) (Pt D) (Pr 17).

——Arts. 226 and 208 (1) — U. P. Legislative Assembly — Rules of procedure and conduct of Business, R. 74 — Cannot be challenged on ground of violation of principles of natural justice.

Rules of natural justice only apply when the statute or statutory rules are silent as to the procedure but no statutory provision or statutory rule can be struck down where it makes a provision excluding the application of rules of natural justice. Rule 74 has been framed in pursuance of the power conferred by Art. 208 (1). It cannot be challenged on the ground of violation of the principles of natural justice. 1965 (2) Cri L J 170 : ILR (1965) 2 All 281 : 1965 All W R (HC) 286 : 1965 All Cr R 213 : AIR 1965 All 349 (355, 356) (Pt F) (Pr 17) (DB).

——Art. 226—Grounds of interference — Inquiry — Inquiry held with all fundamentals — High Court will not intervene—See Municipalities — U. P. Municipalities Act (II of 1916), S. 69-A (1). AIR 1960 All 273.

——Art. 226—Natural justice — Principles — When can be invoked under Indian Law.

The principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority while making an order affecting those rights.

(1) That every person whose civil rights are affected must have a reasonable notice of the case he has to meet. (2) That he must have reasonable opportunity of being heard in his defence. (3) That the hearing must be by an impartial tribunal. (4) That the authority must act in good faith, and not arbitrarily but reasonably. Under the Indian Law, the principles of natural justice can be invoked generally in three classes of cases: (a) When it is alleged that a certain person or class of persons have been unreasonably discriminated against, and that the law violates the provisions of Art. 14; or that the restrictions imposed upon the freedoms guaranteed under Art. 19 are unreasonable. (b) When a rule or regulation or order made in the exercise of a statutory power is attacked on the ground that it is unreasonable and (c) When the procedure adopted by a judicial or quasi-judicial authority not being one prescribed by law is challenged on the ground that it is unfair and unjust. 1956 All W R (HC) 643 : 1956 All L J 878 : AIR 1957 All 297 (301) (Pt B) (Prs 8, 9, 10) (DB).

——Art. 226—Natural justice — U. P. Consolidation of Holdings Act—Procedural provisions of the Act—Violation of principles of natural justice —(Tenancy Laws — U. P. Consolidation of Holdings Act, 1953 (5 of 1954)).

The U. P. Consolidation of Holdings Act (1954), is not invalid on the ground that its procedural provisions are against principles of natural justice. The order of the Consolidation Officer upon receipt of the report of the Assistant Consolidation Officer directing him to proceed with the correction of maps and records, etc., is merely a preliminary proceeding and does not affect anybody's rights. The parties are fully heard later. No principles of natural justice require an enquiry to be held in all cases at a preliminary stage. Again, there is no principle of natural justice violated when the order of a particular judicial or quasi-judicial authority is made final and no appeal is provided therefrom The bar to the civil Court's jurisdiction in S. 49 of the Act cannot be said to be unreasonable. 1956 All W R (HC) 643 : 1956 All L J 878 : AIR 1957 All 297 (301, 302) (Pt D) (Prs 12, 18) (DB).

——Art. 226—Natural justice—Applicability.

There are no rules of natural justice in abstract. The principles of natural justice have to be determined with reference to statutory provisions or rules and not under any preconceived notions. ILR (1961) 2 Andh Pra 540.

——Art. 226 — Principles of natural justice — No exhaustive rules can be laid down.

Each case will depend upon the nature of the tribunal which is constituted to decide the matter and the circumstances in which they are to act. But undoubtedly if a serious allegation is made and that is the decisive factor, the party concerned should be given an opportunity to meet the allegation and failure to do so is a violation of the principles of natural justice. AIR 1965 Assam 106 (108) (Pt B) (Pr 10) (DB).

——Art. 226—Natural justice.

Principles of — Applicability to proceedings under S. 33-B of Income tax Act (1922). See Income-tax Act (1922), S. 33-B. AIR 1966 Cal 73.

——Art. 226—Natural justice—Principles of — When violated and when not. A I R 1964 Cal 184 (189, 190) (Pt B) (Pr 26) (DB).

——Art. 226 — Income-tax Officer making assessment under — Nature of his function — Non-observance of principles of natural justice—Effect. See Income-tax Act (1922), S. 18 (7). AIR 1955 N U C (Cal) 5917.

——Art. 226 — Order of suspending Small Towns Committee without giving opportunity to show cause — S. 49, Punjab Small Towns Act does not say that before a Committee is suspended, an enquiry should be held and an opportunity be given to committee to clear its position. A I R 1955 Him Pra 11 (12) (Prs 5, 7).

——Art. 226—Natural justice.

Revenue minister refusing permission for alienation — Order is not in quasi-judicial capacity — No certiorari can issue — Principles of natural justice not applicable. See J. & K. Alienation of Land (Temporary Restriction) Act (21 of 1959), S. 3 (2). A I R 1961 J & K 47 (DB).

——Art. 226 — Principles of natural justice — What amounts to its violation.

Principles of natural justice require that there should be a fair determination of a question by quasi-judicial authorities. Arbitratriness swill certainly not ensure fairness. The judicial process does not end by making known to a person the proposal against him and giving him a chance to explain. It extends further to a judicial consideration of his representations and the materials and a fair determination of the question involved. If the quasi-judicial authority disregards the materials available to it or refuses to apply its mind to the question and if he reaches a conclusion which has no relation to the facts before him, to allow those decisions to stand would be violative of the principles of natural justice. Thus arbitrary decisions can also, result in violation of the principles of natural justice which is a fundamental concept of Indian jurisprudence. In certain cases, where an authority refuses to apply its mind to the question and makes a decision as it likes, it may amount to even a mala fide decision. AIR 1964 Cal 265, Rel. on. 1965 Ker L T 803 : I L R (1965) 2 Ker 240 : 1965 Ker L J 866 : A I R 1966 Ker 55 (58, 59) (Pt B) (Prs 13, 14, 15).

——Art. 226 — Decision of Reserve Bank being subjective cannot be challenged as violative of principles

of natural justice. See Banking Companies Act (1949), S. 35-B (1) (b). AIR 1966 Ker 6.

——Arts. 226 and 311(2)—Procedure of quasi-judicial body — Principles of natural justice — Requirements of.

The requirements of natural justice to be observed in a departmental enquiry held against a Government servant are that the person proceeded against should know the nature of the accusation made, that he is given an opportunity to state his case and that the tribunal should act in good faith. (1958) 2 All E R 579 and (1960) 1 W L R 228, Rel. on. **I L R (1961) 1 Ker 153 : 1961 Ker L J 315 : (1961) 2 Lab L J 50 : 1961 Ker L T 486 : AIR 1962 Ker 43 (45, 46) (Pt C) (Pr 6) (DB).**

——Art. 226 — Natural justice — Principles of — Rr. 13 (2) (vii) and 14 in Part II under Madras Elementary Education Act (3 of 1920) — Appellate authorities under R. 13 (2) (vii) and Director of Public Instruction under R. 14, are domestic tribunals — Canons of natural justice not complied with inasmuch as no opportunity was given to the school management against which orders were passed, to be heard — Orders are liable to judicial review. See Madras Elementary Education Act (8 of 1920), S. 56. **AIR 1961 Ker 303 (FB).**

——Art. 226 — Natural justice — Requirements — Refusal of Government to deal with blacklisted contractors — There is no fundamental right or rule of law to insist upon Government to do business with particular individuals — No remedy under Art. 226 is available to blacklisted contractors, when Government refuses to do business with them — Considerations of natural justice cannot be imported into the consideration of purely statutory orders — Applicability of Arts. 14 and 226 and of principles of natural justice. See Ibid, Art. 13. **A I R 1958 Ker 333 (DB).**

——Art. 226 — Natural justice — S. 16-A, Madras General Sales Tax Act—Is not void as being contrary to principles of natural justice. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 15 (b). **1958 Cri L J 381 : AIR 1958 Ker 55 (DB).**

——Arts. 226 and 227 — Rules of natural justice are attracted only when the function is quasi-judicial and not administrative. **1965 Jab L J 161 : 1965 M P L J 108.**

——Art. 226—Natural Justice—What is.

The rules of natural justice vary with varying constitutions of statutory bodies and the rules prescribed by the Legislature under which they have to function. The question whether in a particular case they have been contravened must be judged not by any preconceived notion but in the light of the provisions of the relevant Act. A I R 1957 S C 232 and A I R 1958 S C 398 and A I R 1959 S C 308, Rel. on. **I L R (1963) Madh Pra 1021 : 1962 M P L J 1049 : 1962 Jab L J 829 : 1962 M P C 441 : AIR 1963 Madh Pra 41 (46) (Pt C) (Pr 10) (DB).**

——Art. 226—Central Excise Rules, R. 151—Proceedings for contravention of, are of quasi-judicial nature involving an objection to follow rules of natural justice, which require that the party should have opportunity to adducing all relevant evidence, that the evidence of the opponent should be taken in his presence, that he should have an opportunity of cross-examining the witnesses of the party and that no material should be relied upon against him without giving him opportunity to explain the same. See Central Excise Rules, R. 151. **A I R 1962 Madh Pra 112 (DB).**

——Arts. 226, 311 (2) — Change in seniority rules of public officer — Not a judicial function — Rules of natural justice do not apply. **A I R 1959 Mad 1 (7) (Pt B) (Pr 21) (DB).**

——Art. 226 — Natural justice — Principles of — By natural justice is meant that which is founded on equality, on honesty and right; and its principles are (1) a person must not be condemned unheard (2) a person must not be a Judge in his own cause and (3) decision must be made in good faith. **(1956) 2 Lab L J 347 (Mad).**

——Art. 226 — Principle of natural justice and good conscience cannot override express provisions of law. See Panchayats — U. P. Panchayat Raj Election Rules, R. 66. AIR 1965 Manipur 37.

——Art. 226—Principles of natural justice.

The question whether and in what manner the rules of natural justice have to be observed in a particular case must itself be judged in the light of the constitution of the statutory body which is to function in accordance with the rules laid down by the statute. AIR 1957 S C 232, Rel. on. **39 Mys L J 552 : I L R (1961) Mys 349 : A I R 1962 Mys 31 (35) (Pt E) (Pr 16) (DB).**

——Art. 226 — Natural justice — Non-observance of rules of natural justice—If vitiates decision.

The essence of natural justice is rendering justice. By no means it is a mere dogma or ritual to be adhered to and observed irrespective of the consequences. It cannot, unless it has been laid down as a statutory requirement or otherwise made binding, be urged as a ground by itself to invalidate a decision irrespective of its merits. If the Court is satisfied that the impugned decision is essentially just, then the same cannot be set at nought on the excuse that no respect to principles of natural justice had been shown in arriving at the decision. 1915 A C 120, Rel. on. **38 Mys L J 1048 : I L R (1960) Mys 1100 : (1961) 1 Lab L J 472 : A I R 1961 Mys 49 (52, 53) (Pt B) (Prs 12, 14, 15) (DB).**

——Art. 226—What is natural justice.

The following may be mentioned as some of the essential requirements of natural justice: (1) the tribunal should be impartial and have no personal interest in the controversy; (2) it should give a full and fair opportunity to every party of being heard; (3) it should act in good faith; and (4) it should not do anything contrary to the essence of justice. Finally the very important rule of natural justice is that justice should not only be done but should be seen to be done. **1956 Nag L J 66 : A I R 1956 Nag 235 (237, 238) (Pt C) (Prs 9, 10, 12) (DB).**

[Reversed on another point in AIR 1957 S C 232.]

——Art. 226—Natural justice—Order under R. 24 of Orissa Gram Panchayat Rules (1949) — Order is judicial and must comply with principles of natural justice. See Panchayats—Orissa Gram Panchayat Rules (1949), R. 24. AIR **1966 Orissa 12 (DB).**

——Art. 226—Natural Justice — Violation of — Bihar Panchayat Raj Act, 1948, S. 16 (1) and (2) prior to amendment by Act 21 of 1959—Imposition of fine by executive committee on person without trial is invalid. See Panchayats—Bihar Panchayat Raj Act (7 of 1948), S. 16 (1). **AIR 1964 Pat 90 (DB).**

——Art. 226—Writ against University—Principles of natural justice—Estoppel — (University of Bihar Act (1951), Ss. 10 (5) and (12), 20 (2), 22 (1) and 58) — (Evidence Act (1872), S. 115)—Admission on matter of law).

The petitioners, students, who had joined I. Sc. class in 1952 were not allowed to appear by the University on the ground that the University had not granted to their college an affiliation in Intermediate Science

with effect from 1952 so as to enable the Intermediate Science students of this college to sit at the examination to be held in February, 1954.

Held, on facts of the case, that the power of affiliation vested only in the Senate. Under no regulation or rule could the Vice-Chancellor exercise that power. The correspondence or the conversation which the Principal had with the Vice-Chancellor was therefore of no consequence and the understanding given by the Vice-Chancellor would be no step-in-aid of the affiliation and would not entitle the petitioners to sit at the examination in 1954.

A representation or admission on matters of law cannot constitute any basis for estoppel. When the statute says that it is only the Senate which can grant affiliation, recommendation by Inspectors and correspondence and personal talks with the Vice Chancellor and even the careless issue of Admit cards which is only a ministerial act cannot be taken into consideration for the purpose of granting a writ under Art. 226. It may be a very high degree of administrative inefficiency if the University authorities issue the Admit Cards to the students of this college, though there had been no affiliation but the mere issue of the cards could not be a ground for contending that the principles of natural justice had been violated. A I R 1954 S C 217, Rel on ; (1954) 1 K B 171; (1952) 2 Q B 413; (1920) 2 K B 523; (1909) 93 E R 698; A I R 1952 Cal 594; AIR 1952 Cal 656 Disting. 1954 B L J R 369: AIR 1954 Pat 486 (488, 489) (Prs 4, 5, 6) (DB).

——Art. 226 — Gram Panchayats — Principles of natural justice must be observed in Gram Panchayat activities.

The rule of natural justice, also described by some as 'rational or universal justice' and which is only fairplay in action conceiving justice as the supreme human good and a self-sufficient end, also extends to the activities of the Gram Panchayat affecting the property and interest of citizens. 67 Pun L R 134: AIR 1965 Punj 232 (235) (Pt F) (Pr 10).

——Arts. 226 and 227 — Natural justice — Use of unfair means at examination — Inquiry proceedings —Proceedings are of quasi-judicial nature—Regulations of University not prescribing any procedure—Principles of natural justice should be followed.

The following principles may be laid down with regard to proceedings taken against a candidate charged with having used unfair means at an examination: (1) The order made by an educational authority while dealing with a charge of unfair means against a candidate is not an administrative order but a quasi-judicial order. (2) The educational authority has to follow such procedure while determining the correctness of those allegations as is prescribed by the regulations or bye-laws. (3) In case the regulations or bye-laws prescribe no procedure, it would be for the authority to devise the procedure as it considers necessary to satisfy itself with regard to the correctness of the charge. (4) The procedure so adopted should be fair and not violative of the principles of natural justice. It need not, however, be the same as governs trials in ordinary Courts of law. (5) The candidate concerned must be informed of the charge and an adequate opportunity should be given to him to defend himself. (6) In case such an opportunity has been given to the candidate, and there is some material before the prescribed authority about the use of unfair means and the prescribed authority accepts that material and is not actuated by any hostile animus, the Court would not interfere with the decision of the aforesaid authority even if the Court disagrees with the conclusion of the authority.

Held, on facts, that there was nothing violative of the principles of natural justice in the procedure adopted. Further, as there was material before the Members of the Standing Committee on the basis of which they could have come to a conclusion about the use of unfair means by the petitioner, the High Court could not sit as a Court of appeal on that decision and hold that even though the members of the Standing Committee were satisfied about the use of unfair means they should not have been so satisfied. 66 Punj L R 674 : A I R 1964 Punj 327 (331, 332) (Prs 7, 8) (DB).

■ ——Art. 226 – Rules of natural justice, are relevant only when action is judicial or quasi-judicial. Joginder Singh v. State of Punjab, 65 Punj L R 267 : 1963 Cur L J 98 : I L R (1963) 1 Punj 588 : AIR 1963 Punj 280 (286, 287) (Pt A) (Pr 18) (FB).

■ ——Art 226—Quasi-judicial authority—Principles of natural justice to be observed by — Requirements of natural justice vary according to intendment of particular provisions.

Per Tek Chand, J. — Courts in India have been acting as vigilant sentinels on the qui vive to see that the principles of natural justice, are not violated by a judicial or quasi-judicial authority. In the case of the latter, the requirements of natural justice vary according to the provisions and intendment of the particular provisions. One of the broad principles of natural justice is that a quasi-judicial authority cannot make any decision against a party without giving him an effective opportunity of meeting the allegations made against him. This requires that a person whose civil right is affected must have a reasonable notice of the case he is to meet and, further, to have a reasonable opportunity of being heard in his defence. Of course, opportunity of being heard does not necessarily mean an oral hearing in person or by a lawyer. There, however, are exceptional cases where a public interest may be of such an imperative nature either by reason of a sudden and unforeseen emergency coming into existence or because of some other pressing exigency of the State which may weigh against such an opportunity being granted. A I R 1962 S C 1110 and A I R 1950 S C 222, Rel. on. Bhikhan Bobla v. Punjab State, 65 Pun L R 368 : ILR (1963) 1 Punj 660 : 1963 Cur L J 169 : AIR 1963 Punj 255 (273) (Pt F) (Pr 53) (FB).

——Art. 226 — Natural justice — Seat of member ordered to be vacated under S. 14 (e)—Punjab Municipal Act, 1911—Action under S. 14 (e) is of administrative nature—Rules of natural justice should be followed—Rule of fair play. See Municipalities—Punjab Municipal Act (3 of 1911), S. 14 (e). ('62) 64 Punj L R 685.

——Art. 226—Natural justice—Quasi-judicial orders —Duty to act judicially.

In the exercise of quasi judicial function the doctrine of natural justice must be observed and complied with by the tribunal, if no procedure is laid down in the statute. The doctrine of natural justice in substance only means that the interested parties should have a fair and reasonable chance of putting their case before the authority or in other words they should have a fair and reasonable hearing. This doctrine is not concerned with the form of the proceedings taken but with the substance of the matter. ILR (1957) Punj 1728 : AIR 1958 Punj 35 (36, 37) (Pt B) (Pr 4).

——Art. 226—Natural justice — Principles of — Applicability of, to proceedings under Punjab Urban Rent Restriction Act. See Civil P. C. (1908), S. 151. ILR (1957) Punj 611.

——Art. 226 — Natural justice — Violation of principles of natural justice — Order can be set aside under Art. 226. See Motor Vehicles Act (1939), S. 47 (1) (c). AIR 1961 Raj 130.

——Art. 226 — Principles of natural justice when should not be introduced—[Arms Act (1878), S. 18 (a)].

Where, an authority exercising administrative powers under a statute [e. g., under S. 18 (a), Arms Act] acts within the four corners of the statute, and does not exceed or abuse its powers, it is unnecessary to introduce into the statute the principles of natural justice. Thus, if in a particular type of statute it is thought unnecessary to provide for notice of hearing in an administrative matter, the Courts should not introduce that in the law on the basis of principles of natural justice. AIR 1953 Raj 149, Ref. AIR 1953 Nag 125, Criticised. 1954 Cri L J 1672: ILR (1954) 4 Raj 170 : AIR 1954 Raj 264 (268) (Pt C) (Pr 10) (DB).

——Art. 226 — Natural Justice — Principles. See Saurashtra Restoration of Dispossessed Land Ordinance (No. 16 of 1948), S. 7. ('55) 8 Sau L R 373.

——Art. 226 — Good faith — Test of — Parallel proceedings under S. 47, Travancore Income-tax Act and Taxation on Income (Investigation Commission) Act, 1124, if repugnant to good faith and natural justice. See Travancore Income Tax Act (1921), S. 47. AIR 1957 Trav-Co 303 (DB).

78 (a). Right to be heard.

(i) Disciplinary proceedings against students. See also Note 5 (g).

(ii) Disciplinary proceedings against servants.

(iii) Labour disputes.

(iv) Hearing and decision by different bodies.

(v) Defence.

(vi) No infringement.

(vii) Miscellaneous.

78 (a). Right to be heard.

——Art. 226—Principles of natural justice—Authorities which are expected to apply these principles in dealing with matters entrusted to them.

Authorities or bodies which are given jurisdiction by statutory provisions to deal with the rights of citizens, may be required by the relevant statute to act judicially in dealing with matters entrusted to them. An obligation to act judicially may also in some cases, be inferred from the scheme of the relevant statute and its material provisions. In such a case, the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its powers; the obligation to follow the principles of natural justice need not be expressly imposed. Power to determine questions affecting the rights of citizens, would impose the limitation that the power should be exercised in conformity with the principles of natural justice. Whether or not such an authority or body is a tribunal, depends upon the nature of the power conferred on it, the nature of the rights of citizens, the decision of which falls within the jurisdiction of the said authority or body and other relevant circumstances. 1964 A C 40 and AIR 1965 S C 1595, Rel. on. Lala Shri Bhagwan v. Ram Chand, (1965) 2 S C A 844 : 1965 All L J 353 : 1965 All W R (HC) 304 : (1965) 2 S C W R 318: AIR 1965 SC 1767 (1770) (Pt A) (Pr 5).

——Art. 226— Certiorari — Natural justice — Opportunity to parties to be heard.

Certiorari will be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice : AIR 1955 S C 233, Foll. Sangram Singh v. Election Tribunal, Kotah, 1955 Mad W N 844 : (1955) 2 Mad L J (S C) 13 : 1955 Andh W R (S C) 267 : 1955 S C A 545 : (1955) 2 S C R 1 : 1955 S C J 431 : A I R 1955 S C 425 (428) (Pt B) (Pr 10).

——Art. 226 — Natural justice — Opportunity and right to be heard before being condemned — What amounts to. AIR 1960 All 579 (583) (Pt B) (Pr 15).

——Art. 226 — Order under U. P. Municipalities Act, S. 221—Declaration of street as public street—Nature of proceedings — Objections to declaration— Duty of administrator — Issue of writ — Nature of proceedings under S. 221, although not judicial, if fundamental rights are to be affected, and where evidence has to be recorded and provisions of Civil P. C. and Evidence Act have to be followed, the person whose fundamental right has to be affected must be given a right to substantiate his objections —He should be given opportunity to be heard before passing orders. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 221. AIR 1958 All 209.

——Art. 226—Natural justice — Audi alteram partem —Principle applies to quasi-judicial determinations but not to purely administrative orders which do not create any legal right in petitioner. A I R 1960 S C 606, Disting. A I R 1965 Andh Pra 425 (432) (Pt D) (Pr 14).

——Art. 226 — Natural justice — Essential requirements —Reasonable opportunity— What is —Charges should be levelled with sufficient paticularity and preciseness.

The essential requirements of natural justice are: firstly, that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, that the tribunal should act in good faith. A reasonable opportunity means an adequate opportunity and it presupposes that the person against whom a charge is levelled should be told with sufficient particularity and preciseness what the charge is and what the allegations are.

Action was taken by the authorities against malpractices committed by certain students during the examination. None of them was informed in what subject and in what manner he had copied or allowed some one else to copy from him. Further, they were asked to answer vague and indefinite charges : Held, that the procedure adopted by the authorities did not satisfy the requirements of natural justice. 1943 A C 627 and (1958) 1 W L R 762, Relied on. 1961 Andh L T 890 : AIR 1962 Andh Pra 187 (191, 192) (Pt B) (Prs 17, 18).

——Art. 226 — Natural justice — Reasonable opportunity to show cause — Meaning of. See Ibid, Art. 311 (2). AIR 1960 Assam 141 (DB).

——Art. 226—Natural justice—Audi alteram partem. See Berar Land Revenue Code (1928), S. 140. ('59) 61 Bom L R 1638.

——Art. 226 — Natural justice — Requirements — Hearing party.

It is the ordinary rule of natural justice that before a Court or a tribunal or an authority exercising judicial functions passes an order which prejudicially affects a party, the Court, tribunal or the authority must hear the party in his defence and give him an opportunity to show cause against the order that it proposes to pass. 59 Bom L R 1 : ILR (1957) Bom 157 : (1957) 32 ITR 344 : AIR 1958 Bom 459 (460) (Pt D) (Pr 6) (DB).

——Art. 226 — Opportunity to be heard — What amounts to. See Municipalities — City of Nagpur Corporation Act (2 of 1950), S. 49. ('58) 60 Bom L R 760.

——Art. 226 — Railway Establishment Code (1951), App XIII, Part B, R. 1—Withdrawal of recognition— Opportunity to show cause—Means reasonable opportunity— Colourable compliance with R 1 — Vitiates order of withdrawal.

Rule 1 of the Code simply requires 'opportunity' and does not mention that such opportunity must be reasonable'. But the concept of adequacy or reasonableness not only follows from the Dictionary meaning of the word 'due but is inherent in the requirement of 'opportunity' being given, for the object of R. 1 is to afford the association sought to be affected by the withdrawal of recognition an opportunity to meet the charge or cause upon which the recognition is sought to be withdrawn. If the opportunity is given in such circumstances that the union gets no proper time or no chance of referring to the requisite materials, for meeting the charges it, would be only a 'colourable' compliance with the Rule. The very word 'opportunity' requires a reasonable opportunity to be afforded. AIR 1954 S C 170, Rel. on Further, what opportunity would be proper or adequate in a given case would depend upon its circumstances. Having regard to the circumstances of this case it must be held that the impugned order has been made without giving proper opportunity to show cause as required by R. 1, and hence the impugned order has been vitiated by want of jurisdiction. It also contravenes the principles of natural justice in so far as they are implicit in the Rule itself. The impugned order of withdrawal of recognition was therefore ultra vires and void in toto. **AIR 1965 Cal 389 (393, 397, 398) (Pt G)(Prs 29, 42).**

——Art. 226 — Natural justice—Opportunity of being heard — Includes disclosure of information received by Commissioner on inquiry, See Income tax Act (1922), S. 33. **AIR 1964 Cal 367.**

——Art. 226 — Natural justice — Audi Alteram Partem. See Calcutta Police Act (1860), S. 39. **AIR 1962 Cal 556 (DB).**

——Art. 226 — Certiorari — Natural justice — Fair hearing — Elements—Quasi-judicial orders—Orders under Sea Customs Act — Denial of opportunity to inspect documents held up in evidence against petitioner—No fair hearing — Sea Customs Act (1878), S. 167 (8).

A fair hearing has two elements. The first is that an opportunity to be heard must be given; the second is that this opportunity must be reasonable. Both these matters are justiciable. Whether a person has had a fair hearing can be gone into by the Court; and the Court's conscience must be satisfied that an Administrative Tribunal charged with the duty of deciding a dispute has conformed to fundamental principles of natural justice.

Held, that even if no injustice had resulted, the proceedings did not exclude the possibility of denial of opportunity of fair hearing to the petitioner and the order of adjudication must, therefore, be held to be bad on that ground. AIR 1959 Cal 533, **Reversed. 1962 (2) Cri L J 342 : AIR 1962 Cal 460 (466) (Pt A) (Prs 33, 35) (DB).**

——Art. 226 — Natural justice — Certiorari, writ of —Administrative Tribunal — Natural justice — Fair hearing does not include right of personal hearing. **AIR 1962 Cal 411 (414) (Pt A) (Pr 14) (DB).**

——Art. 226 — Opportunity to be given to appellant to be heard—See Tenancy Laws — West Bengal Non-Agricultural Tenancy Act (20 of 1949), S. 72 (1). **AIR 1956 Cal 357.**

——Art. 226 — Principles of natural justice — Requirements of, whether met in a case—Question depends upon factors involved in case.

There are certain basic principles relating to the requirements of natural justice which must be followed in all cases by those who hold any judicial inquiry unless of course the statute in express terms or by necessary implication absolves them from the obligation to do so. Very broadly expressed, the first principle is that the party to the controversy must know with reasonable certainty the nature of the case against him. Secondly, he should be given a fair and proper opportunity to meet the case against him and to state his own case. Lastly, the tribunal must conduct the inquiry and reach its conclusion in good faith.

The question whether the requirements of natural justice have been met by the procedure adopted in a particular case must depend to a great extent on the facts and circumstances of the case in point. The requirements of natural justice are not such as can be reduced to any formula which can have universal application to every kind of inquiry. The procedure also need not be analogous to judicial procedure or procedure of Courts of justice but would depend upon the subject-matter, etc. (1949) 1 All E R 109 and (1915) A C 120 and AIR 1918 P C 67 and (1958) 2 All E R 579 and AIR 1958 S C 398, Rel. on. **(1963) 4 Gui L R 326: AIR 1963 Guj 50 (59, 60) (Pt C) (Pr 10) (DB).**

——Art. 226 —Natural justice—Audi alteram partem — Administrative orders — Order under S. 39, Sea Customs Act.

The application of the principle founded on the maxim audi alteram partem does not reach executive or administrative orders. Its application covers orders which are judicial or quasi judicial. A I R 1958 S C 578 and (1915) A C 120, Rel. on.

The action taken by the Customs authorities under S. 39 is an administrative or executive action and, therefore, in doing so, they cannot be regarded as acting in any quasi judicial manner. Before making the order the Customs authorities are not bound to hear the assessee. **(1960) 1 Gui L R 267 : AIR 1961 Guj 51 (56, 57) (Pt D) (Prs 12, 13) (DB).**

——Art. 226 — Natural justice—Audi alteram partem — Scope and applicability, indicated. **AIR 1962 Him Pra 59 (64, 65, 66, 67, 68) (Pt B) (Prs 19, 21, 22, 31, 32, 33, 42, 43).**

——Art. 226—Natural justice — Audi alteram partem —Act of executive bodies — Order against person passed without notice to him and without hearing him in the matter — Error held fundamental —When executive is given power to decide something in its discretion, the Courts would still keep it in the leading strings of fair procedure — Rule applies to every tribunal or body of persons invested with authority to adjudicate on matters involving civil consequences — It is not confined to legal tribunals alone. **1963 Ker L T 1051.**

——Art. 226 — Grant of lease for certain term subject to earlier termination on certain contingency — Lessee whether must be heard before order terminating lease — Lessee heard by revising authority —Illegality committed by tribunal of first instance whether cured — Public orders — Construction — Quashing of — (Administrative law).

The Government by order sanctioned the grant of a Kuthakapattom lease to the petitioner. The Tahsildar issued a notice to the petitioner to give possession of the site to the Village Officer, Berumbavoor within 3 months from the date of notice.

Held, (i) that in addition to the essentials expressed in the lease, that the lessee must be heard before final order was passed, must also be implied; (ii) that it failed to give the three months notice under clause 9 of the lease; (iii) that public orders, cannot be construed in the light of explanations subsequently given by the officer making the order; (AIR 1952 SC 16, Followed); (iv) that the fact that petitioner was later heard by Government as revising authority, could not in any

way mend the matter; (v) that this was a case where it fairly appeared that some prejudice might likely to have resulted from disregard of established rules. In such circumstances the High Court would readily set aside the administrative determination of the lease. 1959 Ker L R 142 : 1959 Ker L J 305 : AIR 1960 Ker 88 (89, 90) (Prs 5, 5a, 6).

——Art. 226 — Scheme of road-transport service — Objections to be heard by 'Public Works Secretary — Order overruling objections and approving scheme passed by Minister for transport—Such procedure defeats object of personal hearing and is clearly unsustainable — Resultant scheme should be quashed under Art. 226. See Motor Vehicles Act (1939), S. 68 D. ILR (1959) Ker 1058.

——Art. 226 — Natural justice — Meaning—Expression embodies principle of audi alteram partem—It contemplates a reasonable and fair opportunity to person concerned to prove his innocence — Question of procedure becomes unimportant if these basic requirementt are fulfilled.

Natural justice would broadly mean firstly, the principle of audi alteram partem, meaning that no person should be condemned behind his back. So far as disciplinary action of any sort, whether under the service rules or under the University or the School Education Board Acts, is concerned, a charge of adopting unfair means in the examinations, would be more or less of a quasi-criminal nature involving the reputation and career of the student. Before a person is condemned, he must be given an opportunity to be heard to explain the materials and circumstances, appearing against him. It will depend on the facts of the case, as to, what is a sufficient or a reasonable opportunity. It would, however, mean an opportunity to prove his innocence. Where statutes and ordinances have been framed by University their requirements must be met, in addition to the requirements of the principle of natural justice. For this purpose the person concerned is not entitled to invoke any statutory provision of the Civil or the Criminal Procedure Code or the Indian Evidence Act. But what might be permissible would be broadly speaking a fair opportunity to be heard and to prove one's own innocence. If these two essential requirements are satisfied the question of procedure is not very material, because the procedure as applicable to the Courts of law can, in no event, be insisted upon by the person concerned. The enquiry need not be elaborate like the one in a law Court. The enquiry may as well be summary. But the basic principles ought not to be ignored namely, that the authority taking disciplinary action has some material before it, which can be the foundation for arriving at a conclusion of the guilt of the person concerned and any reasonable man would arrive at such conclusion. The principle further requires that the person concerned, should not only be given a hearing but also that it must not be given to one side in the absence of the other. The opportunity to be heard ought to be given before action is taken against person concerned. What is required is only a fair opportunity to the person concerned to state his case and to prove his innocence. If after such opportunity the person concerned does not avail of it and if the conclusion is against him, it cannot be said that the principles of natural justice are violated. AIR 1950 S C 222 and AIR 1962 S C 1110 & 1958 (2) All E R 579 and AIR 1960 S C 992 and (1920) 3 K B 334 and (1935) 1 K B 349 and 1915 A C 120 and 1940 Ch D 70 and (1944) 1 All E R 179 and AIR 1962 S C 646, Rel. on.

In the case of a University unless the statutes and the ordinances framed under the University Act so require, the principle of natural jnstice would not imply a right to be heard in person or representation through a counsel or a right to cross-examine every witness examined in support of the charge. AIR 1963 S C 375 and 1911 A C 179 and AIR 1957 S C 232 and AIR 1957 S C 882 and AIR 1959 S C 1111 and AIR 1954 Bom 351, Rel. on. 1965 Jab L J 912 : 1966 M P L J 16 : AIR 1966 Madh Pra 136 (141, 142, 143) (Pt A) (Prs 19 to 23) (DB).

——Art. 226—Natural justice—Opportunity of being heard not given—Duty of Courts—Legal maxims—Audi alteram partem.

It is a fundamental principle which is firmly rooted in English jurisprudence that no one shall be condemned or punished or deprived of property in any judicial proceeding unless he has had an opportunity of being heard. The maxim audi alteram partem (hear the other side) is one of those principles of natural justice which has always been followed in our country, and superior Courts are jealous to enforce this basic requirement of procedure and feel themselves duty-bound to intervene in case of its infraction. 1960 Jab L J 1016 : 1961 M P L J 963 : ILR (1961) Madh Pra 792.

——Art. 226—Use of emergency powers—Opportunity of owner to make representation can only be deprived of for proper reasons. See Land Acquisition Act (1894), S. 17 (4). AIR 1965 Mad 328.

——Art. 226—Natural justice—Principles of—What are—Do not necessarily involve giving of oral hearing—Question of oral hearing depends on facts of each case — Bombay Primary Education Act (61 of 1947), S. 56.

It is not easy to define by any neat combination of words, the exact or precise requirements of the rules of natural justice. The two principles of natural justice are that no man should be a Judge in his own cause and that an opportunity should be afforded to the person likely to be affected by the proceedings to make his defence.

The words "to make a defence" do not necessarily include an oral hearing. The question as to whether an oral hearing should or should not be given, is one which depends upon the facts of each case. If an oral hearing in certain circumstances is unnecessary and superfluous, the statutory body whether it is either a quasi-judicial tribunal or an admistrative tribunal or some other kind of tribunal, is not bound to give such oral hearing. But if the proceeding is such and the circumstances make it imperative that there should be an oral hearing and the presentation of a case in writing is likely to be inadequate, an oral hearing would be indispensable.

It is thus clear that the requirement that the person who is likely to be affected should be heard means that he should have an adequate opportunity of presenting his case and not that in all cases he should be afforded or given an oral hearing. Case law referred to.

Thus, where it was clear that the order dissolving a school board under S. 56 of the Bombay Primary Education Act, 1947, was made by the State Government honestly and in good faith; that the State Government afforded to the school board a full and adequate opportunity to present its case and to make its defence against the charges which were brought against it; that the school board itself at no stage considered that any enquiry into those charges was necessary and left it to the option of the State Government to decide whether any such inquiry was or was not required and that the procedure adopted by the State Government in making the impugned order had not resulted in any prejudice to the school board nor had produced any unjust results:

Held, that the order was incapable of being assailed on the ground that it was not preceded by a fuller enquiry or an oral hearing. 1962 Mys L J (Sup) 227 (DB).

——Art. 226—Natural justice—Audi alteram partem.

Rule of natural justice is not a rule of law that can override the laws of the land. It cannot also be made a touchstone to find out the validity of any piece of legislation. But if a given statute can be interpreted both consistently with the principles of natural justice as well as de hors those principles, it should be construed in accordance with the principles of natural justice. Similarly unless there is something in the contract either specifically or by necessary implication negativing the application of that rule, it is proper to read into the terms of that contract, if it deals with the civil rights of a person, the rule of 'audi alteram partem' as an implied term. 38 Mys L J 1048 : ILR (1960) Mys 1100 : (1961) 1 Lab L J 472 : AIR 1961 Mys 49 (52, 53) (Pr C) (Pr 14) (DB).

——Art. 226 — Natural Justice — Maxim Audi alteram partem — See Bombay Land Revenue Code (5 of 1879), S. 211. ILR (1958) Mys 414.

——Art. 226 — Grounds for issue of writ — Failure of quasi judicial tribunal to give personal hearing.

In all cases of quasi judicial tribunals, what is required is that sufficient opportunity should be given to the parties who approach them for relief. Whether a personal hearing should be given or not will depend upon the facts and circumstances of each case. Where petitioner's objections as to acquisition proceedings in respect of his lands were considered by the State Government and the order of dismissal of the petitioner's application for dropping the land acquisition proceedings was made, the said order cannot be said to be vitiated merely because no oral hearing was given to the petitioner's advocate. I L R (1956) Mys 146 : AIR 1957 Mys 12 (13, 14) (Pt A) (Pr 7) (DB).

● ——Art. 226 — Quasi-judicial orders of appellate authorities — Principle of natural justice should be observed.

Quasi-judicial orders of appellate authorities should be passed only after the parties concerned are given a reasonable opportunity of being heard. It may be that the question of maintainability is a preliminary issue but even in respect of this preliminary question, the appellant is entitled to be heard before the appellate authority makes up its mind. Otherwise it offends the well-known principle of natural justice. Virendra v. Sada, 1965 B L J R 839 : (1966) 12 Fac L R 137 : AIR 1966 Pat 143 (143) (Pr 3) (FB).

——Art. 226—Natural justice.

Opportunity to be heard. See Bihar Minor Mineral Concession Rules (1964), R. 34. AIR 1965 Pat 491 (DB).

——Art. 226 — Certiorari — Denial of opportunity to show cause against impugned order—Order stopping grant-in-aid of a school without giving any opportunity to Managing Committee of the School to show cause against it is illegal and liable to be quashed. 1965 B L J R 357.

——Art. 226—Natural justice—Principles.

Natural justice does not imply unfettered liberty to the litigants to determine and direct the course of the hearing or their cause, nor does it make the hearing dependent upon the convenience of the litigants. The principle of natural justice does not connote unqualified indulgence on the part of the Court towards the litigants. Once a person affected is given a reasonable opportunity of being heard, there is sufficient compliance with the fundamental principle of natural justice. If the party does not avail of that opportunity and fails to place his case before the Court or Tribural, either personally or through a lawyer, there is no denial of justice to him. ILR 36 Pat 1264 : AIR 1958 Pat 71 (73, 74) (Pt D) (Pr 4) (DB).

——Art. 226 — Writ of certiorari—Principle of audi alteram partem — Order of Deputy Commissioner cancelling licence under S. 42 (1) (c), Bihar and Orissa Excise Act (1915) without hearing licensee—Writ of certiorari if can issue.

Per Ramaswami, J.: The principle of audi alteram partem only means that the party affected should be given sufficient opportunity to meet the case against him and not that he is necessarily entitled to an oral hearing. The principle is satisfied if the party adversely affected is given sufficient opportunity to know the case he has to meet and to answer that case at some stage and not at all the stages of the administrative proceeding. No general test can be formulated which would be applicable to all conditions. There is, however, authority for the view that the principle would be satisfied if the statute provides for an appeal to higher authority, or for making any formal representation to the authority before the order becomes finally operative. Though S. 42 (1) (c), Bihar and Orissa Excise Act, does not prescribe what is the procedure to be followed by the Collector for cancellation of a licence, there is an implication as a matter of law that some form of enquiry must be made and the Collector is bound to give a fair opportunity to the licensee of stating his view point. 1956 Pat L R 120 : I L R 35 Pat 268: 1956 B L J R 549: A I R 1956 Pat 212 (219, 220, 221) (Prs 21, 22, 25) (DB).

——Art. 226 — Natural justice — Principles of — Opportunity to be heard — No standard of reasonableness — Question depends on facts and circumstances of each case. AIR 1964 Punj 15 (19, 20) (Pt B) (Pr 15).

● ——Art. 226 — Principles of natural justice — Concept of natural justice — Its connection with maxim "audi alteram partem".

Per Tek Chand J. — The concept of natural justice is bound up with the maxim "audi alteram partem" (hear the other side). The cardinal characteristic of a judicial or quasi-judicial process is the impartiality of the tribunal giving rise, as a corollary, to juridical qualities between the parties before it, and the latter is apt to be gravely imperilled when one of the parties has not been given opportunity to appear before it thus disturbing the equilibrium betweem them. The essence of the rule is notice, adequate opportunity to be heard, consideration and solemn judgment. Bhikhan Bobla v. Punjab State, 65 Pun L R 368 : ILR (1963) 1 Punj 660 : 1963 Cur L J 169 : AIR 1963 Punj 255 (268 to 273) (Pt E) (Prs 38 to 52) (FB).

——Art. 226—The question whether a fair opportunity has or has not been given to the party adversely affected depends on the particular facts of each case. The rule does not require that the party adversely affected should be heard at every stage of the administrative proceedings. 59 Pun L R 251: I L R (1957) Punj 1334 : AIR 1957 Punj 155 (158) (Pt F) (Pr 8) (DB).

——Art. 226—Natural justice — Right to be heard—Tenancy Laws — Punjab Tenancy Act (16 of 1887), S. 45 (5) — (Tenancy Laws — Pepsu Tenancy and Agricultural Lands Act (8 of 1953), S. 7).

When powers are conferred by the legislature which are to be judicially exercised, the person against whom they are to be exercised has a right to

be heard; and if this right be not expressly conferred by the statute, the common law will supply that omission. 32 L J (N S) C P 185 : 24 Q B D 703 and (1893) 3 Ch D 482, Foll.

Where a landlord seeks eviction of a tenant-at-will by following the procedure laid down in Ss. 43 and 45 of the Punjab Tenancy Act, 1887, and no suit by the tenant contesting his liability to be ejected is filed within 2 months of the service of notice of ejectment, since the enactment of S. 7 of the Pepsu Tenancy and Agricultural Lands Act of 1954, the revenue officer is bound to make an enquiry whether the grounds specified in S. 7 of the 1953 Act exist or not before an order for eviction under S. 45 (5) of the 1887 Act is made. **ILR (1957) Punj 1682.**

——**Arts. 226, 311 (2)** — Reasonable opportunity of showing cause — What is — Meaning of reasonable (Words and Phrases). See Ibid, Art. 311 (2). **AIR 1956 Punj 58 (DB).**

——**Art. 226—Administrative tribunal—Procedure — Person exercising judicial or quasi-judicial functions—Duty to hear parties—Practice.**

Natural justice is founded in equity in honesty and right and the two broad rules which must be observed by every person exercising judicial or quasi-judicial functions are (1) that there must be no bias and (2) that no party should be condemned unheard. The distinguishing feature of the judicial power is that an interested party must come to the Judge and require him to determine a matter in controversy; and the party to whom the order of the Judge may prove detrimental must have the right to oppose. Both sides should be heard and one side should not be heard in the absence of the other. If these conditions are not fulfilled, the decision is almost certain to be quashed. **53 Pun L R 115 : AIR 1951 Punj 401 (404) (Pt B) (Pr 9).**

——**Art. 226—Quasi judicial tribunal — Opportunity to be heard by — Right whether exists.**

All that quasi-judicial tribunals like the Board of Revenue have to do, is to give sufficient opportunity to persons who approach them for the exercise of their jurisdiction to state their case. In the case of an executive authority like the Member of the Board of Revenue, there is no rule which requires that he should listen to oral contentions of parties or their advocates It is enough if the contentions are put in writing and the order is passed on perusal of these objections. That is sufficient hearing for the purpose of disposing of the matter. AIR 1951 Mad 276, Foll. AIR 1951 Trav Co 197, Affirmed. **1951 Ker L T 329 : AIR 1952 Trav-Co 287 (288, 289) (Pt A) (Pr 7) (DB).**

——**Art. 226—Jurisdiction—(V. P. Gram Panchayat Ordinance (1949), S. 49).**

The decision of Gram Panchayat constituted under Gram Panchayat Ordinance is vitiated if all the Panchas who decided the case did not hear it and if six Panchas decided it instead of five. A matter affecting the constitution of the tribunal is a matter involving jurisdiction. **AIR 1956 Vindh Pra 6 (7) (Pt D) (Pr 5).**

78 (a) (i). Disciplinary proceedings against students.

See also Note 5 (g).

——**Art. 226** — Natural justice — Opportunity to be heard — University — Disciplinary jurisdiction — Reluctance of High Court to interfere — University when it finds a student guilty of misconduct, if acts as an administrative or disciplinary body — It may observe principles of natural justice — One such principle is to give opportunity to the student to be heard. **A I R 1961 All 301 (305, 306) (Pt B) (Prs 21, 24).**

——**Art. 226—Natural justice—Disciplinary action by Board of High School and Intermediate Education against student for copying during examination—Student asked to answer in writing questions during inquiry.**

Held, there was reasonable opportunity to meet the charges—Special App. No. 174 of 1955 (All) Rel. on. AIR 1961 All 290 (292) (Pt D) (Pr 9).

——**Arts. 226, 227 — Natural justice — Use of unfair means in university examination.**

Summary inquiry by Academic Council and debarring of examinee—Examinee given opportunity to explain conduct but had no explanation to offer—Held no violation of principles of natural justice — Examinee when to be allowed to cross-examine stated. **AIR 1960 All 642 (646, 647) (Prs 17, 19).**

——**Art. 226—Natural justice.**

Even an administrative or disciplinary authority is expected to observe the ordinary rules of fair play and act keeping in view the principles of natural justice.

An examinee at University Examination was found with a piece of paper with writing thereon, and both the invigilator and the Superintendent wrote their report on a printed form and the examinee wrote his explanation, and when the matter was put before the Academic Council in due course, the Academic Council passed a resolution, rusticating the examinee for one year. The Academic Council in the present case is not acting in a judicial or quasi-judicial capacity. It is functioning more as a disciplinary body than an administrative one. All the requirements of natural justice were fulfilled in the present case. (1940) 1 All E R 109 and AIR 1958 S C 398 and AIR 1957 S C 232, Relied on. There is no warrant for the proposition that in every case in which action is taken by an administrative or disciplinary authority it must itself give the person concerned an opportunity to be heard and that it cannot act on the basis of the materials submitted by a subordinate enquiring body which had given an opportunity to the examinee when the facts were enquired into. AIR 1956 All 539 and 1957 All L J 213; AIR 1958 All 792 Distinguished; (1953) 2 All E R 717 and (1954) 2 All E R 118 and AIR 1956 All 46, Relied on; AIR 1959 Orissa 196, Expl. and Disting. **I L R (1960) 2 All 205 : 1960 All L J 348 : AIR 1960 All 531 (532, 533, 534) (Prs 6, 8, 14, 15) (DB).**

——**Art. 226**—Natural justice—Examinee using unfair means—Inquiry by delegate on spot — Cancelling of result by University—Order held not contrary to natural justice — 1957 All L J 213, Dissented from. **AIR 1963 All 198 (199) (Prs 4, 5).**

——**Art. 226—Cancellation of student's examination —Opportunity to explain couduct not given—Principles of natural justice violated —(Natural justice).**

If a student's examination is cancelled without giving him an opportunity to explain his conduct such an order is in violation of the principle of natural justice. AIR 1956 All 539, Foll. **1957 All L J 213.**

——**Art. 226—Regulation under S. 15, U. P. Act 2 of 1921, Chap 6, Para 1 (1) —Students using unfair means at examination — Cancellation of results by examination committee in ex parte proceedings—Failure to provide opportunity of being heard — Effect on order of cancellation—Penalty imposed if within power of committee —Infringement of students' rights under Art. 19 (1) (f) of Constitution—See U. P. Intermediate Education Act (2 of 1921), S. 13. A I R 1956 All 539.**

——**Art. 226—Administrative Bodies—Procedure to be followed—Select Malpractice Committee of Board of Secondary Education — Enquiry into alleged**

malpractices by students during examination — Principles of natural justice should be observed.

The Select Malpractice Committee of the Board of Secondary Education and the Commissioner for Government Examinations when conducting enquiries into cases of alleged malpractices at examinations, exercise quasi-judicial functions and not mere administrative functions notwithstanding that they are administrative bodies. That being so, and in the absence of any prescribed procedure, it is incumbent on them to observe the principles of natural justice in conducting such enquiries. (1960) 1 W L R 223, Rel. on. 1961 Andh L T 890 : AIR 1962 Andh Pra 187 (190) (Pt A) (Pr 14).

——Art. 226—Natural Justice—Judicial and quasi-judicial body — Andhra Pradesh Secondary School Examination Board—Disciplinary proceedings against examinee for using unfair means—If there are rules governing the procedure they must be followed — In their absence, requirements of natural justice are to be observed — Principle of audi alteram partem has to be observed—A person cannot be condemned without having notice of charge against him and without an opportunity to meet the charge. AIR 1961 Andh Pra 46 (48, 49, 50) (Pt A) (Prs 10, 11, 12, 14, 17).

——Art. 226 — Administrative orders — University debarring candidate from examination for misconduct — Opportunity not given for explanation — Interference—Legality of order—(Maharaja Sayajirao University Act (17 of 1949), S. 47).

The University in holding examination and in seeking to punish misconduct of a candidate in the examination is acting as an administrative body. The decision of the University authorities to declare a candidate unsuccessful, and to impose penalties is not open to review by the Courts unless it is shown to be arbitrary, capricious or mala fide.

Under Ordinance 278 framed by the Maharaja Sayajirao University of Baroda it does not appear to be obligatory upon the Syndicate of the University to hear a student before imposing a penalty upon him for misconduct. The High Court exercising jurisdiction under Art. 226, in the absence of any claim on the part of the candidate for the protection of any fundamental right or an allegation that the action of the University is either arbitrary, capricious or mala fide, is incompetent to review that decision on the ground that the candidate had not been given an opportunity to explain the charge of misconduct. But having regard to the nature of the enquiry being administrative, with no statutory obligation to give opportunity to the candidate, the action taken by the University cannot be assailed on the ground of absence of notice. 59 Bom L R 569 : ILR (1958) Bom 60 : A I R 1957 Bom 246 (249, 250, 251) (Prs 6, 8, 10, 15) (DB).

——Art. 226 — Quasi-judicial bodies — University Authorities — Procedure — Disciplinary action—Enquiry by Examination Board— Opportunity to candidates to defend themselves. See Calcutta University Regulations, Ch. 25, Reg. (5). AIR 1957 Cal 428.

——Art. 226 — Writ against University — Duty of Board of Examiners to act judicially — Candidate appearing for examination found guilty of misconduct or adoption of unfair means at examination —Candidate disqualified from obtaining degree — Decision reached in violation of principles of natural justice — Jurisdiction of Court to interfere.

One of the functions of the Board of Examiners brought into existence under Chap. XXV of the Regulations framed under the Indian Universities Act, is to consider all cases of breaches of discipline arising in connection with the examination but there is no detailed procedure laid down as to how the Board will discharge this function.

In cases where breaches of discipline are detected by the invigilators or other officers present in the examination hall and candidates concerned are expelled from the hall or are otherwise dealt with, question of any enquiry or investigation upon notice to the candidates may not arise. But where no case of breach of discipline is actually detected but subsequently upon examination of the answer papers the Examiners come to entertain suspicion about adoption of unfair means by particular candidate or candidates and the Examination Board has to consider such cases and come to a determination as to the nature of the offence committed and has to apportion the penalty which can properly be inflicted upon the delinquents, it is only fit and proper that the party arraigned should have an opportunity to defend himself and to offer an explanation, if any. To brand a candidate with the stigma of adoption of unfair means at the examination or in other words finding her guilty of dishonesty or misconduct and thereby causing an irreparable injury to the character and reputation of such candidate, without giving him or her any opportunity to explain, is contrary to all notions of justice and good sense.

It is true that the Board of Examiners is an Administrative Body but when they are conducting enquiries or investigations into cases of misconduct of the candidates they are exercising quasi-judicial functions. They are a body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals.

The words "consider" in Chap. XXV, Reg. 8 (VI) (c) must necessarily involve and import a decision not merely depending upon opinion but depending upon inquiry or investigation.

The question whether a particular power is to be exercised judicially or quasi-judicially or merely in an administrative capacity depends on the nature, scope and effect of the particular power. A mere provision for enquiry or notice does not furnish any conclusive test. Even where there is no provision for enquiry or notice in relation to discharge of certain statutory duties, Courts have spelt out an obligation to act judicially or quasi-judicially in the discharge of such duties.

Where the decision of the Board of Examiners has merged in the order of the Syndicate which is the confirming authority under Reg. 8 (VIII) of Chap. XXV and it is the order of the Syndicate which has been communicated to the petitioner as the final order which has cancelled the examination of the petitioner, and the Board of Examiners have acted in breach of their duty to follow the principles of natural justice, a writ directed against the Syndicate will give effective relief to the petitioner. But whether it is the decision of the Board or the decision of the Syndicate these different bodies are discharging the different functions of the University and their acts are the acts of the University. These different bodies are part and parcel of the University which is a body corporate. So a writ can be properly directed against the University.

Even assuming that the act of confirmation of the Syndicate was in the nature of an executive act the mere confirmation cannot legalise the proceedings of the Board of Examiners which were conducted in violation of the requirements of the Statute or in breach of their duty to follow the principles of natural justice. Both the decision and its confirmation

remain tainted with illegality. There has not been any proper determination according to law and so mandamus can issue directing the University to reconsider the case of the petitioner according to law.

A candidate by the very act of presenting himself for an examination by the University, submits himself to the decision of the authorities appointed by the University for conducting the examination and it is inconceivable that a Court of law will declare a candidate to have passed an examination when the University authorities empowered to adjudicate upon the results of the examination, declare him to have failed. But where, a candidate who has admittedly obtained pass marks in all the subjects and has qualified herself for the degree of Bachelor of Arts, is declared to be disqualified from obtaining the degree because the University authorities have arrived at the conclusion that the candidate has been guilty of misconduct or adoption of unfair means at the examination, and it appears that the decision is reached in violation of the principles of natural justice or in other words by a process contrary to the spirit and intendment of the statutory regulation governing the matter, the Court has undoubtedly the jurisdiction to interfere.

The decision of the University authorities affects not only the rights of the petitioner as an examinee but also her right to reputation. Moreover the injury that is caused to her fair name is an irreparable injury. If she sues for damages for libel she will at once be met by the defence of qualified privilege and unless she proves malice (which will be difficult if not impossible for her to prove) she gets no relief in suit. Hence, the petitioner is entitled to invoke the jurisdiction of the High Court under Art. 226, Constitution of India.

The Board of Examiners and the Syndicate in considering cases of breaches of discipline must act reasonably and with due care and caution. 56 Cal W N 278 : AIR 1952 Cal 594 (596, 597, 599, 600, 601) (Prs 8, 9, 10, 23, 28, 29, 30, 33, 35, 37).

——Art. 226—Calcutta University Regulation, Chap. XXIII, S. 26A—Action against student under Ss. 26A and 33 — Student getting opportunity of representation — He has no right to be heard by Governing body or syndicate — Disciplinary action by college authority — Jurisdiction of Courts of law in the matter. See Calcutta University Regulation, Chap. XXIII, S. 26A. AIR 1952 Cal 238.

——Art. 226 — Natural justice — When violated — University taking action under Regulation 18 of the Punjab University Regulations against certain candidates without affording them opportunity of showing cause — It cannot be said that it has acted against principle of natural justice. See Punjab University, Regulations, Regulation 18. AIR 1957 Him Pra 31.

——Art. 226 — Natural justice — Opportunity to be heard — Disciplinary action by University against student — Opportunity of being heard or notice to show cause before awarding punishment must be given to delinquent student although no such notice is contemplated under University statutes — Requirements of notice—Mere assertion that student's father was asked through messenger to bring student on day of inquiry does not satisfy requirements of valid notice. AIR 1955 S C 233; AIR 1955 S C 425 and AIR 1961 J & K 56, Foll.; (1885) 10 A C 229 and AIR 1956 Cal 114, Rel. on. 1965 Kash L J 23 : AIR 1965 J & K 23 (27, 28) (Pt B) (Prs 31, 33).

——Art. 226 — Certiorari — Proceeding of head of college in relation to exercise of his disciplinary jurisdiction and resulting in expulsion or suspension of student—Contention that order was administrative in character and therefore not liable to be corrected by certiorari, not sound—Even if ultimate decision is administrative in character, process of arriving at decision requires quasi-judicial approach at some stage, and if there is failure to conform to principles of natural justice at that stage, court has right to interfere with decision. AIR 1952 Mad 152, Rel. on., English case law Ref. — Institution — Educational. 1964 Ker L J 1201.

——Art. 226 — Natural justice — Disciplinary action against student for misbehaviour — Charge of using abusive language towards lecturer and disturbing class — Show cause memo given and student's statement sent to Enquiry Committee — Facts and materials on which action was taken explained to student by Enquiry Committee — Statement of lecturer also recorded — Student given oral hearing and allegations as corroborated by statement of lecturer explained — Statement of some students also recorded — Order of suspension from college passed by Principal on basis of finding of Enquiry Committee challenged—Held, that although principles of natural justice must be followed in such enquiries, it did not mean that hearing conducted must have all characteristies of judicial proceedings and contention that contents of statements made by students should have been revealed to petitioner and opportunity given to cross-examine them was not entitled to much weight — That in the circumstances procedure adopted by Committee was not violative of principles of natural justice and Committee was justified in refusing to disclose contents of statements of students as that would have created disharmony among students of the class. Case law Ref. 1964 Ker L J 1201.

——Art. 226 — Quasi-judicial tribunal — Syndicate of University, when asked to consider question of malpractice practised by examinee, functions quasi-judicially — Principles of natural justice — Violation of, by Syndicate.

A Syndicate of a University, though an administrative body, functions quasi-judicially when it is asked to consider the question of malpractice practised by a candidate at the time of answering question paper at an examination held by the University. The principles of natural justice, which require that the other party (namely, the examinee) must be heard, will apply to the proceedings before the syndicate. Where, therefore, the examinee candidate is informed that he has copied answer books and is asked as to why disciplinary action should not be taken as against him and the candidate controverts the allegation that has been made against him by the authorities (Syndicate), then there is an obligation on the part of the authorities concerned, before passing the order debarring the candidate in question, of placing before him the materials that were available before the authorities and give an opportunity to the candidate to place his objections and also to controvert any materials that are sought to be used by the authorities as against him. Where such an opportunity is not made available to the candidate, an order debarring the candidate from appearing at an examination of the University for a period of two years will be in violation of the principles of natural justice. AIR 1962 S C 1110, Foll. 1963 Ker L T 257.

——Art. 226 — Quasi-judicial and administrative orders — Executive Council of University — Order disqualifying examinee for misconduct — Action is administrative — Opportunity to examinee of being heard not obligatory.

There is no obligation on the University authorities to give any opportunity of hearing, before imposing a penalty upon an examinee for his alleged misconduct. The question of giving an opportunity cannot be decided solely on the consideration that the penalty imposed would expose the career of the

candidates to serious consequences. In some cases it may be necessary to give an opportunity to a party to have his say before an administrative action is taken against him but this is quite different from an enquiry and hearing necessary in the case of a quasi-judicial action which can be corrected by a superior Court by means of a writ of certiorari. AIR 1957 Bom 246 and AIR 1953 Cal 212 and AIR 1952 Cal 594 and AIR 1956 All 539, Rel. on; (1960) 1 All E R 631, Dist. 1961 M P C 225 : 1961 Jab L J 913 : 1961 M P L J 828 : AIR 1961 Madh Pra 356 (359, 360) (Pt B) (Prs 6, 8) (DB).

——Art. 226 — Order of Vice-chancellor directing student not to resort to any propaganda for or against university — Order contravened — Vice-chancellor acting under S. 14 (5), Sagar University Act read with Ordinances Nos. 12 and 13 debarring student from appearing in any examination of university for two years — Order held administrative — Object of disciplinary action would be defeated if in such cases the giving of notice, an opportunity of hearing and regular enquiry were held to be essential — Where however, administrative action affected fundamental rights opportunity to explain conduct would be necessary — Here there was no question of fundamental right. 1961 M P L J 371.

——Art. 226—Natural justice — Disciplinary action against candidates for a university examination — Charge of malpractice — Language of the charge not specific but vague — Prejudice is caused to the candidates in that they did not know what case they had to meet and consequently they had no reasonable opportunity of being heard against charge levied —Order thus having been passed without observing the principles of natural justice quashed.

Answer papers of two candidates having consecutive seat numbers at the examination were found to tally word for word in respect of answers to some questions. The matter was reported for action. Thereupon the Registrar of the said University issued an official memorandum to both the candidates containing identical charges of malpractice.

On receipt of replies from the candidates the matter was referred to the Disciplinary Committee of the University which on considering the cases recommended debarring of the candidates for next two examinations and cancelling the result of the examination. The candidates filed writ petitions for quashing the proceedings of the University.

Held, that the candidates in both the cases have suffered a serious prejudice, because of the vagueness of the charge, and the absence of a proper enquiry. The charge framed was so defective that no proper opportunity should be deemed to have been given to the candidates to meet it.

The University authorities ought to have made an adequate preliminary enquiry into all the circumstances implied in the charge of copying before framing the charges. The order by the University thereby violated the principles of natural justice, and deserved to be quashed. 76 Mad L W 760 : I L R (1964) 1 Mad 244 : (1964) 2 Mad L J 336 : AIR 1964 Mad 460 (461) (Pt A) (Pr 6) (DB).

——Art. 226 — Quasi-judicial order — University — Disciplinary matters — Misconduct by students at University Examination — Orders of rustication by University authorities—Nature of—Whether open to scrutiny by Court — Natural justice—Meaning of — Karnatak University Act (Bom. Act 20 of 1949), S. 49.

Universities are autonomous statutory bodies and Courts generally refrain from interfering with their actions except in cases where they clearly act in excess of their powers or act in disregard or in violation of their duty to act justly and fairly in cases where exercise of power is likely to prejudicially affect persons in respect of whom they exercise that power. Even in matters of the latter category, they do not in all respects resemble Courts of law nor are they required to follow strictly the procedure of Courts. Their actions cannot fully bear the character of judicial acts and all of them may rightly be described as being purely administrative in nature.

Nevertheless, the nature of the power, the circumstances in which it is exercised or required to be exercised, the object with which the law entrusts an authority with such power and the relationship between the authority exercising the power and the person or individual against whom it is sought to be exercised, may be of such a nature as to impose upon the authority the duty to adopt a particular type of approach and apply certain standards resembling in essential particulars the approach and standards which a judicial tribunal ordinarily adopts. Those are circumstances in which it could properly be stated that the authority is required by law to act judicially. This duty to act judicially cannot be ignored for reason only of the fact that the particular act or function of the authority is purely administrative in nature. Likewise, although the exercise of a certain administrative power may have to be done in a manner simulating judicial standards, such power nonetheless continues to be administrative in character. The function of the administrative authority in the circumstances of this nature is described as quasi-judicial for want of a better term.

The expression 'natural justice' commonly used by Courts and lawyers clearly connotes two distinct but closely related ideas. It comprises or suggests certain principles which may be described as immutable and which require an authority exercising power likely to affect others prejudicially to act justly to reach just ends by just means. It also has reference to the form of rules of procedure to be observed by the authority exercising that power. In this regard, the essential point to note is that no man should be condemned without being given an opportunity to meet the case sought to be made against him and render his explanations. The exact procedure to be followed has to be ascertained from the conditions governing the constitution of the body or authority exercising that power and the statute and statutory rules governing that body or authority and regulating its actions and procedure. But if the statute or the rules themselves do not indicate or lay down any particular procedure, the duty to act judicially in the manner stated above also involves the duty of determining the proper procedure to be followed such as will enable the authority fairly and justly to exercise its power.

When power is conferred to lay down the rules of conduct to be observed by others which define and provide for punishment of misconduct or misdemeanours, the exercise of that power necessarily imports a duty to act justly and fairly.

In the light of the express purpose of establishing Universities and the objects they are intended to achieve, in exercising their power of enforcing discipline and meting out punishment for that purpose, Universities are under a clear duty to act justly and fairly.

From the point of view of the University or authorities which exercise the powers of the University in proceedings against a student for an alleged delinquency, (in this case malpractice at the university examination) it is thus clear though they may not be required to function exactly in a manner in which ordinary Courts of law function and they may mould their procedure according to the circumstances of each case, they are not free to proceed in a manner which cannot be supported in Courts as just and fair in the circumstances of the case. From the point of

view of a student, he should have such notice or information about the facts and circumstances on the strength of which action is sought to be taken against him as to afford him a full and fair opportunity of meeting that case.

There is certain difference between cases where the alleged malpractice takes place and is detected in the examination hall itself and cases where the University subsequently comes to entertain a suspicion that a student has resorted to such practices in relation to an examination. In the former case it is open to argue that any formal or further enquiry beyond the immediate detection of the malpractice in the examination hall may not be necessary. Where the student is caught in the very act of committing the malpractice or misconduct and is at once confronted with the facts and circumstances constituting such malpractice or misconduct, the position in a majority of cases would be one in which he has a fair and full opportunity of explaining himself and in the absence of his being able to furnish any satisfactory explanation he may be said to stand self condemned.

However, there is one important aspect of this matter which should not be lost sight of. The peculiar atmosphere of an examination hall when an examination is in actual progress which keeps students answering the examination in a state of tension or anxiety, the temptations to which they may conceivably lay themselves open of seeking some source of assistance to their memory to be able to answer the questions fully and correctly, and the mental attitude of the invigilators or supervisors which cannot but be coloured to some extent at least by the natural human difficulty of completely clearing an attitude of vigilance from a trace of suspicion may in some cases lead to a consequence in which a really innocent student appears like a culprit. This possibility taken along with the fact that in such circumstances an invigilator exercising the power of the Syndicate may at once expel a student from the Examination Hall places upon the invigilator the heavy responsibility of approaching such cases with a clam and dispassionate attitude and affording the suspected student a full and fair opportunity of dispelling the suspicion. 1963 Mys L J 408 (DB).

——Art. 226—Natural justice—University debarring candidate from appearing at degree examination—Order quashed.

Where the University comes to entertain suspicion about the candidate having adopted some malpractice in respect of the answer papers submitted by him at a degree examination, it is only fit and proper that the candidate who is so suspected should have a full and fair opportunity to defend himself and offer explanation, if any, which might succeed in dispelling the suspicions entertained against him. Without any such reasonable opportunity being given, to brand the candidate with the stigma of having adopted unfair means which casts a slur on his character for the rest of his life is a serious matter. If the enquiry committee instead of enquiring and coming to certain conclusions of fact proceeds to subject the candidate to a memory test without telling him why he was being subjected to such severe test it is a negation of the ideas of justice. **Held** that the order of the University of Mysore debarring the candidate from appearing for the B. Sc. Degree Examination for a period of two years commencing from April 1960, should be quashed as what the committee had reported was not a finding of fact but a statement of suspicion in the form of an opinion. 39 Mys L J 202: ILR (1961) Mys 114 : A I R 1961 Mys 164 (166) (Prs 8, 9, 10, 11) (DB).

——Art. 226 — Natural justice—College Principal—Authority in disciplinary matters — If absolute — Aggrieved student should get opportunity of being heard.

A review of the Indian decisions shows a divergence of view from the English and American authorities as to whether an order of expulsion or restriction passed by the head of an educational institution against an offending pupil would be a quasi-judicial act or purely administrative act. The majority view which is based on the judgment of Bose J. (in A I R 1952 Cal 594) seems to be that it is a quasi-Judicial act. But whether it is a quasi-judicial act or administrative act, the majority view of the High Courts seems to be that the student concerned should get a reasonable opportunity of showing cause against the proposed punishment. Even in respect of such administrative acts the rules of natural justice embodied in the maxim audi alteram partem should be complied with. (1959) 1 O J D 195 : I L R (1959) Cut 311 : AIR 1959 Orissa 196 (202, 203) (Pt D) (Prs 20, 24) (DB).

——Art. 226—Natural justice—Expulsion of student from college—Opportunity of being heard—Duty of principal—(Orissa Education Code, Art. 107).

Art. 107 of the Orissa Education Code requires that the guardian is under an obligation to withdraw his ward if the Principal decides that such withdrawal is necessary. While passing an order expelling the pupil, there should be a decision to that effect by the Principal. The order of expulsion is in the nature of a quasi-judicial act and the Principal must hear the student concerned and give him an opportunity to defend himself. ILR (1959) Cut 311 : (1959) 1 O J D 195 : AIR 1959 Orissa 196 (203, 204) (Pt E) (Pr 25) (DB).

——Art. 226—Natural justice—Expulsion of students from college — Rules of natural justice not observed —Interference.

The High Court is justified in interfering with an order of expulsion passed as a disciplinary measure by the Principal of an Educational Institution against a student. The Principal who is a quasi-public officer did not observe the rules of natural justice when he passed a drastic order of punishment on the pupil concerned. In such a case that order of punishment may be quashed and a direction prohibiting him from giving effect to his order, is permissible under Art. 226 of the Constitution. AIR 1954 S C 207 and AIR 1954 S C 440 and AIR 1959 S C 107, Rel. on. ILR (1959) Cut 311 : (1959) 1 O J D 195 : AIR 1959 Orissa 196 (204) (Pt F) (Prs 26, 27) (DB).

——Art. 226—Applicability—Statutory body—School Examination Board — Order punishing candidate for misconduct without notice—Power of High Court to interfere—(Bihar Act (7 of 1952), S. 6).

The Bihar School Examination Board in holding an examination under the statutory powers given by S. 6 of Bihar Act 7 of 1952 and in punishing the misconduct of candidates in the course of examination is acting as an administrative body and is not acting in a quasi-judicial capacity. There is no question of any lis between the parties and the principle of audi alteram partem does not apply in this case. Hence the Board is not bound as a matter of law to give notice to a candidate before coming to a finding that he is guilty of misconduct and thereafter taking action for punishing him for this misconduct. But this proposition is subject to the petitioner showing that the Board has acted arbitrarily, capriciously, mala fide or from any extraneous consideration. AIR 1957 Bom 246 and AIR 1958 All 503 and AIR 1952 Mad 151, Rel. on. 1958 B L J R 712 : AIR 1959 Pat 224 (224) (Pr 3) (DB).

——Art. 226—Certiorari—Expulsion from college.

The authority of the head of an educational institution to expel a scholar is not unfettered or uncontrolled but it is subject to the limitations (a) that he is not to exercise his power of expulsion arbitrarily and on grounds that are not reasonable, and (b) that a solitary instance of misconduct would ordinarily not merit summary expulsion from the institution. This second condition should depend upon the nature of the misconduct in the circumstances of a particular case because a solitary instance of misconduct may be of such a grave and serious nature that it by itself may be a complete justification for the expulsion of a scholar from the institution.

Held, on the facts of the case, that the principal was not justified in expelling the petitioner on the solitary instance of misconduct that the petitioner wrote the letter to a girl-student, and that the principal did not act in a reasonable manner but rather acted contrary to the principles of natural justice in condemning the petitioner unheard. In this dealing with the case and ordering expulsion of the petitioner the principal not having acted on reasonable grounds did exceed his authority to expel the petitioner. In this view the order of expulsion of the petitioner was liable to be quashed by the issue of a writ of certiorari. ILR (1954) Patiala 414 : AIR 1954 Pepsu 151 (152, 153, 156) (Pt A) (Prs 5, 13).

——Art. 226—Natural justice—Standing Committee of University finding petitioner guilty of using unfair means in examination—Report of expert relied on by Standing Committee — Petitioner not informed of existence of report — Order of Standing Committee disqualifying petitioner for two years- Order held could not be allowed to stand and must be set aside. 67 Pun L R 693 : AIR 1966 Punj 152 (155) (Pr 9) (DB).

——Art. 226—Writ against educational institution—Expulsion of school-boy for alleged misconduct and refusal to allow him to appear at annual examination —Principles of natural justice—Applicability—Order of expulsion passed without giving opportunity of hearing—Order quashed. AIR 1959 Orissa 196; AIR 1950 S C 222; AIR 1962 S C 1110 and 1964 A C 40, Rel. on; AIR 1956 All 46, Held Overruled impliedly by AIR 1962 S C 1110. 67 Pun L R 901 : ILR (1965) 2 Punj 826 : 1965 Cur L J 620 : AIR 1965 Punj 507 (508, 510) (Prs 4, 7, 8, 11, 13, 14) (DB).

■ ——Art. 226—Natural justice—Educational institution—Malpractice by examinee—Enquiry into—Procedure to be followed by University authorities—Right of examinee to be heard—Statement of examinee obtained first—Statements of Superintendent and supervisor at examination centre obtained subsequently—No opportunity to rebut subsequent prejudicial statements of superintendent and supervisor given to examinee — Decision prejudicial to examinee taken on basis of supervisor's and superintendent's statements—Rules of natural justice violated—Order quashed.

Per Full Bench : It will depend on the facts and circumstances of each case whether the rule of natural justice has been complied with by the University authorities by affording an adequate opportunity to a candidate to present his case against the charge or allegation of malpractice at the examination made against him. In the absence of any regulations having been framed by the University prescribing the procedure to be followed in such cases, it can certainly prescribe and follow its own procedure so long as the fundamental rule mentioned above is complied with. It is always open to the examinee to ask for more information or details with regard to the material or evidence which may be sought to be used against him and normally if he makes a request in that behalf the University authorities, in order to inform him adequately of the case he has to meet as also to afford him proper opportunity of presenting his case, would supply him the necessary particulars or details of the evidence. In the very nature of things no hard and fast rule can be laid down and so long as the Court is satisfied that the opportunity which was afforded to the examinee at all times and all stages was adequate and sufficient, it will not interfere with any orders prejudicial to him which may have been made by the University authorities. (1960) 1 All E R 631, Rel. on. Unless there is justification to do so, Courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like Universities. AIR 1966 S C 875, Foll.

Held, that the order of the University must be quashed as rules of natural justice were violated in the case. The opportunity that was to be given to the candidate was to be a reality and before he could meet his case and give a proper explanation, he should have been told not only what was going to be considered against him but also the persons who were giving information against him. He might have been able to show to the authorities concerned that the statement made by a particular person was not worthy of credence for certain reasons, besides showing that the statement was incorrect. As the statements were recorded behind the back of the appellant, which were prejudicial and which were not brought even to his notice, he could not be said to have got this adequate opportunity : Civil Writ No. 1332 of 1963, dated 24-10-1963 (Punj), Reversed. Ramesh Kapur v. Punjab University, 1964 Cur L J 560 : ILR (1964) 2 Punj 954 : 67 Pun L R 101 : AIR 1965 Punj 120 (126, 127, 128) (Prs 12, 15, 16, 17, 25, 26) (FB).

——Art. 226—Natural justice—Violation—Disqualification of University student — Disqualification on basis of statement made by student himself—Disqualification challenged on ground of violation of rules of natural justice, alleging that statement was not voluntary and that no opportunity was given to establish that it was involuntary — Facts disclosing that allegation was not true and that opportunity was never claimed—Held, there was no violation of rules of natural justice — No interference in writ proceedings. ('65) 67 Punj L R 518.

——Art. 226 — Natural justice — Opportunity to be heard—Petitioner examinee not given any opportunity to be heard nor was case against him explained, before disqualification — Rules of natural justice completely violated—Disqualification, held illegal. 1965 Cur L J 182 (Punj).

——Art. 226—Natural justice — Using unfair means in examination — Suspected candidate not given opportunity to show cause against action to be taken against him on basis of report submitted by Superintendent in charge of examination — Controversy about facts reported by Superintendent — Action in disqualifying candidate held not valid — Punjab University Calendar, Part I, (1961), Rr. 10, 11.

Held, on facts, that the action of the Committee in disqualifying the candidate as provided in Regulation 11 of the Punjab University Calendar without giving an adequate opportunity to him to show cause against the action to be taken against him, was not valid. A I R 1962 S C 1110, Foll ; 64 Punj L R 944, Dist. 65 Punj L R 632 : A I R 1963 Punj 480 (481, 482, 483) (Prs 5, 7).

78 (a) (ii). Disciplinary proceedings against servants.

■ ——Art. 226—Administrative Tribunal — Disciplinary proceedings for terminating services of employee — Procedure in proceedings must conform to principles of natural justice — Procedure cannot be short-

circuited on considerations of expediency not permitted by law. See Dock Workers (Regulation of Employment) Act (9 of 1948), S. 4 (1). (1965) 2 S C A 226 : (1965) 11 Fac L R 72 : (1965) 2 Lab L J 112 : (1965) 2 S C W R 1142 : 1966 Cri L J 189 : A I R 1966 S C 282.

● ——Art. 226—Natural justice — Reasonable opportunity — Requirement of oral enquiry under R. 55 of Civil Services (Classification, Control and Appeal) Rules is mandatory. See Ibid, Art. 311 (2) (prior to Constitution (Fifteenth Amendment) Act, 1963). (1965) 2 S C W R 667 : 1965 M P L J 941 : A I R 1966 S C 269.

● ——Art. 226—Domestic Tribunal — Natural justice — Rules of — Procedure — Employee charged with misconduct — Elaborate cross-examination of employee at commencement of enquiry constitutes infirmity—Desirability of intimating employee about date of inquiry — Industrial Disputes Act (1947), S. 10 (1) (d). (1963) 2 Lab L J 396 (SC).

● ——Art. 226—Natural justice—Violation of principle of — (U. P. Town Improvement Act (8 of 1919), S. 19)—(Constitution of India, Art. 311).

Where an employee of an Improvement Trust was dismissed from service by the Chairman of the Trust and the plaintiff was aware of the charges which had been laid against him and he submitted written explanations in regard to them and further he was given an opportunity to make any oral submissions that he wished to make before the Chairman in the presence of his main accuser, the Trust Engineer and there was nothing to indicate that the plaintiff sought any opportunity to call any evidence in his defence and that opportunity was denied to him.

Held, that the plaintiff had that opportunity to which he was entitled, to show cause against the charges made against him under the rules of natural justice and the power which was exercised in the case by the Chairman in dismissing him from service was in no way open to challenge. Mohammad Ahamad Kidwai v. Chairman Improvement Trust, Lucknow, 1958 All L J 160 : 1958 All W R (H C) 242 : (1958) 2 Lab L J 281 : I L R (1957) 2 All 280 : A I R 1958 All 353 (356, 359, 360) (Pt C) (Prs 13, 28) (FB).

——Art. 226 — Opportunity to show cause, meaning of — Case under Art. 311 — It does not only mean to permit an employee to file his explanation but implies power to give opportunity to employee to summon his witnesses and to produce evidence and to cross-examine witnesses — If when changes were initially investigated and employee had been given full opportunity he will not be entitled to a further opportunity to recall witnesses or to have second opportunity to cross-examine witnesses. See Ibid, Art. 311. A I R 1957 All 634.

——Art. 226 — Dismissal of public servant—Powers of Government—Enquiry—Stages—Reasonable opportunity, is question of fact. See Ibid, Art. 311. A I R 1957 Andh Pra 414.

——Art. 226—Natural justice — Preliminary enquiry before charge sheet — Right of police officer charged to demand enquiry. See U. P. Police Regulations, R. 490. A I R 1957 All 217.

——Art. 226—Natural justice—Madras Civil Services (Classification, Control and Appeal) Rules — Non-compliance—Effect—Issue of writ. See Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, R. 8. A I R 1961 Andh Pra 289.

——Art. 226 — Madras Elementary Education Act (8 of 1920)—Rules under, R. 13 (2) (ii) (b)—Termination of services of teacher — Procedure to be followed indicated—Improper order of termination—Executive ratifying order—Essentials of justice and fair play held denied. See Madras Elementary Education Act (8 of 1920). A I R 1961 Andh Pra 178.

——Art. 226—Administrative Tribunal — Quasi-judicial proceedings—Police Official — Disciplinary proceedings — Punishment confirmed in appeal—Denial of opportuniy by appellate authority to appellant to be heard in person — Appellate order being quasi-judicial cannot be upheld. AIR 1963 Assam 183 (184) (Prs 2, 3) (DB).

——Art. 226—Administrative body—Board of Examiners—Board investigating cases of misconduct—Functions are quasi-judicial - Candidate to have reasonable opportunity of explanation — Procedure and penalty are within Board's jurisdiction. AIR 1955 N U C (Andhra) 5823.

——Arts. 226 and 311 — Municipal employee—Dismissal on account of mala fide conduct — Relief under Art. 226.

With a view to gaining an advantage to himself, the petitioner a municipal employee, without an order from his superior officer, entered his name in the register of permanent employees which he had no right to do. A charge in this respect was duly framed against him and he was served with a copy of the charge. He was given an opportunity to explain his conduct. An enquiry was duly held in the presence of the petitioner. The matter was gone into again by the two appellate authorities and the final appellate authority, namely the Deputy Commissioner, held that the conduct of then petitioner was mala fide.

Held, that, the petitioner having had fair and reasonable opportunity to show cause against the action which was proposed to be taken against him, no case was made out for any relief under Art. 226. 1958 Nag L J 111 : 60 Bom L R 767 : I L R (1960) Bom 225 : A I R 1958 Bom 260 (262) (Pt F) (Pr 6) (DB).

——Art. 226—Natural justice — Domestic Tribunal—Departmental proceedings against Government servant — Reasonable opportunity of showing cause — Scope of reasonable enquiry. See Ibid, Art. 311 (2). A I R 1966 Cal 42 (DB).

——Art. 226—Natural justice—Adequate opportunity — Enquiry against Railway servant — Prayer by servant to examine material witnesses — Refusal of, on ground of non-disclosure of points on which he wanted to examine them — Held, servant was not bound to make such disclosure before hand—Servant was, therefore, prejudiced by refusal. (1965) 10 Fac L R 263 (Cal).

——Art. 226—Departmental inquiry—Natural justice—Violation of—Time of 48 hours given to delinquent to submit his explanation to charges — Petitioner not asking for more time nor complaining about it — It is too late for him to contend in writ proceedings that rules of natural justice were violated—Personal hearing not necessary again in the matter of proposed penalty. (1962) 5 Fac L R 57 : 67 Cal W N 361 : A I R 1963 Cal 116 (121) (Pt C) (Pr 31).

——Art. 226 — Certiorari, writ of — Administrative Tribunal—Natural justice—Fair hearing does not include right of personal hearing — Calcutta Dock Labour Board — Disciplinary procedure affecting registered dock worker — Dock worker proceeded against cannot insist upon being personally heard in terms of Cl. 45 (6) of Calcutta Dock Workers Scheme of 1956—Dock Workers (Regulation of Employment) Act (1948), S. 4 (1)—Calcutta Dock Workers (Regulation of Employment) Scheme (1956), Cls. 45 (5) and (6)—Administrative Tribunal — Natural justice. AIR 1962 Cal 411 (414) (Pt A) (Pr 14) (DB).

——Art. 226 — Suspension of servant of Sabha — Administrative Committee acts as quasi-judicial body —Must follow rules of natural justice — Hearing not given — Order of suspension affecting emoluments held invalid. See C. P. and Berar Local Government Act (38 of 1948), S. 70 (2). 1961 Jab L J 980.

——Art. 226 — Natural justice — Enquiry against Railway servant—Servant expressing satisfaction with manner of enquiry, on being questioned by enquiry authority—Held, enquiry would not be characterised as being violative of principles of natural justice, in writ petition — Disciplinary authority could consider whether it was fair or not. I L R (1965) 1 Ker 536.

——Art. 226 — Natural justice — Railway servant — Charge-sheet calling upon servant to show cause against punishment and also granting oral enquiry if desired by him—Held, calling upon servant to show cause against punishment did not amount to prejudging of the issue and oral enquiry could not be termed as mere farce. I L R (1965) 1 Ker 536.

—— Arts. 226 and 311—Order of punishment—Order by Public Service Commission debarring clerk from service — Validity — Principles of natural justice — (Travancore-Cochin Public Service Commission Business Rules, R. 5). See Ibid, Art. 311. A I R 1958 Ker 352.

——Art. 226 — Domestic tribunal — Disciplinary action—Right of hearing.

Even a quasi-judicial tribunal is not bound to give an oral hearing to a person before it proceeds to pass an order adverse to him. It is enough if it affords him sufficient opportunity for stating his case. 1958 Ker L T 48 ; 1958 Ker L J 538 : AIR 1958 Ker 164 (165) (Pt B) (Pr 4) (DB).

——Art. 226 — Principles of natural justice — Non-applicability.

Where an order of discharge of an employee is in fact an order terminating his services under the general law of master and servant after due notice the rules of natural justice do not apply. I L R (1960) Madh Pra 550 : 1961 Jab L J 1103 : 1962 M P C 105 : 1962 M P L J 835 : (1962) 2 Lab L J 239 : AIR 1961 Madh Pra 351 (353) (Pt B) (Pr 5) (DB).

——Art. 226—Punishment in departmental enquiries —High Court cannot interfere with—Personal hearing not permissible at every stage of enquiry.

In departmental enquiries, in the matter of punishment, High Court cannot substitute its own judgment for the judgment of the authority competent to impose appropriate punishment.

When the applicant was given a personal hearing before the enquiring Officer, there is no rule or regulation under which he would be entitled to a personal hearing at every stage. There is no rule of natural justice also that at every stage a person is entitled to a personal hearing. A I R 1957 S C 648, Rel. on. 1961 M P L J (Notes) 249.

——Art. 226—Master and servant—Natural justice—Employee convicted of an offence by criminal Court —Employer dismissing employee in conformity with relevant rule on subject—No failure of natural justice —Separate enquiry before dismissal not necessary. (1964) 2 Mad L J 349.

——Art. 226—Master and servant — Extreme penalty of dismissal inflicted on servant — Rule laying down punishment of dismissal when not mandatory — Employer would be well advised to give opportunity to employee to prove past good conduct—But in such matter it was doubtful whether jurisdiction of High Court could be invoked under Art. 226 of the Constitution of India. (1964) 2 Mad L J 349 : I L R (1964) 1 Mad 589 : 77 Mad L W 348 : 1964 Mad L J (Cr) 579.

—— Art. 226—Natural justice — Reasonable opportunity to defend — Meaning of — Enquiry into misconduct of employee — Employee not apprised of material on which charges framed — No reasonable opportunity for defence — Time for preparation of defence — Insufficiency — Madras Shops and Establishments Act (36 of 1947), S. 41 (1).

An employee against whom an enquiry is conducted on charge of misconduct does not get a reasonable opportunity to defend himself where no indication is given to him that the statements of witnesses recorded behind his back are going to be relied on against him. He cannot ask for cross-examining the witnesses in respect of their statements. Reasonable opportunity means not only framing of charges and asking for explanation but much more. He must be apprised of the material on which the charges were framed so that he could have a proper opportunity of testing or challenging that material so far as would be possible for him.

Similarly, the employee would not get a reasonable opportunity to prepare himself for his defence if he is informed at 12 noon that an enquiry would be held into the charges at 6 P. M. on the same day.

Such an enquiry also does not conform with the requirements of S. 41 (1) of the Madras Shops and Establishments Act. Section 41 (1) contemplates an enquiry at which evidence is recorded and not the investigation stage at which ex parte statements are recorded from possible witnesses behind the back of the person charged with misconduct. The sub-section contemplates that any material gathered outside the enquiry, or not at the enquiry cannot be the foundation for finding a charge to be proved. (1962) 2 Lab L J 482 : (1962-63) 23 F J R 193 : AIR 1963 Mad 76 (78) (Pt B) (Prs 7, 8).

——Art 226 —Natural justice — What is — Effect of contravention of—Non-compliance with Rr. 5 and 5A of Madras District Boards Rules, 1920 — No opportunity given to employee for being heard upon charges on basis of which he was removed—Even if Rules did not apply, principles of natural justice were violated. See Madras District Boards Rules (1920), R. 5. (1957) 2 Mad L J 406 : AIR 1958 Mad 211.

——Art. 226—Natural justice—Principles of—Railway servant — Termination of services except as punishment is not covered by Art. 311 or S. 240 of Government of India Act, 1935—To such matters civil Court does not sit in appeal over decision of departmental authorities — Strict laws of evidence do not apply—Public servant can file suit where there is violation of constitutional right, or statutory provisions of law or rules of natural justice — General rule is that the service is during the pleasure of the Government, that it is protected only to the extent and within limits prescribed by relevant statutes while the Courts will take care to see that the cardinal requirements prescribed by the statute are fulfilled and the principles of natural justice have not been violated and the public servant has had a fair deal. Equally the Court will have discretion to refuse in suitable cases a declaration based on the well-settled principles applicable to specific relief. See Ibid, Art. 311. ('57) 70 Mad L W 965.

——Art. 226—Natural justice—Departmental enquiry against Municipal servant — Principles of natural justice—Violation of —Effect. See Ibid, Art. 311. AIR 1957 Orissa 222 (DB).

——Arts. 226 and 311 — Reduction of Government servant—Proceedings in contravention of R. 55, Civil Services (Classification, Control and Appeal) Rules — Finding arrived at in violation of natural justice inasmuch as no reasonable opportunity for defending was given to delinquent officer — Statement of witnesses recorded behind back of Govt. servant both before and after framing charge — Government servant demanding opportunity to adduce defence evidence — Show cause notice under Art. 311 (2), not giving date, hour or place of enquiry — In fact no notice of enquiry given — Finding that charges were proved — Whole proceeding held was in violation of the rules codified in R. 55, C. S. (C. C. & A.) Rules,

1930 and also the principles of natural justice. See Ibid, Art. 311. AIR 1957 Orissa 184.

[Overruled on another point in AIR 1963 S C 1612.]

——Art. 226 — Dismissal of Government servant without giving personal hearing—Order held illegal. See Ibid, Art. 311. AIR 1956 Orissa 103.

—— Art 226—Order transferring services to original post prejudicial—Servant must be heard, before passing such order. AIR 1965 Pat 417 (421, 422, 423) (Prs 7, 8, 9, 10, 11) (DB).

——Art. 226—Departmental enquiry—Police Manual, Rule 851 (b) — Appellate Authority can pass orders which the original authority could have passed—Original authority reverting petitioner though he could have ordered dismissal — Appeal to State Government — State Govt. can order dismissal—But before doing so, it must give notice to petitioner that it proposed to inflict higher penalty — In the absence of any provision in this respect in Police Manual, general principles of natural justice, namely giving opportunity to be heard before passing adverse order, has to be observed—No fresh show cause notice given—Order of dismissal is ultra vires and illegal. See Police Manual, R. 851 (b). AIR 1962 Pat 276 (DB).

——Art. 226 — Natural justice — Practice prevailing in District Board under B. & O. Local Self-Govt Act is that charges are framed and employee concerned is asked to explain them within specified period and after consideration of explanation action resulting in punishment or acquittal is taken — In the absence of statutory rule, the practice is consistent with rules of natural justice. See Bihar and Orissa Local Self-Government Act (3 of 1885), S. 32 (g). AIR 1957 Pat 333 (DB).

——Art 226 — Power of removal of copyist, exercised by Dist. Judge under R. 8, Patna H. C. General Rules and Circular Orders (Civil) Vol. 1, Part. II, Chap. II, is not purely administrative but quasi-judicial — Though R. 8 is silent as to procedure to be followed, notice has to be given to party affected — Audi alteram partem — Violation of principle — Issue of writ of certiorari — See High Court Rules and Orders — Patna High Court General Rules and Circular Orders, Civil Vol. I, Part II, Chap. II, R. 8. AIR 1956 Pat 257.

——Art. 226 — Natural justice — Opportunity to be heard — Petitioner refusing to comply with direction of University — University passing orders in writing disqualifying petitioner from examinership for three years—Petitioner not given opportunity to defend himself—Held, that the action of the University involved exercise of quasi-judicial function and that the petitioner should have been given opportunity of being heard. See Punjab University Act (1961) Regulation VII, Cl. 1. ILR (1965) 1 Punj 704 : 1965 Cur L J 197.

——Art. 226—Natural justice — Disciplinary action against employee — Reasonable opportunity calling upon delinquent employee to show cause forthwith is not reasonable opportunity.

Where an employee, against whom disciplinary action is proposed to be taken is asked to put forth his defence and show cause against the proposed punishment forthwith after the report of the Enquiry Officer is received, without giving him reasonable time to consider the report and, if necessary to consult his friends and advisers it cannot be said that the employee was given a reasonable opportunity of being heard and it must be held in such a case that there was a violation of the rules of natural justice. Statutory opportunity according to law has to be reasonably afforded to the employee at both the steps i. e. when the charge sheet is given and before the proposed disciplinary action is taken. The punishing authority has to apply its independent judicial mind in considering whether the opportunity claimed on the facts and circumstances of a particular case is reasonable. 1965 Cur L J 104 (Punj) : AIR 1965 Punj 342 (345, 346) (Pt C) (Pr 11) (DB).

——Art. 226 — Natural justice — Government coming to conclusion behind back of employee that a particular employee is unfit for municipal employment — Effect. See Municipalities Act (3 of 1911), S. 41. AIR 1960 Punj 554 (DB).

——Arts. 226 and 311 (2) — Discretion — Interference — Railway Establishment Code, R. 1721-A — Appellate authority — Discretion to give personal hearing.

Rule 1721-A does contemplate a personal hearing, but it merely permits the appellate authority to give the Railway servant concerned either at his (authority's) discretion or if so requested by the appellant, a personal hearing, before disposing of the appeal. In so far as the exercise of discretion by the appellate authority is concerned it is idle to contend that the High Court can, under Art. 226 of the Constitution, control the exercise of discretionary power at the instances of the petitioner. AIR 1959 Punj 643 (645) (Pt C) (Pr 3).

——Art. 226 — Natural justice — Removal of municipal member on ground of his abusing position as member — Member is entitled to be informed of reasons of his proposed removal and to be afforded opportunity of tendering explanation. See Municipalities Punjab Municipal Act (3 of 1911), S. 14 (a). AIR 1960 Punj 186 (DB).

——Art. 226 — Removal of servant — Applicability of principle of natural justice. AIR 1958 Punj 402 (406) (Pt E) (Pr 8) (DB).

——Art. 226—Saurashtra District Police (Amendment) Act (23 of 1951), Ss. 47-B and 47-E—Notice to petitioner under S. 47E containing allegation—No evidence before District Magistrate who passed order under S. 47-B against petitioner—Held that the petitioner had no reasonable opportunity of tendering an explanation in respect of the same and hence the order was not justified—See Saurashtra District Police (Amendment) Act (23 of 1951), S. 47-B. AIR 1953 Sau 92.

——Art. 226 — Natural justice — Panch of Gram Panchayat removed by Collector without giving him opportunity to explain facts — Order set aside — (Vindhya Pradesh Gram Panchayat Ordinance (1949), S. 48). AIR 1955 N U C (Vin.Pra) 5785.

78 (a) (iii). Labour disputes.

● ——Art. 226 — Enquiry by management — Representation — Workmen entitled by standing order to representation only by representative of recognized Union — Workmen insisting on assistance of representative of their unrecognized Union with a view indirectly to obtain recognition to Union—Principle of natural justice is not violated by refusal of such request.

In holding domestic enquiries, reasonable opportunity should be given to the delinquent employees to meet the charge framed against them and it is desirable that at such an enquiry the employees should be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request. But where the standing orders of a company provide that at domestic enquiries only a representative of a union which is registered under the Indian Trade Union Act and is recognized by the company can assist, there can be no denial of natural justice if

the request of the workmen who insist to be assisted by a representative of their own unrecognized union with the object of indirectly obtaining recognition to their union is rejected. AIR 1960 S C 914 and (1961) 2 Lab L J 417 (S C), Foll. Dunlop Rubber Co. (India) Ltd. v. Their Workmen, (1965) 1 Lab L J 426 : (1964-65) 27 F J R 321 : (1965) 1 S C W R 885 : AIR 1965 S C 1392 (1395, 1396) (Pt A) (Prs 9, 10).

■ ——Art. 226 — Natural justice –Industrial dispute — Misconduct of worker — Enquiry by management — Requirements as to. Meenglas Tea Estate v. The Workmen, (1963) 7 Fac L R 106 : (1963) 2 S C W R 102 : (1963) 2 Lab L J 392 : (1963-64) 25 F J R 150: (1964) 1 S C J 98 : 1964 S C C 142 : (1964) 2 S C R 1965 : AIR 1963 S C 1719 (1719, 1720) (Pt A) (Prs 4, 5).

——Art. 226 — Natural justice — Principles of — Industrial dispute relating to appointment to higher post on officiating basis — Worker appointed not heard — Management defending his case – No violation of principle of natural justice. See U. P. Industrial Disputes Act (28 of 1947), S. 19 (1). (1965) 10 Fac L R 199 (All).

——Art. 226—Natural justice — Principles of — Applicability — Industrial dispute — Inquiry. See C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), S. 22 (4). AIR 1959 Bom 473 (DB).

——Art. 226 –Evidence Act (1872), S. 3 — Industrial Tribunal is a "Court" and must observe the rules of natural justice. AIR 1950 Mad 834, Overruled and held no longer good law in view of decision in AIR 1950 S C 188. A I R 1966 Cal 504 (507, 508) (Pt A) (Prs 22, 23) (DB).

——Art. 226 –Industrial Disputes Act (1947), S. 12— Award by Industrial Tribunal refusing reinstatement of a dismissed workman and allowing compensation — Principles of natural justice and of law not followed in deciding the matter—Award held properly quashed. 1965 Ker L J 1151.

——Art. 226—Domestic Tribunals—Natural justice.

Where a labour officer, by virtue of directions in an award passed in terms of compromise between parties, is authorised to do something which he is not bound to do under the statute, he becomes a domestic tribunal and as such he is under an obligation to observe principles of natural justice, and the non-observance thereof (absence of notice to parties likely to be affected) is fatal to the legality of the parts of the report by the labour officer affecting such parties. Halsbury's Laws of England, 3rd Edn., Vol. IX, pp. 580 and 581, Ref. 1960 Ker L J 999: (1960) 2 Lab L J 523 : 1961 Ker L T 223 : AIR 1961 Ker 265 (268) (Pt D) (Prs 12, 13) (DB).

——Art. 226—Principles of natural justice — Industrial dispute—Preliminary issue—Notes of arguments received behind back of party — No opportunity given to that party to meet contentions advanced in notes — Principles of natural justice vitiated.

Where a labour Court received written arguments on the preliminary issue from one party, but without notice to the other party, and no opportunity was afforded to the other party to meet the contentions advanced in the notes of arguments, in spite of an application by the other party in that behalf, the order of the labour Court on the preliminary issue was clearly vitiated for non-observance of the principles of natural justice. In matters like this, the true principle is, not whether the Labour Court was really influenced by the notes of arguments submitted to it, but whether there was possibility of its being influenced. (1963-64) 26 F J R 324: (1963) 1 Mys L J 200 : (1963) 2 Lab L J 235 (1963) 7 Fac LR 301 : AIR 1963 Mys 206 (207) (Pt A) (Pr 4) (DB).

——Art. 226—Applicability — Direction by Central Government to comply with provisions of Employees Provident Funds Act—Opportunity to employer not given — Remedy of employer. Section 19-A does not provide for any enquiry into the matter before the Central Government and does not lay down that the employer is to be given an opportunity to present his case before Government. It only enables the Central Government to issue certain directions in case of any difficulty or doubts and such directions are to be considered final. Employer can defend himself when proceedings are taken against him under S. 14 of the Act; writ of mandamus against Government cannot be issued. (1957-58) 12 F J R 115 (Punj).

78 (a) (iv). Hearing and decision by different bodies.

■ ——Art. 226 –Natural justice—Scheme proposed by Transport undertaking under S. 68C, Motor Vehicles Act—Hearing by State Government under S. 68D (2) of the Act — Minister in charge, directing Secretary to Government to hear objections under S. 68D (2) —Secretary giving personal hearing to parties—Entire material received by him put before the Minister in charge, who made his order approving the scheme —Order issued in name of Governor, authenticated by the Secretary in charge — It must be held the State Government gave hearing to parties — But such hearing given by Secretary offends principle of natural justice that authority empowered to decide dispute must be one without bias and proceedings and hearing given in violation of that principle are bad. 1959 SCJ 967 : (1959) 2 MLJ (SC) 156 : (1959) 2 An W R (SC) 156: AIR 1959 SC 308 (322, 323, 324, 325, 326, 327, 333, 334, 338, 339, 340, 341) (Pt E) (Prs 21, 22, 27, 30, 31, 47, 49, 50, 61, 63, 67).

■ ——Art. 226 –Natural justice –Appellant taxed by assessing authority on instructions from superior authority — Failure to give opportunity to meet opinion of superior authority — Validity of assessment.

Held, that the order which the Commercial Tax Officer ultimately passed showed that he was merely voicing the opinion of the Assistant Commissioner without any conviction of his own. It was clear that the Commercial Tax Officer did not exercise his own judgment in the matter and faithfully followed the instructions conveyed to him by the Assistant Commissioner without giving the appellant an opportunity to meet the points urged against him. The whole procedure was contrary to the principles of natural justice. The procedure adopted was unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the sales tax department concerned. Mahodayal Premchand v. Commercial Tax Officer, 1959 S C R 551: (1958) 9 S T C 428 : 1958 SCJ 728 : (1958) 2 Andh W R (SC) 93 : (1958) 2 Mad L J (SC) 93 : AIR 1958 SC 667 (670, 671) (Pt A) (Prs 18, 19).

——Art. 226—Order of Commissioner setting aside sale under U. P. Z. A. and L. R. Rules, R. 285-I, on ground of irregularity in sale proclamation—Order, however, failing to record finding that party had suffered substantial injury—Order reversed by Government under S. 219 of Land Revenue Act without hearing petitioner —Held order of Government contravened para 913 of Revenue Manual read with R. 119 of Revenue Court Manual and also violated principles of natural justice and omission of Commissioner to record finding as to substantial injury was not sufficient for not interfering with impugned order—See U. P. Land Revenue Act (3 of 1901), S. 219. 1965 All W R (HC) 826.

—Art. 226 — Land Acquisition Act (1894), S. 11— Award prepared and filed — Land Acquisition Officer revising award at direction of his superior officer—

Second award is illegal—Principles of natural justice —Violation of — Observation on couduct of superior officer : See Land Acquisition Act (1894), S. 11. AIR 1962 All 61.

——Art. 226—Principles of natural justice—Hearing petitioner—Proceedings under Motor Vehicles Act—Petitioner not heard — Full opportunity for redress available at appellate stage—If there was any defect in proceeding it was curable by procedure prescribed before Appellate Authority. AIR 1955 N U C (All) 3589.

——Art. 226 — Natural justice — Rejection of review petition without hearing petitioner — Principles of natural justice. See Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 273. AIR 1955 N U C (All) 1517.

——Art. 226 — The rule of natural justice that the parties should be heard.

U. P. Act 30 of 1953 is not invalid because a member of the Board of Revenue who has not heard the parties can sign concurrence to the judgment written by another who has heard the parties. See U. P. Board of Revenue (Declaration of Procedure and Validation) Act (30 of 1953). AIR 1954 All 660 (DB).

——Arts. 226 and 215—Judgment of concurrence of one of members of Revenue Board quashed on ground that he did not hear parties—Case sent back to Board for disposal according to law—State Legislature Passing Act 30 of 1953, authorising Member who had not heard the parties to sign concurrence with judgment written by another member who had heard the parties — Judgment in case signed by another member purporting to act under the new Act — There is no disregarding the decision of the High Court—U. P. Board of Revenue (Declaration of Procedure and Validation) Act (30 of 1953).

Appeal before Revenue Board—One of the Members hearing parties writing judgment and sending it to another member for concurrence—The other member concurring and signing judgment without hearing parties — High Court in petition under Art. 226, quashing the judgment of the other member who had not heard the parties—Case going back to the Board for disposal according to law — Three days after the High Court decision, State Legislative passing U. P. Board of Revenue (Declaration of Procedure and Validation) Act, 1953—Under Act, hearing of parties by both Members of Board not necessary—Purporting to act under the Act, the judgment of Member who heard the parties sent to another Member for concurrence—Other member signing concurrence without giving opportunity to parties for being heard—In the circumstances of the case, held, that the Board could not be said to have disregarded the decision of the High Court upon the writ petition—This would have been the case had the new Act not intervened. **1954 All L J 656 : A I R 1954 All 660 (661) (Pt A) (Pr 4) (DB).**

——Art. 226—Natural justice—Revenue Board setting aside sale without hearing auction-purchaser — Government directing Board to hear parties—Government order passed without hearing petitioner — Violation of — Principles of natural justice — Power of High Court to issue writs. See Hyderabad Land Revenue Act (8 of 1317-F), S. 166. AIR 1959 Andh Pra 7.

——Art. 226—Natural justice—Disciplinary Proceedings Tribunal of two members — After recording of evidence one retiring and another taking his place — Judgment on evidence recorded — No fixed quorum prescribed for Tribunal—Principle of natural justice held not violated, specially when no objection was raised before Tribunal. (1951) 1 Lab L J 621, Disting. **(1959) 2 Lab L J 261 (Andh-Pra).**

——Art. 226 — Quasi-judicial orders — Certiorari to quash—When will issue.

The State Government when making a declaration under S. 6, Land Acquisition Act, does not act in a quasi-judicial capacity. There is no duty cast upon the Government under the provisions of the Act or any rules framed thereunder to act judicially. There are no indications in the provisions of the Act to show that the Government while making up its mind to issue the declaration has to give opportunity to the parties concerned to produce evidence before it and decide the matter on consideration of the evidence before it. Hence no writ of certiorari can issue quashing the said declaration for non-observance of the principles of natural justice.

Under S. 5-A of the Act, the Legislature itself provides that the hearing is to be given by the Collector and the satisfaction is to be of the State Government after taking into consideration the report made by the Collector and if the hearing has been given by the Collector, there can be no violation of the principles of natural justice in the State Government not giving any hearing to the petitioner before making a declaration.

The Government acts judicially under Ss. 5-A and 6 (1) of the Land Acquisition Act and hence such an action must conform to the principles of natural justice. One of these principles is that a party whose civil rights are affected must have a reasonable opportunity of presenting its case. This principle is based on the maxim audi alteram partem, i.e., hear the other party. The requirement to give an oral hearing will depend on the circumstances of a particular case. In the instant case, the petitioner gets no opportunity of rebutting the Collector's report if it is against him or of supporting it, if it is in his favour unless he is given an opportunity of being orally heard. Where no opportunity was given a writ of certiorari should be granted for quashing the notification under S. 6 (1) of the Land Acquisition Act so that the same may be issued again if the objections of the petitioner are still rejected after he has an opportunity of being heard. M/s. Tinsukia Development Corporation, Ltd. v. State of Assam, **AIR 1961 Assam 133 (141, 143, 144, 147, 148) (Pt B) (Prs 14, 21, 22, 39) (FB).**

——Arts. 226 and 227— Principles of natural justice —Sea Customs Act (1878), S. 182.

Where it was the Assistant Collector of Customs, who gave a personal hearing to the party heard the arguments, but it was the Deputy Collector of Customs who passed the order of confiscation and imposition of penalty under the Sea Customs Act, without giving any further hearing to the party, it cannot be said that there has been proper compliance with the principles of natural justice. If one person hears evidence and arguments and another person decides, then such a procedure is destructive of the concept of a judicial hearing and defeats the object of a personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments and the party appearing to persuade the authority by reasoned argument to accept his point of view. But if one person hears and another decides then personal hearing becomes an empty formality and such a procedure offends the basic principle of judicial procedure. A I R 1959 S C 308; 59 Cal W N 969, Foll. Even if there has been no actual prejudice caused to the person by reason of the principles of natural justice being violated still if it is established that there has been in fact any non-compliance of the principles of natural justice, the Court will have no hesitation in setting aside the act or order which is made in violation of natural justice. 1961 A C

956, Appeal from Original Order No. 15 of 1959, Foll. (1964) 68 Cal W N 974.

——Art. 226—Sea Customs Act (1878), S. 182 — Imported goods — Confiscation of — Adjudication proceedings—Personal hearings in — Hearing given by one officer — Order of confiscation passed by another officer — Principle of natural justice is not observed—Order can be challenged.

Where a personal hearing is given in an adjudication, the person who hears cannot allow an enquiry to be held or evidence to be taken by another person and then pass the order on reading the records. The person to be heard is deprived of an opportunity of satisfying the person who passes the order. The words "personal hearing" connotes personal aspect both as regards the person heard and the person hearing. That is the principle of natural justice which indicates that personal hearing is not an empty formality.

Where, therefore, a personal hearing is given in an adjudication of confiscation of imported goods under S. 182 by the Assistant Collector of Customs and the order of confiscation is passed by the Deputy Collector who did not hear the importer in person, his order is impeachable on the ground of violation of the principle of natural justice. A I R 1959 S C 308, Foll ; App. No. 375 of 1956, dated 5-10-1956 (Bom), Not foll. (1963) 1 Cri L J 749 : A I R 1963 Cal 331 (335, 336) (Pt D) (Pr 19).

——Art. 226 — Controller has implied power of termination of appointment of registered stockist — Or of cancellation of declaration of controlled source — But in passing such order he must observe rules of natural justice. See Iron and Steel (Control) Order (1956), Cl. 4. ('63) 67 Cal W N 36:

——Art. 226 — Natural justice — Principles of — Hearing by one person — Decision by another not proper — Computation by Agricultural Income Tax Officer — Assessment by successor — Rule stated — Bengal Agricultural Income-tax Act (4 of 1944), S. 25 (3).

In the case of judicial proceedings, or proceedings which are in the nature of judicial proceedings, the ordinary rule is that one person cannot hear evidence and another person decide the case. But there may be special provisions made by statute dealing with exceptional cases. The very fact that it has been found necessary to make statutory provisions in exceptional cases shows that the normal rule is to the contrary. Normally, where we are to apply only the rules of natural justice, the procedure of one person hearing the party concerned and another person passing a judgment cannot be supported. So far as the Agricultural Income Tax Officer is concerned, he cannot be said to act judicially for all purposes. Apart from hearing evidence of certain description, he has also administrative duties. Mere computation of liability to pay tax is not a judicial act but an administrative act. If one officer has made a computation and left such exhaustive notes that a further computation was merely a mechanical process, that is say, a matter merely of arranging figures or computing them, then such a procedure should not be struck down. A computation of that description would merely be an administrative process and not judicial. But it the process involves not merely computation but the exercise of discrimination or the evaluation of any evidence, whether that of witnesses or documents, or a determination of issues upon which two views may be expressed, one in favour of the assessee and another against him, then it can no longer be called a mechanical computation, and in that event, no assessment is possible by a person who has not looked into the evidence or heard arguments. It is but obvious that there is a statutory duty to hear the assessee. Where there is involved a determination as to whether certain claims should be allowed or disallowed and even a determination as to the genuineness of the books of account. This cannot be considered as a mere computation. It may be that the procedure adopted by the succeeding officer was irregular but that cannot make his order a nullity, when he had jurisdiction both territorial and pecuniary to assess the assessee. 1962 Cal L J 18.

——Art. 226—Natural justice rule — Compliance — Delegation of authority — (Rules and Regulations of the State Medical Faculty of West Bengal, S. 6, R. 1).

Rule of natural justice demands that a person should not be condemned unheard. There is however no hard and fast rule governing such an enquiry. As long as it can fairly be inferred that the person charged with some omission or commission has been able to place his case before the enquiring authority, the rule is satisfied. Where statute provides that an individual or a body shall hear a dispute, it might be said that the hearing cannot be delegated. But where there is no such statutory provision, and a body which has to hear the disputed point is an unwieldy body, it is not illegal for it to appoint a smaller enquiry committee out of its members to go into the question and make its recommendation. The whole point is that the person involved must have a hearing. As long as he can fairly represent his case, the rule of natural justice is satisfied. Of course the enquiry committee cannot straight-away make an order. The recommendation must be made to the larger body and considered by them and the order must be their order.

Held that upon the facts of the case, the petitioner was given a full hearing and his case was adequately considered, not only by the enquiry committee but also by the Governing body of the State Medical Faculty and the order was made by the Governing body. The rules of natural justice were therefore satisfied. 58 Cal W N 730 (SB); 1911 A C 179; 54 Cal W N 883, Rel. on. ILR (1955) 2 Cal 252 : AIR 1954 Cal 193 (194, 195) (Prs 5, 6).

——Art. 226—Writ for quashing order— Arguments heard by Additional Collector — Order passed by Collector.

It is an accepted principles of law that it is only that authority who can pass the final order who hears the argument. There is no procedure of one authority, hearing the case and expressing his opinion and sending it for formal sanction by a higher authority. Such a procedure may probably be prevalent and in force on the executive or the administrative side but not at any rate on the judicial side.

Held that the order passed by a Collector in a case where the arguments were heard not by him but by the Additional Collector was improper and was quashed. ILR (1952) Hyd 525 : 1952 Cri L J 1297 : AIR 1952 Hyd 146 (147) (Pr 1) (DB).

——Arts. 226, 311—Dismissal by superior authority on evidence recorded by subordinate officer is not bad, provided the superior authority has applied his mind to the evidence.

In the administrative matters (dismissal of a Police constable), when dealing with right of a party, the deciding authority must himself consciously and satisfactorily deal with the records on which the order is being passed. What is meant by the rule that 'he who decides must hear' is that the administrative agency, making the findings, must address itself to the evidence; and, upon the evidence before it, must conscientiously reach a conclusion which it deems such evidence to justify. The rule does not mean that the evidence should be taken by the authority who makes the final decision. The aggrieved party would only succeed should he establish that the order chal-

fenged was without any directing of the mind to the evidence by the deciding functionary. AIR 1959 S C 308, Expl.: AIR 1956 S C 285, Foll.; 62 SE 780 (790), Rel. on. 1961 Ker L T 35: (1961) 1 Ker L R 56: AIR 1961 Ker 299 (301) (Pr 3) (DB).

——Art. 226 — Domestic tribunal — Disciplinary action—Formalities.

In taking disciplinary action against a member of a domestic tribunal, it is not necessary that the charge and the demand for an explanation must proceed from the very authority competent to inflict the punishment and, on principle there is no reason why these should not proceed from some subordinate authority. 1958 Ker L T 48 : 1958 Ker L J 538 : AIR 1958 Ker 164 (165) (Pt C) (Pr 4) (DB).

——Art. 226 — Concurrence by other member of Revenue Board with opinion given by single member, without hearing party affected—Decision not opposed to principles of natural justice. See M B. Revenue Administration and Ryotwari Land Revenue and Tenancy Act (66 of 1950), S. 18. A I R 1955 Madh B 185 (187, 188) (Pt A) (Prs 12, 14, 17) (DB).

——Art. 226—Natural justice — Appeal by dismissed teacher to the President, Board of Secondary Education — Appeal heard by President's nominee — Order passed by President — Both legal — No violation of principles of natural justice. See Bihar High Schools (Control and Regulation Administration) Act (13 of 1961), S. 8 (2). 1963 B L J R 880.

——Art. 226—Natural justice—Hearing by Collector—Final decision by his successor without giving any hearing to the appellant—Word 'adjudged' in S. 182, Sea Customs Act shows that the matter should be approached judicially—Principles of justice violated—Order vitiated. See Sea Customs Act (1878), S. 167 (8). A I R 1965 Punj 84 (DB).

——Art. 226 — Natural justice — Principles of — Judicial or quasi-judicial matter heard by an authority — Decision given by some other authority — Held procedure violated principles of natural justice.

Held on facts, that the matter before the Minister was a quasi-judicial matter. The deciding authority, i.e., the Minister, must have decided it judicially or by a judicial approach. The Deputy Minister who heard the cases was not authorised to decide then and the Minister who alone had the authority to decide them never heard the parties. The order of the Minister could not be supported in law. 1915 AC 120 and AIR 1959 S C 308 and AIR 1955 Raj 203 and AIR 1952 Raj 46 and AIR 1960 SC 606, Rel. on.; AIR 1957 S C 648 and AIR 1958 S C 398 and AIR 1958 S C 578, Dist. ILR (1965) 15 Raj 619 : AIR 1966 Raj 50 (53, 54) (Prs 13, 17) (DB).

——Art. 226 — Quasi judicial tribunal — Hearing parties' — (Rajasthan Jagir Decisions and Proceedings (Validation) Ordinance (6 of 1955), Ss. 3, 4 (d)) —AIR 1948 Bom 63, Disst. from.

The minimum requirement that the Rajpramukh as a quasi judicial tribunal acting under S. 3 of Ordinance VI of 1955 should fulfil is to give a hearing to the parties before it. If there is any evidence to be taken, that evidence may be taken by some authority designated by the Rajpramukh, but thereafter the Rajpramukh should give a hearing to the parties. In the absence any rule or law which provided that the Rajpramukh would appoint some subordinate officer to hear the representations and make the report upon which he would pass such orders as he thought proper, it seems necessary that the Rajpramukh as a quasi judicial tribunal should have given a personal hearing to the party.

In the absence of a rule or law to that effect the hearing by the Minister is not the same thing as the hearing by a quasi-judicial tribunal like the Rajpramukh by virtue of S. 3 of the Ordinance. **Held that** the case of the applicant should now be heard in the manner provided by S. 4 (d) of the Ordinance, Case law discussed AIR 1948 Bom 63, Disst. from. I L R (1955) 5 Raj 995 : AIR 1955 Raj 203 (207, 208) (Pt J) (Prs 17, 22) (DB).

78 (a) (v). Defence.

——Art. 226—Domestic Enquiry—Natural justice—Enquiry by management—Representation—Workmen entitled by Standing Order to representation only by representative of recognized Union—Workman insisting on assistance of representative of their unrecognized Union with a view indirectly to obtain recognition to Union—Principle of natural justice is not violated by refusal of such request. AIR 1965 S C 1392.

——Art. 226—Enquiry into charges of misappropriation against municipal servant—Servant declining to examine witnesses—Enquiring officer holding no hearing on date fixed for examination—No complaint can be made.

Where in an enquiry against a municipal servant on the charges of misappropriation, a date was fixed for him to examine witnesses, but the servant informs the presiding officer that he does not propose to examine any witnesses, no complaint can be made, if the presiding officer holds no hearing on the date to which the enquiry was adjourned for examination of the witnesses. 1960 All L J 409.

——Art. 226—Natural justice. Even if their is no specific provision in the statute, the judicial order should not be passed against a person unless he is heard in self-defence—Order proposed to be based under S. 14, Bombay Money-lenders Act—Notice to offending money lender calling upon him to show cause why appropriate order should not be passed against him is essential—Notice should be followed by enquiry in which the money lender should get clear idea of allegations against him and he should be given opportunity to meet them. See Debt Laws—Bombay Money-Lenders Act (31 of 1947), S. 14. AIR 1957 Bom 12.

——Art. 226 — Disciplinary action against public servant for alleged misconduct — Public servant not given reasonable opportunity to defend himself — Order quashed under Art. 226. See Ibid, Art. 311. AIR 1964 Cal 503.

——Art. 226—'Natural justice'—Audi alteram partem—Scope and applicability of rule—Bombay Municipal Boroughs Act (18 of 1925), S. 28 (2)—Appeal by Councillor to State Government against order of Collector — No notice — Effect—Appellate order of State Government is vitiated.

It is the duty of a quasi-judicial officer to act jucicially, and give each of the parties an opportunity of adequately presenting his case. 1915 App Cas 120, Relied on. If any person alleges that the rule of natural justice was not intended by the Legislature to be followed, the burden of proof is on that person.

The functions which the State Government has to perform in a appeal under sub-s. (2) of S. 28 of the Acts against the orders of the Collector are quasi-judicial functions. Though a quasi-judicial officer acting in his appellate jurisdiction is not bound to give a personal hearing to the appellant he is bound to give an opportunity to the appellant to state his case. 1911 A C 179 and 1915 A C 120 and AIR 1960 S C 606 and AIR 1957 SC 648, Rel. on. (1960) 1 Guj L R 53 : (1960) 1 Guj H C R 76 : AIR 1960 Guj 19 (20, 21, 22, 23) (Prs 3, 4, 5, 7, 8, 9) (DB).

——Art. 226 - Master and Servant — Head clerk of University — Dismissal of — Opportunity given to produce defence —Opportunity not availed of—No violation of natural justice.

The petitioner-respondent was appointed a Head clerk in the University in May, 1958. A complaint was made against him on 16th May and on the basis of the complaint he was suspended by the Registrar of the University on the 17th May. On 9th June, 1958, a detailed charge sheet was delivered to the petitioner and he was given an opportunity of producing the defence, if he had any. When he did not produce any defence he was called by the Registrar at his office and the evidence was read over to him and he was given opportunity to cross-examine the witnesses on 6th August, 1958. On 9th August the Registrar wrote to the respondent in which he was informed that the inquiry against him had been completed and that he was given another opportunity to produce defence if he liked, and show why he should not be punished in the manner indicated. The respondent did not produce any defence in spite of various opportunities given to him and the final order was passed on 21st November, 1958, dismissing the respondent from service.

Held, that the principles of natural justice were not violated and the punishment of dismissal awarded to him was in the circumstances, fair and just. **AIR 1960 J & K 80 (82, 83) (Prs 11, 16) (DB).**

——Art. 226—Natural Justice—Madras Hindu Religious and Charitable Endowments Act, S. 45 — Interlocutory order suspending hereditary trustee—Disregard of rules of natural justice — Notice is necessary.

Any interlocutory order of suspension of hereditary trustee under S. 45 (3) is bad, if it has been made in disregard of rules of natural justice. A trustee is entitled to a fair opportunity of making relevant statements and of controverting the grounds on which immediate action of his being suspended from his hereditary right of managing the trust, is contemplated. **1960 Ker L T 1007 : I L R (1960) Ker 1259 : 1960 Ker L J 1445 : AIR 1961 Ker 87 (91) (Pt C) (Pr 8) (DB).**

——Art. 226—Order by Labour Judge disallowing particular lawyer to appear for party after granting permission to party to be represented by counsel — Petition under Art. 226 challenging such order — Power of High Court to quash such order — Per Dixit J.: — Course adopted by Labour Court was neither dignified nor fair—To call lawyer obstructionist because he made application for adjournment or for transfer or for further and better particulars was an erroneous conception of position he occupied — Per Chaturvedi J.—In such matters High Court does not sit in appeal under Art. 226, over Labour Court—(M. B. Industrial Relations (Adaptation) Act (2000 Smt.) S. 83-A). **AIR 1955 N U C (Madh B) 3755.**

——Art. 226—Opportunity to rebut evidence not given—Effect. See Ibid, Art. 311 (2). **AIR 1962 Madh Pra 15 (DB).**

——Art. 226 — Natural justice — Order dissolving Board of Directors—Opportunity to file objections given—Order not justiciable. See Co-operative Societies Act (2 of 1912), S. 38-A (1) (M. P. Amendment). **1960 Jab L J 88.**

——Arts 226 and 311—Natural justice—Dismissal of servant—Charge of criminal nature—No opportunity given to explain or rebut charges—Order not maintainable. 1958 M P L J (Notes) 99.

[Reversed in 1960 M P L J (Notes) 207.]

——Art. 226 — Practice — Writs by candidates debarred by a University from appearing at subsequent examinations on their being found guilty of copying at the examination — Charge did not specifically say who copied whom — Same counsel appearing for both the candidates — Interests of candidates conflicting — Taking up the defence of both the candidates by the same Advocate, in the circumstances, was not proper. 76 Mad L W 760 : ILR (1964) 1 Mad 244 : (1964) 2 Mad L J 336 : AIR 1964 Mad 460 (461) (Pt B) (Pr 6) (DB).

——Art. 226—Rules of Natural Justice—Opportunity to defend must be given to member of club whose conduct is impugned. AIR 1955 N U C (Manipur) 4546.

——Art. 226 — Principle of natural justice — Patna University Act (25 of 1951) — Statutes under—Ordinance IV, Para 21 — Syndicate of University acting under — It acts judicially — It should observe principle of natural justice.

The Syndicate of the Patna University exercises quasi-judicial duties while acting under the provisions of Para. 21 of Ordinance IV of the Statute. It therefore follows that the Syndicate must follow the principle of natural justice while acting in this capacity and adequate opportunity must be given by the Syndicate to the examinees for presenting their case. This principle of natural justice is denied when the Unfair Means Scrutiny Committee refuses to give the examinees the materials upon which the allegation about using unfair means at University examination is based and also refuses to give them an effective opportunity of defending themselves against such allegation. AIR 1962 S C 1110 and M J C No. 777 of 1959, D/- 10-5-1960 (Pat), Rel. on. **AIR 1964 Pat 291 (291, 292) (Pr 4) (DB).**

——Art. 226 — Certiorari — Quasi-judicial orders — Denial of reasonable opportunity — Interference — Orders under S. 3 (1) of Madras Restrictions On Habitual Offenders Act (6 of 1948) (as applied to Union Territory of Delhi).

It is incumbent on every quasi-judicial authority to inform the person concerned about the materials that are sought to be used against him and to give him an opportunity of explaining or rebutting the same. Order passed under S. 3 (1) of the Madras Restrictions on Habitual Offenders Act (as applied to Delhi) without informing the person, the materials from which the due verification was sought to be made, is bad. ('65) 67 Pun L R 1234.

——Art. 226 — Natural justice — Foreign judgment dismissing suit at preliminary stage — Refusal to adjourn case — Effect — If violation of principles of natural justice. See Civil P. C. (1908), S. 13. **AIR 1959 Punj 306 (DB).**

——Art. 226 — Natural justice — Principles of — Departmental proceedings — Principles of natural justice — Right to be represented by a lawyer. See Ibid, Art. 311. **AIR 1963 Tripura 20.**

78 (a) (vi). No infringement.

——Art. 226 — Natural justice—Proceedings under Delhi and Ajmer Merwara Rent Control Act — Landlord not appearing in spite of repeated notices and adjournments — Ex parte proceedings—No violation of rules of natural justice. See Houses and Rents — Delhi and Ajmer Merwara Rent Control Act (19 of 1947), S. 7-A. **AIR 1982 S C 646.**

——Art. 226 — Natural justice — Appeal dismissed without hearing appellant — (Sea Customs Act (1878), Ss. 188 and 191).

There is no rule of natural justice that at every stage a person is entitled to a personal hearing. Moreover when the appeal against the orders of the Customs Authorities was filed beyond limitation, and the Appellate authorities dismissed the appeal as barred by limitation without hearing the appellant, there is no violation of the rule of natural justice,

Roy, F. N v. Collector of Customs; Calcutta, 1957 SCR 1151 : 1957 SCA 764 : 1957 Cri L J 1026 : 1957 S C J 734 : (1957) Mad L J (Cri) 684 : AIR 1957 S C 648 (652) (Pt B) (Pr 11).

——Art. 226 — Natural justice—Removal of Pradhan of Gaon Sabha under S. 95 (1) (g) (iii) of U. P. Panchayat Raj Act (26 of 1947) — Regular enquiry not contemplated in Act — Petitioner had not demanded opportunity to be heard and to defend himself — Explaining to petitioner, charges framed against him was sufficient compliance with principles of natural justice and provisions of Act — U. P. Panchayat Raj Act (26 of 1947), S. 95 (1) (g) (iii). AIR 1963 S C 375, Foll. 1964 All L J 1073 : AIR 1965 All 370 (371) (Pt A) (Prs 3, 4) (DB).

——Art. 226 — Central Excise Rules (1944), R. 10— Short levy — Limit of three months prescribed for making demand — Delay in issuing show cause notice likely to frustrate purpose of action — Principles of natural justice not applicable.

It is well settled that when immediate action is required to be taken and the delay which the right of hearing may involve is likely to frustrate the very purposes of the action, the principles of natural justice would not apply. In such a case all that is required is that the authority taking action must keep an attitude of impartiality and fairness.

Where the only dispute between the parties was whether the bottles could be treated as laboratory glassware or other glassware during a period of two months and ten days the Department officials erroneously considered the bottles to be laboratory glassware and after realising their mistake they asked for the recovery.

Held, that the case clearly fell within R. 10 and the demand was rightly made. Rule 10 gives the limit of three months for making the demand. The period of three months would have been over in the process of issuing a show cause notice and receiving a reply and deciding it. The version of the assessee was already known to the assessing authorities and show cause notice was not necessary. AIR 1965 All 305 (308, 309) (Pt D) (Pr 7).

——Art. 226 — Natural justice — Principle not applicable to compulsory retirement.

Compulsory retirement is not a punishment and does not involve the servant's being deprived of any property. The principle of natural justice is that a person should not be punished or deprived of his property without being heard. It does not apply to retirement in accordance with the rules of service. It does not apply to compulsory retirement any more than to retirement on reaching the age of superannuation or discharge on completing the term of appointment. Abdul Ahad v. Inspector-General of Police, U. P. (1965) 1 Lab L J 110 : ILR (1964) 2 All 959 : 1964 All L J 791 : 1964 All W R (HC) 467 : (1964) 9 Fac L R 197 : AIR 1965 All 142 (150) (Pt E) (Pr 14) (FB).

——Arts. 226 and 311 — Natural justice—Examinee using unfair means — Inquiry by delegate on spot— Cancelling of result by University — Validity.

The rule of natural justice merely requires that no person shall be condemned unheard. In a case where an examinee used unfair means in his examination it no where requires any questioning of the offending examinee by the 'University' or the Executive Council, it is sufficient for the University's agent or delegate on the spot to give him a reasonable opportunity of explaining his position. In such a case, there is no rule of natural justice which enjoins a procedure like that laid down in Art. 311 of the Constitution. 1957 All L J 213, Diss. from; AIR 1956 All 539, Disting. and Expl. AIR 1960 All 198 (199) (Prs 4, 5).

——Art. 226 — Motor Vehicles Act does not give party right to appear and be heard — Right not given — No violation of natural justice — Opportunity afforded at appellate stage — Regional authority has discretion in granting permit — Act does not require him to act judicially. AIR 1955 NUC (All) 3589.

——Art. 226 — Temporary assignment of lands to political sufferers — Subsequent order for permanent assignment to others — Order passed without hearing temporary assignees — Still order is not invalid — It cannot be quashed by a writ of certiorari on the ground that it has been passed in violation of the principle of audi alteram partem. AIR 1961 Andh-Pra 123 (125, 126) (Pt A) (Prs 9, 15, 16) (DB).

——Art. 226 — Natural justice — Pensions Act does not contemplate any elaborate inquiry—No foundation for the grievance that principle of natural justice was violated and that maxim audi alteram partem was not given effect to. See Pensions Act (1871), S. 5. AIR 1959 Andh-Pra 487 (DB).

——Art. 226 — Natural justice — Order passed by State Authority under Motor Vehicles Act in disposing of appeal under S. 64 of Act, without giving opportunity for oral hearing — Principle of natural justice is violated — Sufficient opportunity given to state the case — Party is not entitled as of right to be heard — Order passed without hearing in such case is not contrary to principles of natural justice. See Motor Vehicles Act (1939), S. 64. 1958 Andh L T 627.

——Art. 226 — Right to carry on business in cement — Reasonable restriction — Cancellation of licence under Cl. 14 and the petitioner distributing agency in respect of Government stock — Reasonable opportunity against cancellation of licence only necessary. See Ibid, Art. 19 (1) (g). AIR 1962 Assam 80 (DB).

——Art. 226—Administrative order—Natural justice —Petitioner not heard—Effect—Interference.

The order of settlement of forest Mahal issued by Forest Department is an administrative order and unless there be violation of any statutory rules or principles there is no scope for issue of any writ of mandamus.

The Government is not obliged to give a party a hearing and there is neither any violation of the principles of natural justice if the party is not heard before rejecting his application for review of the order rejecting his tender. AIR 1961 Assam 123 (124) (Prs 3, 4) (DB).

——Art. 226—C. P. and Berar Sales Tax Act (21 of 1947), S. 11 (4) — C. P. and Berar Sales Tax Rules (1947), R. 32 — Reasonable opportunity — Notice— Sufficiency of — 'Ordinarily' meaning of — Discretion — Interference with under the extraordinary constitutional powers—Propriety.

The word 'ordinarily' in R. 32 clearly indicates that the Legislature did not intend that 30 days' notice shall be the invariable rule. It also points out clearly what the Legislature had in view when it provided in S. 11 (4) of the C. P. and Berar Sales Tax Act that the assessee shall be afforded reasonable opportunity of being heard, before being assessed to tax under the section.

What is reasonable within the meaning of the section however, is by statute and the Rules entrusted for determination by authorities concerned and unless the view taken by the authorities is erroneous or perverse, the High Court will not interfere with the discretion exercised, in its extraordinary, constitutional powers.

Where, therefore the assessee was served with two notices, before making best judgment assessment under S. 11 (4) and the first of the two notices allow-

ed him a time of 11 days and the second one 27 days, only 3 days short of the ordinary period prescribed by R. 32 and by the first notice served on him the assessee well knew that the Sales Tax Officer was proceeding to assess him and intended to do so.

Held, that there was sufficient compliance with the proviso to S. 11 (4) and R. 32; the assessee had more than adequate notice and also had a very reasonable opportunity of being heard. **(1962) 13 S T C 477 : 1962 Nag L J 312 : 64 Bom L R 476 : ILR (1962) Bom 606.**

——Art. 226—W. B. Secondary Education Act, 1950, S. 30 (3) — Proceedings in appeal are proceedings before administrative tribunal — Appellant is not entitled to oral hearing, apart from any provision made in the Regulations — Regulation 7 conferring discretion on the appellate committee to allow such hearing or not is not invalid — D. P. I's report relied on by committee, in favour of appellant — Non-disclorure of same to appellant does not offend principles of natural justice — Constitution of India, Art. 226. See West Bengal Secondary Education Act (37 of 1950), S. 30 (3). **('62) 66 Cal W N 75.**

——Art. 226 — Natural justice — Persons failing to appear even after repeated notices—Effect.

If persons notified to appear fail to appear after repeated opportunities are given then the proceeding has to be conducted in their absence and in such a case it is not violation of the principles of natural justice at all. AIR 1957 S C 82, Rel. on. **(1959) 1 Lab L J 605 (Cal).**

——Art. 226 — Certiorari — (Administration of Evacuee Property) Act (1950), S. 40.

Where the applicant himself sought the confirmation of the sale under the provisions of the Regulation similar to S. 40, Administration of Evacuee Property Act, and this provision conferred jurisdiction on the Custodian in his discretion to confirm or refuse the sale, the order upon the application cannot be held either in excess of jurisdiction or to be without jurisdiction. Similarly, if the authorities in reaching the conclusion against the applicant gave the petitioner every opportunity to urge his case and they proceeded in a manner laid down for the hearing of such applications, if their conclusions are against him, it does not follow that any error in them, assuming that there are such errors, can be corrected by issuing a writ of certiorari. For, every error is not necessarily of natural justice and it cannot be corrected as if the High Court sits as an appellate authority over the decisions of Custodians of Evacuee Property. AIR 1952 S C 319, Ref. **I L R (1953) Hyd 147 : AIR (1953) Hyd 157 (158) (Pt A) (Pr 2) (DB).**

——Art. 226—Scope—Non-compliance with proviso to S. 12 (2) (b), T. C. General Sales Tax Act — No reasonable opportunity to dealer—No damage to petitioner — No writ can issue — Issue of writ. See Sales Tax—Travancore Cochin General Sales Tax Act (11 of 1125), S. 12 (2) (b), Proviso. **AIR 1957 Ker 76.**

——Art. 226 — Natural justice — Order under S. 5, Rice Milling Industry (Regulation) Act, 1958 is administrative and not quasi-judicial — Government not bound to hear applicant before rejecting application for permit. See Rice Milling Industry (Regulation) Act (21 of 1958), S. 5. **AIR 1965 Madh Pra 247 (DB).**

——Art. 226—Natural justice.

Rules of natural justice — Observance of, by Arbitrator — Presumption as to — Violation of principles of natural justice, when justifies interference — Both parties heard — Minor grievance — No ground for misconduct. See Arbitration Act (1940), S. 30. **AIR 1964 Madh Pra 15 (DB).**

——Art. 226—Natural justice — M. B. Municipalities (Adult Franchise) Act, 1951, S. 16 (2) — Declaration of ineligibility of office-holder, following order of removal — Show cause notice is not necessary — Absence of notice — Not opposed to principles of natural justice. See Municipalities — Madhya Bharat Municipalities (Adult Franchise) Act (9 of 1951), S. 16 (2). **1961 M P L J 13.**

——Art. 226 — Sea Customs Act (1878), S. 167 (3) — Petitioner not informing Superintendent of Excise within the time allowed by show cause notice his desire to be heard in person—Request made only later on to Collector for such hearing — Collector not bound under the rules to give him such hearing — Refusal to give personal hearing under the circumstances does not render his order opposed to principles of natural justice. **1962 Mad W N 302 : 1962 Mad L J (Cri) 659 : 75 Mad L W 276 : (1962) 2 Mad L J 499 : AIR 1962 Mad 366 (367) (Pt B) (Pr 5).**

——Art. 226 — Industrial dispute — Dismissal of worker in contravention of standing orders — No prejudice—No contravention of principles of natural justice — Natural justice. AIR 1957 S C 38, Rel. on. **72 Mad L W 676 : (1959) 2 Lab L J 635 : AIR 1960 Mad 131 (133) (Pt B) (Pr 9).**

——Art. 226 — Principles of natural justice —Application for no objection certificate under Madras Cinemas (Regulation) Act, 1955 — There is nothing in provisions of Act or Rules thereunder which makes it incumbent on the Collector to take into consideration any representation of a competent applicant. See Madras Cinemas (Regulation) Act (9 of 1955) (as amended by Act (21 of 1956), S. 3-A). **('59) 72 Mad L W 235.**

——Art. 226 — Madras Medical Registration Act (4 of 1914), S. 18 — Appeal by medical practitioner suspended from practising—Written representation made — Personal hearing not given — Principle of natural justice not violated.

Nowhere in the Madras statute is there any statutory obligation upon the Government to follow any specified procedure in disposing of appeal preferred to it under S. 18 of the Madras Medical Registration Act. Hence, the Court has to see if any principle of natural justice is violated by the Government when it happens to dismiss the appeal.

Where a medical practitioner, suspended for a period of one year by the Medical Council after his being found guilty of infamous conduct in a professional respect, is allowed to make his representation, and the written representation in the memorandum of appeal he submits to the Government is taken into consideration along with the evidence on record and the order of the Medical Council before the Government rejects his appeal, it cannot be said that the petitioner is given no opportunity at all to make any representation to the Government. That the petitioner is not given a further opportunity to make personal representations to supplement the written representations he made, may not be enough to prove that any principle of natural justice has been violated by the Government.

Further mere failure to give reasons, even though an appeal under S. 18 of the Act is a matter of great importance to the medical practitioner, whose whole professional reputation is at stake, may not by itself suffice to invalidate the order. **1955 Cri L J 1507 : 1955 Mad W N 90 : (1955) 1 Mad L J 155 : AIR 1955 Mad 628 (629) (Pt A) (Prs 4, 6).**

——Art. 226 — Principles of natural justice—Violation of — (Tenancy Laws — Tanjore Tenants and Pannaiyal Protection Act (14 of 1952), S. 13 (2)).

Where in an appeal under S. 13 (2) the petitioner is given an ample opportunity, which he avails himself of, to participate in the further enquiry ordered by the revenue Court and held by the conciliation officer, the order directing that further evidence be taken cannot be held to violate principles of natural justice. AIR 1955 NUC (Mad) 3197.

——Art. 226 — Madras Co-operative Societies Act (6 of 1932), S. 43 — Order of supersession under — Nature of proceedings—Procedure to be followed—Order if can be challenged by a writ of certiorari—**Held**, that the order was passed after giving ample opportunity to the committee to state its objections and there was nothing wrong in the procedure followed by him, and therefore, the order could not be quashed by writ of certiorari. See Madras Co-operative Societies Act (6 of 1932), S. 43. **AIR 1951 Mad 1003 (DB).**

——Art. 226 — Writ of certiorari — When to be issued.

Where opportunity is given to the party making a revision petition to the Board of Revenue to state all his grounds of objection to the order of the Revenue Divisional Officer, a writ of certiorari cannot be issued to quash the order of the Board merely because the petitioner is not orally heard. **AIR 1951 Mad 276 (276) (Pt A) (Pr 1) (DB).**

[Impliedly Overruled on another point in A I R 1950 S C 218—Ed.].

——Art. 226 — Natural justice — Violation of — Departmental enquiry—Non-observance of rules — When amounts to violation of natural justice — Constitution of India, Arts. 309 and 226—Civil Services (Central) (Classification, Control and Appeal) Rules, 1957, R. 15.

In a departmental enquiry, it is not every non-observance of a rule that will constitute violation of natural justice. It is only if the non-observance has prejudiced a person in his defence that it can be said that the principle of natural justice was not observed. Non-observance of R. 15 of the Central Civil Services (Classification, Control and Appeal) Rules in giving a Government servant only 11 days as against 3 weeks provided by R. 15 to submit his explanation to the charges against him would not vitiate the enquiry when it is not shown that such shorter duration prevented him from giving his explanation. **A I R 1963 Manipur 51 (56) (Pt B) (Pr 13).**

——Art. 226 — Certiorari — Maintainability — Deliberate mis-statement of facts in seeking admission to college — Revocation of admission by college authorities—Denial of opportunity to petitioner to explain his mis-statement — Principle of natural justice not violated. **40 Mys L J 823 : ILR (1960) Mys 1146 : AIR 1962 Mys 104 (106) (Prs 7, 8) (DB).**

——Art. 226—Natural justice—Opportunity of being heard — Notice by Excise Authorities to petitioner (Distillery Company) to carry out certain directions—Date fixed for giving company personal hearing — Company praying for change of date twice which was granted — Company failing to present case on those dates — It cannot be said that no sufficient opportunity to be heard was given to company — Order against company cannot be quashed on that ground — Punjab Excise Act (I of 1914), Ss. 38 (c) and 80 (2). **1964 Cur L J 519.**

——Art. 226 — Natural justice — Bihar State Universities (Amendment) Act (13 of 1962), S. 4 — Earlier order by Chancellor disapproving appointment of petitioner as Principal passed on recommendation of University Service Commission, without hearing petitioner—Later order, on representation by college, giving time to petitioner to acquire requisite qualification to act as Principal, passed after giving full hearing to petitioner, by University Service Commission, in pursuance of show cause notice — Held that later order must be taken to be the only order governing the case and there was no question of violation of principles of natural justice on ground of failure to give hearing— Defective wording of show cause notice not sufficient to render entire notice void. AIR 1964 Pat 41, Disting. **AIR 1965 Pat 11 (14, 15) (Pt A) (Pr 5) (DB).**

——Art. 226 —Opportunity to show cause — Right of employee to second notice — (Constitution of India, Art. 311 (2).)

On the question whether a fair opportunity has been given to the servant, in cases to which Art. 311 (2) does not apply, no general test can be formulated which would be applicable to all conditions. The question would depend very much on the particular facts of each case. AIR 1955 Pat 345, Foll.

Where the petitioner, a clerk in the service of a District Board, submitted his explanation in which he gave a detailed explanation regarding the charges against him, and, after a consideration of the same, the District Board at its meeting resolved to ask the petitioner to submit his resignation by a certain date and, on his failure to do so, it authorised its chairman to dispense with his services, and to pass an order to that effect.

Held, that it could not be said that the petitioner was not given an ample and reasonable opportunity to show cause against the charges which were served on him. If, therefore, the principles of natural justice were not violated, and the petitioner was given an effective and reasonable opportunity to show cause against the charges against him, it could not be said that he was entitled to a second notice against the action proposed to be taken by the District Board. **Held**, further, that even assuming that the petitioner should have been given a second notice against the action proposed to be taken against him after the Board had found his explanation unsatisfactory the resolution of the Board would be tantamount to such a second notice, and it was open to him to make representation against the decision of the Board to dispense with his services, if he did not tender his resignation. Therefore, in any view of the matter, the petitioner could not take advantage of his own lapse and negligence and carelessness and make any grievance that the order of his discharge was invalid, because he was not given a second notice. **1957 B L J R 397 : AIR 1957 Pat 333 (337) (Pt C) (Prs 24, 25, 26, 30) (DB).**

——Art. 226—Sales Tax—Bihar Sales Tax Act (19 of 1947), S. 13 (4)— Natural justice—Principle of 'audi alteram partem' — Assessment of sales-tax based on Inspector's report—Legality.

As a matter of law it is not correct to state that the party adversely affected should be heard at each and every stage of the administrative process.

Where an assessee has been assessed to sales tax on information supplied under S. 13(4), Bihar Sales Tax Act, by the Inspector, the assessee has opportunity to argue on the questions raised by the Inspector's report at the appellate stage. He cannot be heard to complain that because at the initial stage of assessment by the Sales Tax Officer he was not shown the Inspector's report there has been violation of any principle of natural justice. AIR 1956 Pat 212, Foll., AIR 1955 S C 65, Disting. **1956 B L J R 631: (1957) 7 S T C 666 : AIR 1957 Pat 21 (23, 24) (Prs 5, 7) (DB).**

——Art. 226 — Natural justice — Applicant having opportunity of defending himself or showing cause— Principle of natural justice is not violated even if

personal hearing is not given — See Motor Vehicles Act (1939), S. 64A. AIR 1956 Pat 437.

——Art. 226 Principles of natural justice — Domestic tribunals — Bihar Education Code (1944), R. 182 (f) — Mismanagement by Managing Committee of private recognized High School—Appointment of an ad hoc Committee under R. 182 to assume management — Principles of natural justice —Applicability of— Opportunity to be heard before action by Board.

Where the Board of Secondary Education, Bihar, in a case falling under R. 182 of the Bihar Education Code, under Cl. (f) of that rule, appoints an ad hoc Committee in place of the Managing Committee of a private recognized High School, without giving an opportunity to the members of the Managing Committee of being heard and answering the charges levelled against them, there is no violation of the rule of natural justice. The Managing Committee of a High School under private management is not a creature of any statute. The rules as embodied in the Bihar Education Code have no statutory force, but are only domestic rules for the management of the internal affairs of the school. If rules have been strictly followed and there is no proof of bad faith, the Court cannot intervene even if it thinks that the penalty is too severe or that too strict a standard has been applied. (1929) 1 Ch 602 and AIR 1949 P C 313, Rel. on. 1956 B L J R 33 : AIR 1956 Pat 81 (85, 86) (Pt B) (Prs 6, 7) (DB).

——Art. 226—Principles of natural justice—Doctrine of audi alteram partem.

Where there is no doubt that the petitioners who were bidders at public auction held under the Bengal Ferries Act (1885), had notice not only of the fact of the enquiry made in connection with the financial stability of the bidders, but also of the date of the enquiry, and, that they were represented at the enquiry by their lawyers, who was their appointed agent, an aid of the doctrine of audi alteram partem cannot be had in a petition under Art. 226 as it has not been violated. 1956 B L J R 592.

——Arts. 226, 227 — University — Misconduct by college student — Disciplinary proceedings — Principles of natural justice—Principal recording student's statement admitting allegation—Tutor, who witnessed incident, identifying student — Student not demanding cross-examination of witnesses or permission to produce witnesses — University ordering cancellation of result on basis of Principal's report — Student alleging violation of principles of natural justice — Held, there was no violation — Observations of Lord Shaw and Lord Parmoor in (1915) A C 120, regarding natural justice cited with approval; AIR 1960 S C 415, Foll.; AIR 1957 S C 882 and 1943 A C 627, Dist. 66 Pun L R 992 : AIR 1964 Punj 456 (459, 460, 461) (Pt A) (Prs 5, 8, 9) (DB).

——Art. 226—Natural justice — Procedure by quasi-judicial bodies — Audi alteram partem — Motor Vehicles Act (1939), S. 60 (1) proviso—Scope — Suspension of permit — Duty to give fair opportunity to state case.

The proviso to S. 60 (1), Motor Vehicles Act, cannot apply where the permits have not been cancelled but only suspended. Where before suspending the permits of the owners of the buses they were asked to show cause why their permits should not be suspended and they practically admitted the fact of their buses being overbooked and it was not their case that they wanted to give evidence or to have an oral hearing and that the Road Traffic Board refused to take evidence or to give an oral hearing.

Held, that the Road Traffic Board could not be said to have denied them a fair opportunity to state their case. 1956 Ker L T 792 : ILR (1956) Trav.Co 1293 : AIR 1957 Trav. Co 141 (144) (Pt C) (Prs 9, 9a) (DB).

——Art. 226—Certiorari—Natural justice—Violation of—Executive authority (Member of Board of Revenue), deciding matter on perusal of written representations—Failure to hear party or advocate orally —If violates natural justice.

There is no rule that an executive authority, e. g., a member of the Board of Revenue should hear or listen to the oral contentions or arguments of parties to a proceeding for him or their advocates. If the contentions are put in writing and the order is passed presumably on a perusal of the representations made in writing that would be sufficient hearing for the purpose of disposing of the matter. It cannot be said that in such case the principles of natural justice are violated, and therefore no writ of certiorari will issue to quash the order. (1915) A C 120 ; AIR 1951 Mad 276; AIR 1951 Trav-Co 197, Foll. 1951 Ker L T 329 : A I R 1952 Trav-Co 287 (288, 289) (Pt A) (Pr 7).

——Art. 226—Grounds for issue— Executive Officer passing administrative order not hearing advocate for applicant—If renders order invalid and liable to be quashed.

The fact that in passing an administrative order the executive authority did not give a hearing to the applicant's counsel, whould not render the order invalid and render it liable to be quashed so long as the order is within the authority of the officer concerned and sufficient opportunity was given to the applicant to state his case. No writ of certiorari will issue on that ground. A I R 1951 Mad 276, Rel on. I L R (1951) Trav-Co 496 : 1951 Ker L T 158 : A I R 1951 Trav-Co 197 (199, 200) (Pt A) (Pr 6).

78 (a) (vii). Miscellaneous.

●——Art. 226—Natural justice.

Principle of — Applicability — Defect in draft scheme—Final scheme in accordance with provisions of S. 68-C, Motor Vehicles Act (1939) after hearing objections — There is no violation of principle of natural justice. See Motor Vehicles Act (1939), S. 68D. AIR 1965 SC 1848.

●——Art. 226—Natural justice—Quasi-judicial order —Mineral Concession Rules (1949), Rr. 57 (2) and 59 —Central Government acts quasi-judicially in disposing of review petitions and must hear applicant on materials which order is based. A I R 1964 S C 1643 (1644, 1645) (Prs 4, 6).

●——Art. 226—Advance payment of tax not made — Assessee is liable to penal interest — But before levying penal interest he is entitled to notice and reasonable opportunity of being heard. See Income-tax Act (1922), S. 18-A. AIR 1963 SC 1456.

●——Art. 226 — Natural justice — Cancellation of licence — State Government's duty to afford reasonable opportunity to licence — Doctrine of bias — Applicability. See Bihar Mica Act (10 of 1948), S. 25 (1) (c) 2nd Proviso. AIR 1960 SC 468.

●——Art. 226—Natural justice — Powers and duties of statutory bodies — (Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 53-A).

S. R. Das C. J. :—Action to be taken under S. 53-A of the C. P. and Berar Municipalities Act may be an administrative action but that does not absolve the State Government from observing the ordinary rules of fair play. Even when administrative action is taken it may be necessary to give an opportunity to a party to have his say before an order is passed. For the breach of the rules of fair play in taking administrative action a writ of certiorari will not lie.

Radeshyam Khare v. State of Madhya Pradesh, 1959 S C R 1440 : (1959) 1 Mad L J (SC) 5 : (1959) 1 Andh W R (S C) 5 : 1959 S C J 6 : 1959 Nag L J 49 : 1959 MPLJ 185 : AIR 1959 SC 107 (119, 131) (Pt C) (Prs 12, 57).

——Art. 226—Natural justice—Cancellation of licence under Arms Act without giving opportunity to licensee of being heard—Breach of first principle of natural justice. See Arms Act (1878), S. 18. 1965 All L J 994 : AIR 1966 All 265 (DB).

——Art. 226—Natural justice — Lucknow University Act (5 of 1920), S. 39 — Dispute as to who is Head of Department referred to Chancellor — Jurisdiction of Chancellor is quasi-judicial — Person interested in dispute and affected by order to be passed must be given opportunity to be heard. AIR 1961 All 401 (408) (Pt D) (Prs 24, 25).

——Art. 226—Natural justice—Revocation of licence to carry on cinema house under S. 9-A of the U. P. Entertainment and Betting Tax Act—Opportunity of being heard must be given to proprietor — Rule of natural justice applies. See Ibid, Art. 19. 1960 All L J 894.

——Art. 226 — Motor Vehicles Act (1939), S. 47 (1) and (3) — Person already providing passenger transport facilities—Representation by — Necessity of consideration—Opportunity of making representation—See Motor Vehicles Act (1939), S. 47 (1). AIR 1958 All 390.

——Art. 226—Natural justice—(U. P. Panchayat Raj Rules, R. 95 A (2))—(U. P. Panchayat Raj Act (26 of 1947), S. 85).

In a dispute concerning mutation of name which was referred to the Panchayati Adalat, the adalat passed an order in favour of A. The Sub-Divisional Officer in a revision set aside that order without giving any notice to A on the ground that the order was signed only by 4 and not by 5 panchas. That order was passed before the enactment of S. 77-A, U. P. Panchayat Raj Act.

Held, that the proceedings in question were judicial proceedings and that being the position, an order passed by the Pachayati Adalat in favour of A could not be quashed without giving an opportunity to him of being heard in the case. That was the rule of natural justice which had been made applicable to all judicial proceedings and also to quasi-judicial proceedings. Further R. 95-A (2), U. P. Panchayat Raj Rules provides that a notice of the application filed in revision along with its copy should be issued to the opposite party and before passing any order on the revision, the Court must give a reasonable opportunity to both the parties of being heard. That being so the view that since S. 85, U. P. Panchayat Raj Act gave power to the Sub-Divisional officer to set aside the order on his own motion also there was no necessity of giving notice to A of the date of hearing and that he was not, in any way, prejudiced by the omission because a pure question of law was only involved in the revision was incorrect, being opposed both to the provisions of R. 95-A and the rule of natural justice. AIR 1955 All 366 (367) (Pr 2).

——Art. 226—Natural justice.

Order reducing life pension granted to widow of Government servant without assigning any reason — Validity —As Regulations were made by Nizam in whom supreme executive power of State and also plenary legislative powers then vested, granting extraordinary pension to widow of Government servant under R. 4 has force of law — Order reducing life pension is not valid since R. 2 does not make any provision for cutting down life pension—Order violates principles of natural justice is not giving reasonable opportunity to show cause against proposed action of reducing pension — Since Government has not till time of issuing impugned order taken power by suitable legislation or under valid statutory rules to terminate, reduce or suspend life pension granted by erstwhile State of Hyderabad, impugned order has exceeded powers of jurisdiction. I L R (1965) Andh Pra 759.

——Art. 226—Natural justice—Requirements of—Income-tax — Assessment to the best of judgment — Powers and duties of Income-tax Authorities—Opportunity to assessee—Duty to give. See Income-tax Act (1922), S. 13. AIR 1959 Andh Pra 166 (DB).

——Art. 226—Quasi-judicial orders — Grant of land under Darkhast Rules — Power of Government to revise orders of Board of Revenue—(Darkhast Rules (Hyderabad) Rr. 4, 5, 6, 9, 10, 17 and 18).

The grant of the Government lands under the Darkhast Rules to persons on satisfaction of certain conditions amounts to discharge of judicial function. (1922) 1 A C 202 : A I R 1921 P C 234, Rel. on. The several paragraphs of the Rules clearly indicate that the officers are to perform their duties conscientiously no proper feeling of responsibility and the decisions in the exercise of powers under the rules are judicial. (1915) A C 120, Rel. on. The Government is not authorised under the rules to interfere with the orders passed by the Board of Revenue. It follows that where the Government interferes with such order of the Government is passed arbitrarily and without jurisdiction. (1902) 12 Mad L J 453 and A I R 1955 Mad 305 (FB), Rel. on. Where no opportunity to be heard was afforded to the petitioner before the Government passed the order the order is vitiated by the failure. L R (1885) 1 A C 229, Rel. on. (1957) 2 Andh W R 123 : (1957) Mad L J (Cr) 376 : I L R (1957) Andh Pra 35 : A I R 1958 Andh Pra 140 (142, 143) (Pt C) (Prs 7, 9, 10) (DB).

——Art. 226—Principles of natural justice — Violation of — First order under para. 7 of Foreigners Order (1948) —Second order under S. 3 (2) of Foreigners Act (1946) — Opportunity to explain case not given before passing second Order —Effect.

If the authority has got power to act under S. 3 (2) (a) of the Foreigners Act and in the exercise of that power it acts and the exercise by implication has the effect or overriding order passed under the Foreigners Order (1948) it cannot be said that any principles of natural justice are violated if no opportunity is given by the authority before passing the second order to the petitioner to explain his case. It is a question mainly depending upon the extent and the ambit of the power which an authority can exercise under S. 3 and not a question of passing any judicial or quasi-judicial order which can be tested on the ground of violation of the principles of natural justice, ILR (1963) 15 Assam 279 : AIR 1963 Assam 105 (107) (Pt C) (Pr 8) (DB).

——Art. 226 — Sea Customs Act (1878), Ss. 167 (8) and 182—Equiry under—Natural justice—Reasonable opportunity—Denial of—Secret information obtained against person charged — Opportunity to test it not afforded—Natural justice violated—Certiorari—Quasi-judicial orders. See Sea Customs Act (1878), S. 167 (8). AIR 1962 Assam 145 (DB).

——Arts. 226 and 311—Railway Establishment Code—Para. 1721—Scope—Power to give personal hearing if discretionary—Non-compliance—Whether vitiates entire proceedings See Railway Establishment Code, Para. 1721. AIR 1959 Assam 112 (DB).

——Art. 226 — Order revoking license — Breach of condition not shown — Opportunity to hear licensee not given— Legality. See Cinematograph Act (1918), S. 3. AIR 1957 Assam 47 (DB).

——Art. 32—Order by Executive Member affecting petitioner's right to sell his commodities on land — Opportunity to be heard should be given—See United Khasi-Jaintia Hills Autonomous District (Management and Control of Markets) Act (5 of 1953), S. 9. **AIR 1956 Assam 162.**

——Art. 226—Natural Justice—Employees transferred to different place not joining at place of transfer—Notice to show cause for misconduct—Enquiry held at place of transfer—Employees refusing to attend——Dismissal—Enquiry held at place different from place of employment is against principles of natural justice — Orders of dismissal illegal — Absence of standing orders immaterial. See C. P. and Berar Industrial Disputes Settlement Act (1947), S. 16. **1961 Nag L J (Notes) 61.**

——Art. 226 — Municipalities — Bombay Municipal Corporation Act (1888), S. 354 — Authority acting under S. 354 — Whether acts judicially — Right of hearing of party affected by notice — Right if can be claimed on principles of natural justice—(Quasi-judicial orders—Orders under municipal laws)—(Natural Justice) — I L R 33 Bom 334, Doubted. See Municipalities—Bombay Municipal Corporation Act (3 of 1888), S. 354. **AIR 1959 Bom 332.**

——Art. 226 — Natural justice — Opportunity to be heard not afforded— Effect.

The appeal before the Board of Revenue was dismissed in default and petitioner applied for its restoration with an affidavit supporting the application. The Board asked for an additional affidavit but as there was delay in filing the same, application for restoration was dismissed. The petitioner was only informed about the dismissal, and no opportunity was given to petitioner to represent his case.

Held, that it was obligatory to give an opportunity to the petitioner to represent his case for restoration of his appeal before decision was taken in that proceeding and that the order passed by the Revenue Tribunal was against the principle of natural justice and deserved to be quashed. **('60) Bom L R 760 : 1958 Nag L J (Notes) 19.**

——Art. 226— Principles of natural justice — Applicability of to proceedings under S. 33-B of Income-tax Act (1922). See Income-tax Act (1922), S. 33-B. **69 Cal W N 66 : AIR 1966 Cal 73.**

——Art. 226—Application for public examination by Liquidator — Denial of right of being heard to concerned party — Offends principles of natural justice. See Companies Act (1956), S. 478 (1). **AIR 1965 Cal 372.**

——Art. 226 — Natural justice—Building rules of the Calcutta Municipality— Sch. 16, Rr. 23, 30 and 91 (2) — Violation of rules — Adjoining owners affected by breach of rules are entitled to object and must be given opportunity of being heard—Resolution passed in presence of objector subsequently amended ex parte — Amendment is invalid—Relaxation of rules—Relaxable rules cannot be relaxed unless specified conditions are proved. See Municipalities—Calcutta Act (33 of 1951). ('64) 68 Cal W N 1049.

——Art. 226—Natural justice—Principles of natural justice denied by Transport Authorities — Application under Article — Maintainability — (Motor Vehicles Act (1939), S. 64).

Where the Appellate Sub-Committee of the State Transport Authority and the higher Appellate Authority have denied the principles of natural justice by not allowing the petitioner to look into the copy of the police report before they made their orders, an application of the petitioner under Art. 226 attacking the validity of the said orders is in order and is maintainable. **('57) 61 Cal W N 779.**

——Art. 226 — Reasonable opportunity — Refusal to allow professional help. See Ibid, Art. 311. **AIR 1957 A P 414.**

——Art. 226—Sea Customs Act (1878), S. 167— Assistant collector acting under Ss. 167 and 183 acts in a judicial or quasi-judicial capacity and must observe the rules of natural justice and should give the party proceeded against a fair opportunity of being heard—Rules of natural justice not observed—Order demanding fine — Order can be quashed by issue of writ under Art. 226—S. 198 held no bar—Remedy under S. 188 or of suit not availed of —It is no bar to issue of writ. See Sea Customs Act (1878), S. 167. **A I R 1952 Cal 656 (DB).**

——Art. 226 — Jurisdiction under — Quasi-judicial enquiry under S. 178-A of Sea Customs Act (1878) — Petitioner denied opportunity to controvert information arrived at in enquiry made against him — High Court can entertain petition as there is violation of principles of natural justice. **(1964) 5 Guj L R 633 : AIR 1965 Guj 135 (142, 143) (Pt D) (Pr 8) (DB).**

——Art. 226—Natural justice—Refugee allotted land by Joint Rehabilitation Board—Provincial Rehabilitation Officer cancelling allotment on ground that it was obtained by dishonest means — No opportunity given to refugee to be heard before cancelling allotment order—There is gross violation of principles of natural justice sufficient to attract certiorari jurisdiction of the High Court. A I R 1955 S C 233 and A I R 1955 S C 425, Rel. on ; A I R 1957 Punj 155 and A I R 1954 S C 150, Distinguished. **A I R 1961 J & K 56 (57, 58) (Pr 5) (DB).**

——Art. 226—Estate Duty Act (1953), S. 58 (4)—Best judgment assessment — No opportunity given to petitioners to state their case — Assessment order offends the rules of natural justice — Writ of prohibition issued against the Department from enforcing the order against petitioners. **1965 Ker L J 1161 : A I R 1966 Ker 100 (104) (Pt C) (Prs 18, 20).**

——Art. 226—Natural justice—Opportunity of being heard.

Income tax Act (1922), S. 23 (4) and (3) — No distinction between assessments under the two clauses—No distinction between the assessments — Assessment based on information obtained—Opportunity to show cause not given to assessee—Assessment violates principles of natural justice. See Income-tax Act (1922), S. 23 (4). **1965 Ker L T 1050.**

——Art. 226—Natural justice, principles of—Quasi-judicial Tribunals — Board of Revenue — Revision petition—Dismissal of — Denial of right of personal hearing — Failure to state reasons in its order of affirmance — No violation of principles of natural justice—(Kerala) Board of Revenue Standing Orders, O. 156-A.

Where a petitioner in his revision petition to the Board of Revenue under O. 156-A has set out the several grounds on which he impeached the orders passed against him, it is not incumbent on the Board to hear the petitioner in support of his petition before dismissing the petition. A I R 1951 Trav-Co 241; AIR 1951 Mad 276 ; A I R 1952 Trav-Co 287 ; 1956 Mad L T 792 and A I R 1957 S C 648, Rel. on ; A I R 1950 S C 27 and A I R 1959 S C 308, Disting.

Nor are the rules of natural justice violated by the failure of the Board of Revenue to state reasons where it affirms in revision the orders passed by the subordinate authorities. **1960 Ker L J 1332 : 1960 Ker L T 1020.**

——Art. 226—Natural justice—Violation of—Travancore-Cochin Agricultural Income-tax Act (22 of 1950), S. 18 (3)—Assessment without giving oppor-

tunity to assessee to show cause — Effect — Interference.

The assessing authorities are bound to proceed in a judicial manner and come to a judicial conclusion upon ascertained facts. Where, therefore, the petitioners complain that the rule of natural justice of being given an opportunity to show cause against the case has not been observed in assessing them under S. 18 (3) of the Travancore Cochin Agricultural Income-tax Act, 1950, and that complaint is not challenged, the petitions should be allowed unless there be other grounds for dismissing them. A I R 1955 S C 65 ; A I R 1959 S C 1238 and (1960) 38 I T R 112 (Mys), Rel. on. **1960 Ker L J 1019 : (1960) 2 Ker L R 361 : 1960 Ker L T 930 : I L R (1960) Ker 1153.**

——Art. 226—Government dismissed appeal relying on report made without enquiry—No opportunity to answer allegations in report — Order dismissing appeal held invalid—Principles of natural justice.

The Director of Local Bodies refused to cancel a resolution, passed by a Gram Panchayat accepting a letter of resignation of the President of the Panchayat. President appealed against the order of the Director and the State Government, dismissed the appeal. **Held,** that the rules of natural justice demanded that the President ought to have been allowed an opportunity to answer the allegations against him in the report. Therefore, the order of the Government dismissing the appeal of the President was quashed. 1951 A C 120, Disting.; A I R 1955 S C 65, Rel. on. **(1961) 1 Lab L J 437 : (1960) 2 Ker L R 255 : 1960 Ker L J 1031 : 1960 Ker L T 871.**

——Art. 226—Natural justice—Action without giving opportunity to meet case—Competency. See Revenue Recovery Act (1890), S. 5. **A I R 1958 Ker 288 (DB).**

——Art. 226—Proceedings upon application for permission to remove cut trees and to cut trees under licence—Nature of — Duty of Collector to hear petitioner. See Madras Preservation of Private Forests Act (27 of 1949), S. 3. **1958 Ker L T 691.**

——Art. 226—Powers of High Court—Interference—Order prohibiting performance of drama — Author not heard — Legality. See Travancore Dramatic Performance Act (2 of 1115), S. 2 (1). **A I R 1957 Ker 75.**

——Art. 226—Powers of High Court — Certiorari—Issue of —Violation of principles of natural justice—Travancore-Cochin Paddy (Acquisition and Movement Control Order, 1950, R. 16 — Appeal under—Rejection without hearing appellant—Quashing of.

Under R. 16 of the Paddy (Acquisition and Movement) Control Order, 1950, a right of appeal is conferred upon the subject by the Government, and in disposing of an appeal from the orders of the Commissioner of Civil Supplies, the Government, in justice, equity and good conscience, is bound to conform to the provisions of natural justice in hearing and disposing of the appeal. No man is to be condemned without or before giving him an opportunity to present his case. When this elementary rule of natural justice is violated in any case, e. g., without hearing any arguments, on a mere reading of the petition of appeal, that is most unsatisfactory and irregular way of disposing of the appeal and the High Court, in the exercise of the powers conferred upon it by the Constitution, is competent to quash the proceedings and the order passed on appeal by the Government will be quashed. **1950 Ker L T 617.**

——Art. 226—Quasi-judicial decision — Opportunity of hearing to parties concerned is imperative.

Where the license-holder preferred an appeal to the State Government against the order of the Excise Commissioner revoking or suspending a licence under R. 87 of the Medicinal and Toilet Preparation (Excise Duties) Rules, (1956) the dismissal of that appeal by the State Government without giving the licenseholder any hearing is illegal, because in making an order for the revocation or suspension of a licence in the exercise of powers under R. 87, the authority acts in a quasi-judicial capacity. It follows, that the proceedings in an appeal against that order are also quasi-judicial proceedings and it is imperative to give a reasonable opportunity of hearing to the appellant before deciding the appeal. A I R 1960 S C 606, Rel. on. **1961 M P C 706 : 1961 Jab L J 1148 : I L R (1962) Madh Pra 191 : 1962 M P L J 71 : A I R 1962 Madh Pra 131 (133) (Pt B) (Pr 5) (DB).**

——Art. 226—Natural justice — Alteration of entries in land records — Tahsildar passing order without previous enquiry — No opportunity of being heard given — Order quashed by certiorari. See Tenancy Laws — Madhya Bharat Tenancy Act (66 of 1950), S. 50. **1961 M P L J 963.**

——Art. 226—Natural justice—Action under S. 39 (4) M. P. Accommodation Control Act, 1955 is quasi-judicial—Opportunity to be heard should be given to the tenant. See Houses and Rents —M. P. Accommodation Control Act (XXIII of 1955) (As Amended by M. P. Act VIII of 1961), S. 12 (1) (b). **1964 M P L J 411.**

——Art. 226 — Quasi-judicial orders — Orders regarding assignment of lands are disposed of in quasi-judicial manner — Revision disposed of by Board of Revenue without relevant data — No adequate opportunity furnished to petitioner to meet contentions against them — Order of Board quashed.

The petitioners had been in permissive occupation of the land since 1942. They were landless poor persons. Wet cultivation was going on, on this land since 1944 under Grow More Food Campaign. In 1955 Board of Revenue treated this as an encroachment. Proceedings in eviction were taken. Board instructed Collector to assign some unobjectionable land to the petitioners. This proceeding led to filing of writ petition, pending which Board was moved to examine the matter afresh. This writ petition was not pressed and was dismissed. A further petition was presented to the Board, but finally the Board declined to interfere. The petitioners complained in subsequent writ petition that having regard to the circumstances under which the occupation of the land by S and subsequently by them had been permitted, the order of the Board, which was made without giving an adequate opportunity to the petitioners was arbitrary, unjust and opposed to natural justice.

Held, (1) that the order of the Board was not an administrative order. Orders regarding the assignment of lands are disposed of in a quasi-judicial manner and even the rules contained in the Board's Standing Orders directed the disposal of applications for assignment in such manner. An order which disposed of the revision petition of the petitioners without considering any of the relevant data could hardly be accepted as complying with the normal requirements of a quasi-judicial disposal ; (2) that there had been a failure to examine the applicability of the relevant Government orders in relation to the case. There had also been a failure to furnish an adequate opportunity to the petitioners to meet the contentions brought forward against their occupation of the lands. The order of the Board was quashed. **77 Mad L W 293 : 1964 Mad W N 266 : (1965) 2 Mad L J 95 : ILR (1965) 1 Mad 526.**

——Art. 32—Violation of rules of natural justice — Fact that R. 6, Bengal Sales Tax Rules says that the

commercial officer can make "any enquiry that he may think necessary" does not necessarily mean that rules of natural justice are to be violated. See Sales Tax — Bengal Sales Tax Rules (1941), R. 6. AIR 1956 Mad 596 (Pt E) (Pr 13).

——Art. 226 — Foreign judgment against natural justice is not enclosure — Full Bench hearing appeal almost ex parte inasmuch as no adjournment was granted to enable senior counsel to appear — This is denial of justice. See Civil P. C. (1908), S. 13. ('54) 67 Mad L W 147.

——Art. 226 — Order passed without giving opportunity to petitioner to put forward his case — Municipalities — Madras City Municipal Act (4 of 1919), Ss. 287, 365, 366.

Issuing an order or refusing to issue a license is of quasi-judicial nature and the Commissioner will have to comply with the provisions of the Act and also shall give reasons for his refusal. Against the order of refusal, a statutory right of appeal is given to the Standing Committee. If the order of the Standing Committee is against the view expressed by the Commissioner he can refer the matter to the Council whose order will be final. When a tribunal is entrusted with quasi-judicial functions affecting the rights of parties, it is the elementary principle that the said tribunal should give an opportunity to the person affected to put forward his case. Any decision made by such a tribunal without giving that opportunity is contrary to the principles of natural justice and is liable to be set aside. But the procedure which a tribunal is to follow depends upon the functions, the character and the administrative convenience of the tribunal. It is not possible to equate the council to a Court of law, and insist upon that tribunal to follow and adopt the rules of judicial procedure adopted and followed by Courts. Where the Council set aside the order of the Standing Committee without giving an opportunity to the petitioner to put forward his case, the order of the Council is liable to be quashed. 65 Mad L W 467 : 1952 Mad W N 500 : 1952-1 Mad L J 655 : AIR 1952 Mad 778 (778, 779) (Pr 2).

——Art. 226 — Madras District Municipalities Act (1920), S. 252—Power under, is quasi-judicial—Setting aside order of Municipality without giving any opportunity to applicant for explanation—Order of Government is liable to be set aside. See Municipalities — Madras District Municipalities Act (6 of 1920), S. 252. AIR 1952 Mad 555.

——Art. 226— Natural justice — Opportunity to be heard — Integration of services upon reorganisation of States — Preparation of provisional inter-State seniority list — List prepared considering all relevant factors— Representation of all affected servants not considered — Such revision is whimisical and arbitrary. See States Reorganization Act (1956), S. 115 (5). AIR 1966 Mys 31 (DB).

——Art. 226 — Natural Justice—Resolution of company increasing remuneration of director—Approval of Central Government under S. 310, Companies Act, 1956 — Approval subject to conditions — See Companies Act (1956), S. 309. (1965) 2 Mys L J 520.

——Art. 226—Writ petitions for quashing demands on petitioners for cost of police force stationed in village declared as disturbance area — Demands in the nature of penalties — Petitioners not afforded opportunity to show cause — Demands not legal —Writ petitions allowed.

The State Government required the Dy. Commissioner to recover from the petitioners the proportionate cost of the employment of an additional police force stationed in their villages which was declared as "disturbance area". The amounts sought to be recovered from the petitioners are in the nature of penalties imposed in them on the ground that they were responsible for the various acts of lawlessness in the area. No such penalty could have been imposed unless preceded by an opportunity to them for establishing their innocence. That not having been done, the impugned demands were quashed and writs granted. ('62) 40 Mys L J 341 (DB).

——Art. 226 — Administrative Tribunal should act according to essence of justice.

Every administrative tribunal in India which is required to decide upon the rights of parties must act in a manner conformable to the essence of justice. One cardinal factor in the administration of justice is that every litigant must be given a fair and proper opportunity of being heard and allowed to state his case to the utmost.

(Note — It was held that the Appellate Authority constituted under R. 73 of the Motor Vehicles Rules Madhya Pradesh erred in rushing through without giving a proper and effective chance to the appellant (a Transport Company) to state its case and that its order deserved to be quashed) 1956 Nag L J 66 : AIR 1956 Nag 235 (238) (Pt D) (Pr 13) (DB).

[Reversing the case on this point, it was held by the S C in AIR 1957 S C 23, that there was no failure of justice in the case.]

——Art. 226 — Natural justice — Order in election petition alleged to have been passed against petitioner without hearing petitioner on his contentions — Contentions found to be untenable — Even assuming non-compliance with principles of natural justice High Court will not interfere in writ jurisdiction 31 Cut L T 128, Rel. on. 31 Cut L T 708 : ILR (1965) Cut 411 : AIR 1966 Orissa 12 (15) (Pt E) (Pr 16) (DB).

——Art. 226 — Natural Justice — Rule of—Admission by legal adviser—Party appearing as witness — Opportunity of explaining admission should be given—See Evidence Act (1872), S. 145. ILR (1963) Cut 901.

——Art. 226—Violation of — Orissa Gram Panchayat Rules (1949), R. 38A (b) — Removal of member for absence from three consecutive meetings — Member must be given opportunity to show cause against removal and the cause shown must be held to be insufficient by District Magistrate — Denial of opportunity vitiates order of removal. See Panchayats — Orissa Gram Panchayat Act (XV of 1948), S. 114. AIR 1963 Orissa 170 (DB).

——Art. 226—S. 30 of the Mines and Minerals (Regulation and Development) Act, 1957 read with Rr. 54 and 55 Mineral Concession Rules confer wide powers of revision on Central Government—In exercise of this power, Central Government acts as quasi-judicial authority and must give parties concerned a reasonable opportunity of being heard— Revisional jurisdiction of Central Government. See Mines and Minerals (Regulation and Development) Act (XLVII of 1957), S. 30. AIR 1962 Orissa 183 (DB).

——Art. 226 — Natural justice — Recovery proceedings for sales tax arrears — Order issuing a distress warrant passed ex parte by certificate officer without giving a hearing, on a date not fixed in the case — Order is illegal, ultra vires and without jurisdiction. AIR 1964 Pat 157 (157) (Pr 2) (DB).

——Art. 226 — Objection under Bihar Panchayat Election Rules 1959, R. 23 (4)—It is against principles

of natural justice to pass order to the prejudice of a party without giving him opportunity to be heard — S. D. M. cannot pass order under R 23 (4) against party without giving him some form of a notice so as to enable him to meet the objection raised against him. See Panchayats—Bihar Panchayat Election Rules (1959), R. 23 (4). **1963 B L J R 24.**

——**Art. 226** — Removal of President and member of Municipality — Right to be orally heard. See Municipalities — Punjab Municipal Act (3 of 1911), S. 16. **AIR 1954 Pepsu 186 (DB).**

——Arts. 226 and 31 (1) — **'Property', meaning of— Principle of natural justice — Pensioner not given opportunity to meet basis for cancellation of pension granted to and enjoyed by him for many years — Order cancelling pension cannot be sustained — Provisions of S. 6 of T. P. Act and Ss. 11 and 12 of Pensions Act does not derogate from pension being a property, if it otherwise is so — Transfer of Property Act (1882), S. 6 — Pensions Act (1871), Ss. 11 and 12.**

On a report of Medical Adviser (Pensions) the pension given to and enjoyed for many years by A, a person in army employment, was cancelled without giving him an opportunity to meet the basis for cancellation of his pension. The original record of the report of the Medical Adviser had not been available and was missing. It was contended that the cancellation of the pension was not in pursuant to any law, it being a gift or a bounty as the pensioner had not right to it. That the Government has full power to withdraw it when misapprehension or mistake in grant is discovered at later date as was the case of A. It was also contended that the pension granted to A was not property or right in property and hence Art. 31 (1) of the Constitution had no application and civil Court had no jurisdiction to entertain suit regarding pension and it is not property within meaning of T. P. Act and Pensions Act.

Held, that the pension of A was property and according to Art. 31 (1) he could only be deprived of it by authority of law which had not happened in the case. That the order of cancellation of pension had been contrary to principles of natural justice.

If he had been given an opportunity of hearing he might have convinced the appropriate authority that there was no ground for the cancellation of his pension. The consequence of the order being deprivation of the pension, the act cannot be said to be administrative and is at least quasi-judicial. Case law discussed.

The word 'property' in Art. 31 has to be construed in the widest sense as connoting a bundle of rights exercisable by the owner in respect thereof and embracing within its purview both corporal and incorporal rights.

Merely because assignability of pensions is barred by statute that is no ground that it is not property if it is otherwise so. The list of rights and properties that are not assignable in S. 6 of T. P. Act itself speaks that but for such negative express provisions, those properties and rights would have been transferable. A restriction imposed by S. 12 of Pensions Act is of the same nature as negative provisions in S. 6 of T. P. Act on the transfer of certain properties or rights in properties and the immunity or exemption provided by S. 11 of Pensions Act does not derogate from a pension being property if it otherwise is so. **ILR (1965) 2 Punj 1.**

——**Art. 226—Natural justice.**

An order passed by the Deputy Collector, Customs, is invalid, where it is passed without giving any hearing to the petitioner. **AIR 1963 Cal 331 and AIR 1965 Punj 84, Rel. on. 1965 Pun L R (Supp) 132.**

——**Art. 226—Natural justice— Cancellation of registration certificate of dealer — No fair opportunity to dealer to be heard given— Dealer is entitled to writ to quash the order.** See Sales Tax — Punjab General Sales Tax Act (46 of 1948), S. 7 (4). **(1963) 14 S T C 549 (Punj).**

——**Art. 226 — Principles of natural justice — Order proposed to be made against petitioner — Order affecting his fundamental right — No opportunity of showing cause given to petitioner — Rule of natural justice is violated — Medicinal and Toilet Preparations (Excise Duties) Act (1955), S. 6.**

Where an order proposed to be made is to the prejudice of the petitioner (in this case, cancellation of his licence in the form prescribed by the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and the rules made thereunder) and if made affects his fundamental right such as one relating to carrying on his trade, the petitioner must be given a reasonable opportunity of showing cause against the proposed action. And if such an opportunity, though requested to be given, is refused and the petitioner is not heard, the authority making such an order violates the rules of natural justice. In consequence, the order deserves to be quashed in a writ petition made under Art. 226 against the order. **('62) 64 Punj L R 478.**

——**Art. 226**—Natural justice—Rules of— Panchayats —Punjab Gram Panchayat Act (4 of 1953), S. 102 — Office of elected Panch and Sarpanch constitutes valuable right — Suspension and removal without show cause notice — Rules of natural justice violated. See Panchayats — Punjab Gram Panchayat Act (4 of 1953), S. 102. **1962 Cur L J 32.**

——**Art. 226 — Natural justice — Cancellation of licence for selling cement—Opportunity to licensee of being heard—Failure to afford—Effect — Art. 19 (1) (g)—Pepsu Cement Control Order (1949), Cl. (3) —(Patiala State Essential Supplies (Temporary Powers) Ordinance (2003 Bk.)).**

Revocation of a licence to sell cement deprives the licensee of the right to carry on this trade which has been guaranteed to him as a fundamental right by the Constitution. An authority cannot condemn a citizen to this extent without giving him some opportunity to refute the allegations made against him and to explain his conduct. The power to cancel licence is to be exercised in accordance with the fundamental doctrine of natural justice. This doctrine is applicable in all cases in which a citizen of India has to suffer pecuniary loss in consequence of that order.

Where the Director never called upon the licenceholder to explain the allegations of blackmarketing which are alleged to have been made against him to that extent the Director did not follow the practice which he had adopted relating to the matter of realisation of advance prices from customers and the petitioner's licence was revoked under a misapprehension of the true situation by the Director. **I L R (1958) Punj 36.**

——**Art. 226—Natural justice—Violation of—Denial of hearing — (Displaced Persons (Supplementary Claims) Act (1954), S. 5 (3).)**

Where the Settlement Commissioner in the revision under the Displaced Persons (Verification of Claims) Act passed an order relying on the verified claim of another person but that decision was not produced in the proceedings and the applicant was not asked any questions about that claim even in the interrogatories

which were put to him on certain affidavits and also on the decisions of other claims which he produced.

Held, that the omission amounted to denial of hearing to the applicant and it violated the principles of natural justice as well as it was contrary to the provisions of S. 5 (3) of the 1954 Act. 1911 A C 179 and (1940) 4 All E R 132 and (1947) 2 All E R 395, Rel. on. ILR (1957) Punj 348 : 59 Punj L R 27 : AIR 1957 Punj 186 (190) (Pt E) (Pr 13).

——Art. 226—Principles of natural justice. Cancellation of permit — Principles of fair play require that party should be given opportunity of being heard before decision is made. See Motor Vehicles Act (1939), S. 64. AIR 1957 Punj 35.

——Art. 226 — Natural justice — Necessity to give opportunity to show cause against valuation — Proceedings involved in fixing value of property under R. 34-B, Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (as amended in 1960) are quasi judicial and not administrative — Even if they are not quasi-judicial it is necessary to give an opportunity to the person whose statutory rights in property are likely to be affected in those decisions, to be heard. This is for the maintenance of rule of law enshrined in Art. 14 of the Constitution — Ex parte orders are vitiated by error apparent on face of record. A I R 1965 Punj 484 (DB).

——Art. 226 — Natural justice — Opportunity to be heard—Application for special leave to appeal barred by limitation provided by S. 417 (4) Cr. P. C.—Application for condonation of delay under S. 5, Limitation Act —Leave granted to appeal in absence of respondent and without giving him opportunity to contest—Respondent can raise preliminary objection in appeal that the leave could not have been granted— Nobody should be bound by order passed in his absence. See Cr. P. Code (1898), S. 417 (3). 1965 (1) Cr L J 338 : AIR 1965 Raj 70 (Pr 7).

——Art. 226—Natural justice — Rajasthan Panchayat Act (1953), S. 77 (f)—Scope of—Powers under S. 77 (f) are not unfettered—Order of dissolution of panchayat without giving it opportunity of hearing is not valid —Express provision of giving hearing was made in S. 73—Omission in S. 77, was not to give unfettered power to Government but only to avoid repetition. See Panchayats —Rajasthan Panchayat Act (XXI of 1953), S. 77 (f). AIR 1958 Raj 119 (DB).

——Art. 226 —Order for removal of ukardi (rubbish) passed behind back of petitioners—Violation of principles of natural justice. See Panchayats—Rajasthan Panchayat Act (21 of 1953), S. 26 (xi). 1959 Raj L W 29.

——Art. 226—Jurisdiction of High Court— Order by Government in appeal under R. 16, Travancore-Cochin Paddy Control Orders, 1950—Disposal without hearing arguments of appellant—If illegal or ultra vires—Inquiry into merits of the case— Permissibility. See Travancore Cochin Paddy (Acquisition and Movement) Control Order, 1950. R. 16. AIR 1951 Trav-Co 241 (DB).

——Art. 226—Administrative order—Validity challenged—Matter to be considered in such case.

Where the Board of Revenue, while functioning in a pure administrative capacity passes an order regarding the selection of site for a liquor shop under the powers vested in it by virtue of Abkari Rules and the person aggrieved by the order challenges its validity by a petition to the High Court, the question for the High Court to consider is whether the order is intra vires the powers of the authorities concerned and whether it had been rendered in a manner not offending the rules of natural justice. In such a case it is enough if an opportunity to state his case is given to the person concerned. He is not entitled as of right to be heard : AIR 1951 Mad 276, Ref. ILR (1951) T C 496 : 1951 Ker L T 158 : AIR 1951 Trav-Co 197 (202) (Pt D) (Pr 10).

——Art. 226—Natural justice—Opportunity of being heard not given—Effect—(Motor Vehicles Act (1939), S. 64)—(Natural justice).

P and R were permit-holders running stage carriages on certain route. On variation in timings of P's buses R filed appeal and applied for stay of operation of the order. Notice was issued to P and on the date of hearing, parties were heard on the question of interim stay. The appellate Tribunal however passed the judgment on merits in favour of R. :

Held, that the decision was against the principles of natural justice and against the express provision of S. 64, Motor Vehicles Act and was liable to be quashed. AIR 1956 Vindh Pra 44 (45) (Pt B) (Pr 4).

78 (b). Right to cross-examine.

●——Art. 226 — Domestic Tribunal — Enquiry by— Natural justice — Enquiry against workman's conduct —Enquiring officer not examining any witness—Only the workman against whom the enquiry was, examined — Report of officers against workman not read out — Officers though present not examined before workman nor allowed to be examined by the workman — Rules of natural justice held not followed— Industrial tribunal cannot rely on the finding of the domestic tribunal in order to decide whether permission should be granted to management under S. 33 to dismiss the workman pending the proceedings before the tribunal — Industrial Disputes Act (1947), S. 33. Bharat Sugar Mills Ltd. v. Shri Jai Singh, 1962 (3) S C R 684.

● ——Art. 226—Reasonable opportunity to defend at the stage of departmental enquiry — Principles of natural justice—Violation of — Denial of opportunity to public servant to cross-examine witnesses who give evidence against him - Copies of documents to which public servant was entitled not supplied — Enquiry not in accordance with principles of natural justice and Art. 311 (2) violated—High Court, if can consider under Art. 226 propriety or validity of decision of enquiry officer. See Ibid, Art. 311 (2). A I R 1961 S C 1623.

●——Art. 226—Natural justice—Misconduct of cadet under training — Enquiry and expulsion from College —Cadet has no right to cross-examine witnesses at enquiry. See Police Act (1861), S. 46 (2) (c). 1964 (2) Cri L J 625 : A I R 1964 All 540 (FB).

——Art. 226—Natural justice—Statements written out by witnesses themselves merely handed over to Deputy Superintendent of Police who did record them — Reliance on such statements held contrary to provisions of rule contained in R. 490 — Rule is mandatory and not directory—Departure from general rule — Reasons for, must be recorded. See Police Act (1861), S. 7. 1964 All L J 576.

——Art. 226—Fair opportunity to defend — Enquiry under S. 7, Police Act—(Police Act (1861), S. 7).

It is certainly desirable that departmental enquiries should be conducted without any unnecessary delay, but the person whose conduct is being enquired into must be given a reasonable opportunity of defending himself not merely by calling defence witnesses but by testing the value of the prosecution evidence by cross-examination.

Held, on facts of the case that the petitioner did not have a fair hearing, and that the conduct of the

enquiry might have proceeded on the assumption that the petitioner was guilty and could have no answer to the charges The petition under Art. 226 could therefore be allowed on these grounds.

Important as the discipline of the poli :e force is and desirable as it is for the High Court not to interfere lightly with orders of disciplinary action against police officers, there is no escaping the position that the procedure adopted in disallowing all leading questions in cross-examination was such as could prejudice a fair hearing of the case against the petitioner. **1954 All W R (HC) 138 · ILR (1954) 2 All 325 : 1954 Cri L J 874 : 1954 All L J 316 : A I R 1954 All 438 (439, 440, 441) (Pt A) (Prs 9, 15) (DB).**

——Art. 226 — Dismissal of workmen — Domestic tribunal, enquiry by—Charge of gross misconduct — Opportunity given to submit his written explanation — Right to cross-examine witnesses — No request that he should be given opportunity to cross-examine two officers whose evidence was against him — Standing orders made under S. 9 (c) of the Industrial Employment (Standing Orders) Act, 1946 as amended—Principles of natural justice not violated. A I R 1963 Assam 155 (159) (Pt A) (Pr 15).

——Art. 226 — Natural justice — Proceedings under S. 167 (8), Sea Customs Act.

Proceedings under the provisions of S. 167 (8) of the Sea Customs Act are quasi-judicial proceedings. The rules of natural justice in quasi-judicial proceedings require that an opportunity should be furnished to a person to cross examine those who have made statements which are to be used against him A I R 1957 S C 882 and A I R 1959 S C 1111 and 61 Bom L R 1230, Rel. on.; AIR 1922 Bom 30 and App. No. 75 of 1956 (Misc. Appln. No. 184 of 1956), D/- 5-10-1956 (Bom.) Not. foll. **62 Bom L R 634 : 1961 (1) Cri L J 229 : AIR 1961 Bom 48 (50, 53) (Pt A) (Prs 7, 15).**

——Art. 226 —Natural justice—Audi alteram partem —Right of cross-examination — Denial of—Effect— It is not denial of natural justice — Formal cross-examination is procedural justice governed by rules of evidence — Proceedings before Collector of Land Customs—Sea Customs Act (1878), S. 182.

There is a good deal of misconception on the question of the right of cross-examination as part of natural justice. Ordinarily the principle of natural justice is that no man shall be a judge in his own cause and that no man should be condemned unheard. This latter doctrine is known as audi alteram partem. It is on this principle that natural justice ensures that both sides should be heard fairly and reasonably. A part of this principle is that if any reliance is placed on evidence or record against a person then that evidence or record must be placed before him for his information, comment and criticism. Formal cross-examination is procedural justice. It is governed by rules of evidence. Natural justice certainly includes that any statement of a person before it is accepted against somebody else, that somebody else should have an opportunity of meeting it. So long as the party charged has a fair and reasonable opportunity to see, comment and criticise the evidence, statement or record on which the charge is being made against him, the demands and the test of natural justice are satisfied. Natural justice must not be strained to become artificial justice. Procedural justice according to statutes or under statutory rules are different from the concepts of natural justice. There the procedure, under the statute or the Rules must govern A I R 1957 S C 882 and AIR 1963 S C 375, Disting ; A I R 1981 S C 1623, Rel. on. **('65) 69 Cal W N 864.**

——Art. 226—Natural justice—Disciplinary proceedings against petitioner — Petitioner not allowed to cross-examine witnesses — Copies of previous statements of witnesses not supplied—Confessional statement not brought on record — Enquiry against petitioner held was in violation of principles of natural justice—Enquiry held contravened Art. 311 (2). See Ibid, Art. 311 (2). A I R 1966 Him Pra 13.

——Art. 226 and Art. 311 (2) — Quasi-judicial body —Departmental inquiry against Government servant —Procedure—Principles of natural justice—Servant not asking for opportunity to cross-examine witnesses—No violation of natural justice.

Where in an enquiry held against a Government servant, after the servant is given notice of the evidence gathered against him detailing the addresses of the witnesses and their respective statements against him, he is invited for a personal hearing on the matter before the tribunal and if with all the information he has he does not request the tribunal to give him an opportunity to cross examine the witnesses who spoke against him, the abstention from tendering the witnesses for the servant's cross examination without his asking for the same cannot be said to be violative of any rule of natural justice. (1960) 1 W L R 228, Rel. on. **ILR (1961) 1 Ker 153 : 1961 Ker L J 315 : (1961) 2 Lab L J 50 : 1961 Ker L T 486 : A I R 1962 Ker 43 (47) (Pt D) (Pr 9) (DB).**

——Art. 226 — Opportunity to cross-examination not given — Rules of natural justice held violated. See Ibid, Art. 311 (2). A I R 1962 Madh Pra 15 (DB).

——Art. 226 — Natural justice — Witnesses during departmental enquiry examined in presence of petitioner and on conclusion he was asked to cross-examine immediately — Petitioner declining and asking for time to file written statement — Time allowed —His demand for examining two more defence witnesses turned down—Dismissal ordered —No adequate opportunity — Dismissal quashed. See Ibid, Art. 311. 1958 M P L J (Notes) 57.

——Art. 226 — Natural justice —Domestic inquiry— It is not necessary that oral evidence should be recorded in presence of person charged — If copies of statement of witnesses are given to him and witnesses tendered for cross examination, there is no violation of principles of natural justice—Rule providing for recording oral statement in oral inquiry before person charged—But statements taken of some witnesses and later on read over to person charged and got verified before him by witnesses who were cross-examined—There was held substantial compliance with the rules. (1965) 2 Lab L J 66 : AIR 1964 Mad 491 (492, 493) (Pr 8) (DB).

——Arts. 226 and 311 — 'Showing cause'—Interpretation of—Opportunity to cross-examine not afforded — Principles of natural justice held sacrificed — (Words and Phrases — 'Showing cause'). See Ibid, Art. 311. A I R 1956 Manipur 34.

——Art. 226—Natural justice—Enquiry by Customs Authority in adjudging confiscation or penalty—Sea Customs Act (1878), Ss. 167 (8), 168, 182 — Issue of writ.

In the case of an enquiry conducted by a statutory body, the rules of natural justice require that evidence of the opponent should be taken in the presence of the party and that he should be given an opportunity to cross-examine the witnesses examined by the opponent. Where in proceedings under the Sea Customs Act, the Customs Authority passed an order of confiscation and penalty against the petitioners after taking the evidence of the witnesses for the opponent behind the back of the petitioners and without giving the petitioners an opportunity of cross-examining them, the enquiry must be held to have been conducted in a manner violative of all principles of natural justice and the order of the Customs Authority cannot be

allowed to stand. A I R 1958 S C 86 and A I R 1957 S C 882 and A I R 1959 S C 1111, Rel. on ; A I R 1957 S C 232, Disting ; A I R 1919 Bom 30, Foll. 39 Mys L J 313 : ILR (1960) Mys 534 : A I R 1961 Mys 203 (204, 206) (Prs 5, 10) (DB).

——Art. 226—Natural justice—Principles of—Violation of. R. 55, of Civil Services (C C A) Rules was expressly made with a view to ensure that principles of natural justice are complied with before any public servant is held guilty of misconduct—Finding based on inadmissible evidence—Charge must be supported by evidence adduced during enquiry and tested by cross-examination at the said enquiry. See Civil Services (Classification, Control and Appeal) Rules, R 55. ILR (1958) Cut 1.

——Art. 226—Natural justice—Proceeding under Sea Customs Act (1878)—Accused and his counsel present at time of hearing to show cause notice — Copies of statements of witnesses supplied— No objection taken that evidence was recorded in absence of accused — No request for re-examination of witnesses or for permission to cross-examine though witnesses present — No violation of rules of natural justice 64 Pun L R 496 and AIR 1963 All 94 and AIR 1957 S C 882, Disting.; AIR 1963 S C 734 and AIR 1964 S C 477, Ref. 1965 Pun L R (Supp) 316.

78 (c). Enquiry by person having interest.
See also Note 129.

●——Art. 226—Domestic Tribunal—Natural justice — Rules of — Procedure — Employee charged with misconduct—Officers claiming to have seen misconduct are disqualified from holding enquiry—Elaborate cross-examination of employee at commencement of enquiry constitutes infirmity — Desirability of intimating employee about date of enquiry, pointed out. Bharat Sugar Mills Ltd. v. Shri Jai Singh, (1964) 3 S C R 652.

■——Art. 226—Section 59 of the Bombay Police Act —Validity — Natural justice—Externment order can only be passed by Commissioner of Police, District Magistrate or Sub Divisional Magistrate specially empowered—Satisfaction is not that of the person prosecuting, though proceedings are not prosecutions for offences or judicial proceedings though the officer or authority charged with duty has to examine the information laid before him by police—Proceedings cannot be said to have been initiated by police—Police is not the judge and the provisions of the Act do not militate against one of the accepted principles of natural justice, that the prosecutor should not also be the judge. See Ibid, Art. 19 (1) (d). AIR 1956 S C 559,

——Art. 226 —Co-operative Societies Act (1912), S. 43 —Ajmer Rules, R. 18 (a) and (b) — Embezzlement in Co-operative bank — Dispute referred to Registrar— Responsibility of Registrar's department for embezzlement—Competency of Registrar to act as tribunal— Natural justice— See Co-operative Societies Act (1912), S. 43. AIR 1956 Ajmer 63.

——Art. 226 — Principles of natural justice — One having bias against another not to try him—Exception—Doctrine of necessity and statutory authorisation.

It is one of the accepted principles of natural justice that no one should be a judge in his own cause and that a person who has a bias against another person should not try him. This principle applies not only to Courts of justice or judicial tribunals but also to other authorities who have to act judicially in deciding the rights of others i. e., authorities who are empowered to discharge quasi-judicial functions. AIR 1958 S C 86 and AIR 1959 S C 1376, Rel. on.

This general rule, however, has an exception, namely, that a Judge who would otherwise be disqualified may act in a case of necessity where no other Judge has jurisdiction. So also, if the statute itself confers a power on an authority and imposes a duty on it which may have the effect of making him a Judge in his own cause or to decide a dispute in which he has an official bias, the doctrine of bias stands qualified to the extent of the statutory authorisation. (1877) 2 Q B D 558, Rel. on. AIR 1962 All 117 (119) (Pt A) (Prs 5, 6).

——Art. 226 — Natural justice — Bias — Relation of presiding officer brought into controversy—Presiding officer is not disqualified — (Municipalities — U. P. Municipalities Act (2 of 1916), S. 76.)

There is no rule of natural justice by which a person may be disentitled to hold an enquiry or adjudicate on any matter simply because some relation of his is directly or indirectly brought into the controversy. He does not thereby become his own judge nor can he be said to be biased.

The president of municipality can hold an enquiry into the charges of misappropriation brought against a servant of the Board and the fact that the servant raises a plea that the money was given to the son-in-law of the president does not disqualify the President from holding the inquiry. 1960 All L J 409.

——Art. 226 — Dismissal of employee—Reference to Labour Court—Considerations—Principles of natural justice—What are—Departmental enquiry by General Manager—Bias—General Manager examined as witness —Held, enquiry was vitiated. See Industrial Disputes Act (1947), S. 10 (1). AIR 1960 Andh Pra 526 (DB).

——Art. 226 —Natural justice — Principles — Citizenship Act, S. 18—Rules under—R. 30—Constitutionality —It is not opposed to natural justice—Though Central Govt. can appoint independent tribunal to investigate the question of acquisition of citizenship of a foreign country, the power is wide and comprehensive enough to enable it to appoint itself as authority to determine the question. See Citizenship Act (1955), S. 9 (2). AIR 1957 Andh Pra 1047 (DB).

——Arts. 226 and 311 — Natural justice—Principle that no person shall be judge in his own cause— Applicability — Disciplinary proceedings against delinquent for his action in making allegations against superior authority — Departmental enquiry held by superior authority through one of his subordinates — Likelihood of bias — Opportunity to be heard given to delinquent in such case held not reasonable — Principle of natural justice violated—Objection as to existence of alternative relief not available in such case.

The cardinal principle of administration of justice is that no person shall be a judge in his own cause. This principle applies not only to the regular Courts which administer justice, but it applies also to quasi-judicial tribunals which are also required to act judicially. It applies not only in a case where the judge or the adjudicator is himself the prosecutor or the suitor, but it applies also to all those cases where the judge or the adjudicator is so situated with reference to the lis that there is a real likelihood of bias taking place in the final decision of the case. The principle extends even to those cases where, though the Judge or the adjudicator is not personally interested in the matter, he is so situated with reference to the matter of any of the parties to the dispute that a reasonable apprehension is likely to arise in the mind of any one of the disputants that he is not likely to get justice at the hands of the judge or the adjudicator. The decision having been arrived at by a disqualified person is no decision in the eye of law and even if it happens to be a correct decision in the opinion of the Court before which the decision is brought, the same de-

serves to be set aside because a disqualified person has no jurisdiction to pass even a correct order or record a right decision.

Held, on facts (i) that the principle of law that no person shall be a judge in his own cause or in a cause in which he is personally interested applied to the facts of the instant case. Although the Divisional Engineer could not be put in the position of either a prosecutor or a suitor, having regard to the fact that he had taken upon himself and was required to determine the truth or otherwise of allegations which were made against himself, he was so situated with reference to the departmental enquiry that he forfeited his qualifications to be an adjudicator therein. There was a real likelihood of bias being exhibited by him and therefore he was disqualified to hold the enquiry; (ii) that looking from another standpoint Art. 311 requires not merely that an opportunity to show cause against action to be taken, should be given to the delinquent but that the opportunity must be reasonable: (iii) that since a rule of natural justice, was violated the ordinary principle of law that the extraordinary relief should not be granted when an alternative relief is available could not be applied. **ILR (1964) Guj 45 : (1964) 5 Guj L R 175 : AIR 1964 Guj 139 (143, 144, 145) (Prs 11, 12, 14, 17) (DB).**

——Art. 226—Natural justice — Violation of — Principles of—What amounts to—Enquiry under S. 57 (a), Madras Hindu Religious and Charitable Endowments Act (19 of 1951)—Initiation by Inspector—Is not opposed to principles of natural justice — Fact that a departmental subordinate is one of the parties to a quasi-judicial proceeding before his official superior does not necessarily involve a hazard — Apart from this, the interest of the party are sufficiently protected by reservation of right of suit and appeal from decree therein to the High Court. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 57 (a). **1958 Ker L J 720.**

——Art. 226—Collector acting as authority competent to award punishment—Collector subsequently appearing as witness in enquiry on basis of facts which had come to his knowledge before commencement of enquiry — There is violation of the rules of natural justice and disregard of all canons of fair play. See Ibid, Art. 311 (2). **AIR 1962 Madh Pra 15 (DB).**

——Art. 226—Natural justice.

The officer appearing as a witness in enquiry against the petitioner on a very material point, heard the appeal and dismissed it.

Held, that the officer was clearly disqualified from hearing the appeal. It was an elementary proposition that a person giving evidence in a case acquired an interest in the case and was consequently disqualified from trying it. **1961 M P L J (Notes) 154.**

——Art. 226—Natural justice—Violation of—Statutory bodies—Combination of functions of a prosecutor and Judge—Validity—Motor Vehicles Act (1939), S. 60 — Mysore Motor Vehicles and Road Traffic Rules (1957), R. 10.

Although it is opposed to the principles of natural justice for a person to function as a Judge in his own cause, if a statute permits or requires the authority or functionary to discharge both the functions of a prosecutor and of a Judge, it must be held that the statute considers that the combination of two functions in the same authority or functionary is necessary for giving effect to the purposes of the Act and such combination is not open to objection on the ground that it amounts to a breach of one of the principles of natural justice. While dealing with statutory bodies or other authorities or functionaries functioning under a statute, the principles of natural justice in relation to the functioning of those bodies, authorities or functionaries have necessarily to be ascertained from or in the light of, the provisions contained in that statute itself.

In the matter of cancellation or suspension of permits for the breach of any of the conditions contained in the permit the Motor Vehicles Act not only tolerates but for its due enforcement actually requires a combination in the Regional Transport Authority of the two functions, one of ascertaining the circumstances accusatory of a permit-holder and other of punishing him under S. 60 on the strength of those circumstances. Such exercise cannot be held to be violative of principles of natural justice. There is nothing in S. 60 or in any other provision of the Act which provides that the power to cancel or suspend a permit for the breach of any of the conditions contained therein can be exercised only if that breach is brought to the notice of the Regional Transport Authority by some third party and not if the Authority itself discovers or otherwise acquires knowledge of any such breach by a permit holder. All that the section requires is that when the power to cancel a permit is sought to be exercised, opportunity should be given to the holder of the permit to furnish his explanation The Regional Transport Authority which has the power to grant a permit and the power to enforce the observance of the conditions thereof is not deprived of the latter power for reason only of the fact that the knowledge of the circumstances in which that power can be exercised is acquired directly by it and not upon information furnished by some other person. **(1963) 1 Mys L J 131 (DB).**

——Art. 226 — Natural justice—Principles of—Bias—Complaint against accused under Panchayat Act—Panchayat cannot be the judge in its own cause—Panchayats — Punjab Gram Panchayats Act (4 of 1953), S. 109.

A complaint under S. 109 (1) of the Act for damage to Panchayat property cannot be tried and decided ex parte by the Panchayat itself, as the Panchayat itself is the complainant and the Judge and the principles of natural justice are violated in the case. The decision of the Panchayat and the resulting convictions of the petitioners thereon, cannot therefore, be upheld. AIR 1959 S C 1376: AIR 1960 S C 468, **Foll. ILR (1960) 2 Punj 772.**

—Art. 226—Superintendent of Police insulted by Sub. Inspector—Superintendent suspending Inspector and enquiry against him ordered—Enquiry entrusted to Subordinate Official — **Held**, Superintendent being aggrieved party should not have entrusted enquiry to his subordinate — He could not assume the role of prosecutor and Judge also. See Ibid, Art. 311 (2). **AIR 1959 Punj 402.**

——Art. 226—Natural justice — Person interested in dispute not to be appointed as arbitrator to decide it.

An employee of an auditors' firm which had been responsible for checking the accounts of the Bank from year to year should not, on principles of natural justice be appointed as one of the members of an arbitration Tribunal for deciding the dispute with regard to certain defalcations made by the director of the Bank. If he is so appointed, the tribunal so constituted cannot be allowed to function. **1960 Raj L W 561 : I L R (1960) 10 Raj 1070.**

78(d). Right to know charge.

● ——Art. 226—Natural justice—Motor Vehicles Act (1939), S. 64—Motor Vehicles Rules, R. 73—Applications for permit for certain route by S and P — P's

application rejected on ground of adverse police report — Appeal by P — Further report by police — Appellate Authority reading out second police report to parties – No objection by parties and no request for adjournment—(Motor Vehicles Act (1939), S. 64) —(Motor Vehicles Rules, R. 73).

The question whether the rules of natural justice have been observed in a particular case must itself be judged in the light of the constitution of the statutory body which has to function in accordance with the rules laid down by the Legislature and in that sense the rules themselves must vary.

Held, on facts (1) there was nothing in the rules requiring a copy of the police report to be furnished to any of the parties, nor were there any circumstances necessitating the adjournment of the hearing of the appeal particularly when no request for such an adjournment had been made. The rules framed under Chap. IV for "the conduct and hearing of the appeals that might be preferred under the Chapter (S 68(2)(b)) did not contemplate any such facilities being granted to the parties. (2) It was more for the information of the authorities concerned with the granting of permits than for the use of the several applicants for such permit that the revised Police report was made. Hence there was no failure of natural justice. A I R 1956 Nag 235, Reversed. New Prakash Transport Co., Ltd. v. New Suwarna Transport Co., Ltd. 1957 M P C 205 : 1957 S C A 178 : 1957 Jab L J 344 : 1957 S C J 236 : (1957) Mad L J (Cr) 157 : 1957 S C R 98 : AIR 1957 S C 232 (236, 237, 241, 242) (Pt B) (Prs 8, 19).

——Art. 226 — Natural justice — Order of Vice-Chancellor of University debarring student from appearing in examination on ground of his having used unfair means at examination—Ex parte order—Merely calling for explanation from student without telling the nature of it and without telling him of the report against him did not meet the requirements of Natural justice. AIR 1958 All 792 (793, 794) (Prs 2, 3).

——Art. 226—Madras Hereditary Village Offices Act (3 of 1895) S. 7 (1-A) (as introduced by Andhra Act (23 of 1955) Expression 'Collector' includes Revenue Divisional Officer—Order of suspension passed without serving charge sheet—Violation of principles of natural justice—Order held illegal. See Madras Hereditary Village Offices Act (3 of 1895), S. 7 (1-A) (as introduced by Andhra Act (23 of 1955). 1961 Andh L T 725.

——Art. 226—Natural justice — Madras Co-operative Societies Act, 1932—Transitory bye-law authorising Registrar to nominate and cancel nomination of director—Registrar cancelling nomination at behest of Government on confidential communication—The procedure offends not only the bye-law but also the rules of natural justice, inasmuch as secret communication sent behind the back of the Director was acted upon by the Registrar without giving the Director an opportunity of knowing its nature and meeting the allegations therein. See Madras Co-operative Societies Act (6 of 1932). (1959) 1 Andh W R 400.

——Arts. 226 and 311—Principles of natural justice—Order merely dispensing with services of temporary servant without any charges.

When an authority is constituted a domestic Tribunal and has got to hold an inquiry into the conduct of a person, it must observe the rules of natural justice. The Government would only be a domestic Tribunal if it is inquiring and investigating into any charge levelled against a temporary servant. But where Government has not levelled any charges against him but has simply dispensed with his services, it is not a case where any inquiry has to be held against him, and therefore neither the question of a domestic Tribunal nor the question of following the rules of natural justice can arise in such case. (1957) 2 Lab L J 189 : ILR (1956) Bom 767 : 58 Bom L R 673 : AIR 1956 Bom 455 (459) (Pt F) (Pt 11) (DB).

——Art. 226—Natural justice—Quasi-judicial orders—Failure of natural justice—Confiscation of bettlenuts seized from petitioner—Order based on reports of experts—Reports not disclosed to petitioner — Order must be quashed in certiorari proceedings—Collector of Customs is administrative tribunal of quasi-judicial nature—He must observe rules of natural justice. See Land Customs Act (1924), S. 5 (3). 1965 (1) Cri L J 292 : AIR 1965 Cal 156.

——Art. 226—Natural justice — Proceedings under—Motor Vehicles Act—Appellant not given opportunity to look into contents of police report — Effect See Motor Vehicles Act (1939), S. 64. ('57) 61 Cal W N 779.

——Art. 226 — Natural justice — Requirements — Income tax—Assessment on best judgment— Assessment based on comparable cases — Information made available by department not disclosed to assessee—Effect of. See Income-tax Act (1922), S. 23 (4). AIR 1958 Ker 44 (DB).

——Art. 226—Quasi-judicial tribunal—Syndicate of University—Consideration of discipline of students by—Its jurisdiction in such matter is quasi-judicial—Student rusticated without framing charges—Order of rustication deserves to be quashed.

The final authority in matters of discipline among students is vested in the syndicate, but no particular procedure to be followed in dealing with cases of discipline has been prescribed either by the statutory provisions or regulations made thereunder. Even so, Syndicate, when it exercises its jurisdiction in disciplinary matters, functions in a quasi-judicial capacity. It is, therefore, bound not only to arrive at a conclusion or finding on the facts and proof of the charge but also give reasons therefor. The jurisdiction of the syndicate to inflict punishment on candidates for misconduct is quasi-judicial in character. AIR 1962 S C 1110, Rel. on.

Held, on facts of this case that as the syndicate had reached a conclusion on the guilt or otherwise of an examinee student without reference to the charges framed against the student, in the absence of any conclusion expressed by the syndicate in its resolution or the order of the University, the order of rustication of the student was vitiated and had to be set aside. 75 Mad L W 591 : (1963) 1 Mad L J 24 : ILR (1963) Mad 177 : AIR 1963 Mad 31 (31, 32, 33) (Prs 2, 3, 6).

——Art. 226 — Natural justice — Termination of employee's service in accordance with terms of contract of employment—But termination in substance for misconduct by employee — Specific charges of misconduct not framed and employee not given reasonable opportunity of rebutting them—Termination of service amounts to colourable exercise of power by employer. 1965 B L J R 947.

——Art. 226—Natural justice—Standing Committee of University finding petitioner guilty of using unfair means in examination — Report of expert relied on by Standing Committee—Petitioner not informed of existence of report—Order of Standing Committee disqualifying petitioner for two years — Order held could not be allowed to stand and must be set aside.

The petitioner, a student, appeared in the Matricu-

lation Examination held by the Punjab University from a certain centre. It was found that some students were using unfair means. The Assistant Registrar was deputed to hold an inquiry and the petitioner appeared before him. He was put questions with reference to the English paper contained in the questionnaire, which he answered. After perusal of the report of the Head Examiner in the English paper and the statements of the petitioner, the matter was referred by the Assistant Registrar to an expert for his considered opinion. After comparing the various answer books in the English Paper, the expert gave an opinion, which was adverse to the petitioner. The petitioner, however was never informed of the existence of report. It was after the receipt of the report that the Standing Committee found the petitioner guilty of using unfair means. The question was whether the Standing Committee was justified in relying on the report of the expert, which was prejudicial to the petitioner, without giving any indication to him of the existence of such report.

Held, that since the petitioner at no stage was informed of the expert's report the order of the university disqualifying the petitioner for two years could not be allowed to stand and must be set aside. AIR 1965 Punj 120 (FB), Foll. AIR 1964 Punj 327, Disting. 67 Punj L R 693 : AIR 1966 Punj 152 (155) (Pr 9) (DB).

——**Art. 226**—Natural justice—Standing committee debarring candidate from sitting at future examinations for unfair practice—Committee finding candidate guilty of unfair practice relying on expert's report the existence of which report was never brought to the notice of candidate at any stage of enquiry—**Held** order of committee debarring candidate must be set aside as the use of the report had prejudiced the candidate. AIR 1965 Punj 120 (FB), Rel. on. AIR 1966 Punj 152 Followed. **('65) 67 Pun L R 1162.**

——**Art. 226**—Natural justice—Examinee disqualified for use of unfair means in examination—Examinee not adequately informed of the case he had to meet nor afforded full opporunity of meeting it—Disqualification order nor supported by any evidence—High Court would be justified to quash the order. AIR 1965 Punj 120 (FB), Foll ; AIR 1962 S C 1110 and AIR 1966 S C 875, Rel. on.; 64 Pun L R 944, Disting. **1965 Cur L J 182 (Punj).**

78 (e). **Bias.**

See also Note 129.

● ——**Art. 226—Natural justice — Principles — Personal bias — What constitutes — Quasi-judicial officer or tribunal — Disqualification of, to try a cause on ground of personal bias — Effect of on validity of order.**

If a person has a pecuniary interest in the case brought before him, or is hostile to a party whose cause he is called upon to try, that would introduce the infirmity of bias and would disqualify him from trying the cause. In dealing with cases of bias, it is necessary to remember that 'no one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind.' The broad principle which is universally accepted is that a person trying a cause even in quasi-judicial proceedings, must not only act fairly, but must be able to act above suspicion of unfairness. The proper significance of 'Bias' is to denote a departure from the standard of evenhanded justice which the law requires from those who occupy judicial office or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator.

Five writ petitions were filed by different persons who were affected by the common order passed by the Minister under S. 68-D (2), Motor Vehicles Act. The validity of the order was challenged on various grounds, but in one of them the petitioner, even though he had not raised the objection before the Minister passing the order challenged the order on the ground of personal bias.

Held, that the elementary rule of natural justice that a person trying a cause, though in a quasi-judicial proceeding should not suffer from a personal bias, is of such great significance that its application cannot be controlled by considerations which are confined to a particular writ petitioner against whom bias of the quasi-judicial authority is alleged and the fact that he failed to raise the objection as to bias before the authority itself would have no relevance in regard to the complaints raised by other writ petitioners in challenging the validity of the impugned order. Andhra Pradesh State Road Transport Corporation, Hyderabad v. Sri Satyanarayana Transports (P.) Ltd., Guntur, **(1965) 2 S C W R 186 : (1965) 2 S C A 305 : AIR 1965 S C 1303 (1306) (Pt A) (Prs 9, 10).**

——**Art. 226** — Principles of natural justice — President of Municipal Board alleged to have bias against Executive Officer himself holding enquiry against officer under S. 69 A, U. P. Municipalities Act — Recommendatory powers of President, he having no power to punish officer — Enquiry by him does not infringe principles of natural justice—AIR 1956 S C 559, Rel. on — It is the Government alone that can punish the Executive Officer—Unless it is shown that the Government has a bias, it cannot be precluded from deciding the matter. **AIR 1962 All 117 (121, 122) (Pt D) (Prs. 13, 16).**

——**Art. 226** —Previous offences taken into consideration, while awarding punishment — Natural justice, principle of, it violated. See Ibid, Art. 311. **AIR 1959 All 624.**

——**Art. 226 — Natural justice, what is not.**

Where the Sessions Judge while setting aside the conviction under S. 409, Penal Code, of the accused who was an employee of a Co-operative Union observed that it was possible that the accused might be liable departmentally or in the Civil Court though he may not be criminally liable and on this ground if the Union dispensed with the services of the accused, it could not be said that the Union had done anything which was against the principles of natural justice or amounting to an error of law on account of which the High Court would have jurisdiction to interfere in the matter. **(1956) 1 Lab L J 242 : AIR 1956 All 43 (45) (Pt B) (Pr 6).**

——**Art. 226 — Principles of — Rule of bias — Exceptions.**

The rule as to bias of the deciding authority has certain exceptions. One is necessity. The second exception is where the statute itself provides that notwithstanding the presence of pecuniary or other interest the members of a tribunal are not disqualified from participating in the proceeding. The question of the bias is a relevant factor in the case of a tribunal discharging judicial or quasi-judicial functions where there is a triangular situation, of two parties to a dispute and a third person to decide.

Where on the complaint of a sanitary overseer against the sanitary inspector in the service of a Cantonment Board, charges are framed by a sub-committee against the latter and the entire Cantonment Board is investigating into the charges it cannot be

said that the dispute is one between one of the members of the Board and the employee. Further, under R. 11 of the Cantonment Fund Servants Rules, it is the Board that should take the disciplinary action, against the Sanitary Inspector in accordance with the procedure prescribed under R. 12. In such a case the fact that one of its members is presumed to have previous knowledge of the facts of the charge cannot disqualify him from sitting on the Board or invalidate the proceedings. If, the enquiry is not conducted in strict conformity with the rules of procedure laid down in the Cantonment Fund Servants Rules or other principle of natural justice, it is open to him to seek such remedies as he has under the rules or seek for such reliefs as he may be entitled to under the general law: (1882) 9 Q B D 454, Rel. on ; AIR 1959 S C 308, Dist. AIR 1961 Andh Pra 37 (42, 43) (Pt B) (Prs 18, 19, 21, 22, 23).

——Art. 226—Principles of natural justice — Violation of — Judge sitting in appeal over his own judgment.

A Judge who has rendered a judgment in any judicial proceeding before him should not hear an appeal therefrom. It is in violation of an essential principle of natural justice and opposed to all canons of judicial propriety. 1906-1 K B 362, Rel. on. 1960 Andh L T 424.

——Art. 226 — Natural justice — Proceedings under Art. 311 (2) — Administrative Tribunal — Bias — Effect.

Proceedings before administrative tribunals need not be according to the procedure familiar to law Courts. But the tribunals must conform to principles of natural justice and cannot act contrary to canons of fair play. Bias of the enquiring authority, is, therefore, fatal to its decision and the position is not different where only one of those constituting the tribunal is shown to have prejudged the issue. The defect goes further where it constitutes infringement of the constitutional right conferred on the public servant by Art. 311 (2). The enquiry by a Committee, whose member had prejudged the issue, is, therefore, no compliance with the constitutional direction. (1958) 2 Lab L J 298 : 1958 Andh L T 766 : (1958) 2 Andh W R 281 : AIR 1958 Andh Pra 636 (637) (Prs 7, 8, 9) (DB).

——Art. 226—Natural justice — Principle of — Appointing biased person to hold enquiry under Art. 311. See Ibid, Art. 311. (1957) 1 Andh W R 172: AIR 1957 Andh Pra 414 (DB).

——Art. 226 — Co-operative Society — Deputy Registrar holding inquiry — Registrar coming to findings thereon — Appointment of Deputy Registrar as arbitrator — Validity—If opposed to natural justice. See Co-operative Societies — Madras Co-operative Societies Act (6 of 1932), S. 51 (2). (1957) 2 Andh W R 22.

——Art. 226 — Natural justice — Bias — Enquiry against Station Master—Enquiring officer proceeding on basis of his personal knowledge about general State of affairs in railway stations — No particular attempt was made to enquire whether that state of affairs was in existence at that particular station — Held, servant was prejudiced. (1965) 10 Fac L R 263 (Cal).

——Art. 226 — Natural justice — Domestic tribunal —Contractual domestic tribunal procedure — Principles of natural justice including rule of bias, applicability—Cochin Devaswom Board feeling aggrieved by false denials of their statements by Principal of College managed by them, themselves holding inquiry into misconduct and dismissing principal—Inquiry is by biased judges in violation of principles of natural justice and dismissal order is illegal. (1924) 1 K B 256 and (1919) 2 Ch 276 and AIR 1956 Cal 662 and AIR 1951 S C 86; AIR 1958 Andh Pra 636 ; AIR 1959 S C 308; AIR 1959 S C 1376 and (1929) 1 Ch 602, Rel. on. (1961) 2 Lab L J 562 : ILR (1961) 1 Ker 447 : 1961 Ker L T 290 : 1961 Kar L J 389 : AIR 1961 Ker 282 (285, 286) (Pt A) (Prs 5, 6) (DB).

——Art. 226—Natural justice—Misconduct by Police officer in investigation of crime — Enquiry into misconduct entrusted to Deputy Superintendent of Police under whose supervision delinquent officer was working during investigation—No allegation that the officer holding the enquiry was in any way biased or prejudiced against delinquent officer—No violation of the principles of natural justice — Constitution of India, Art. 311. 1964 Mad W N 295 : 77 Mad L W 586 : I L R (1964) 2 Mad 526 : A I R 1965 Mad 103 (107) (Pt F) (Pr 8) (DB).

——Art. 226—Domestic Tribunal — Enquiry by—No rule prescribed for order in which witnesses should be examined — Person proceeded against, should be given opportunity to rebut evidence — Evidence Act (1872), S. 135—Natural justice (1965) 1 Lab L J 88 : (1965) 2 Mad L J 364 : (1966) 12 Fac L R 219.

——Art. 226 — Bias — Proof of—Misconduct of employee of Company — Enquiry by Tribunal consisting of Board of Directors—Some Directors giving statements earlier in support of charges—Order of Board dismissing employee biased.

An order terminating the services of an employee of a Company, passed after an enquiry by the Board of Directors, in which two of the Directors gave statements earlier in support of the charges against the employee, is liable to be set aside. Having given statements against the employee in relation to the charges framed, they could not form part of the Tribunal to sit in judgment over those very charges.

Where a person who discharges a quasi-judicial function has by his conduct shown that he is interested or appears to be interested, that will disentitle him from acting in that capacity. No Tribunal can be a judge in its own cause and any person who sits in judgment over the rights of others should be free from any kind of bias and must be able to bring to bear an impartial and objective mind to the questions in controversy.

In such a case, it is not required that bias should be actually proved. This is because justice must not only be rendered but must appear to be rendered. It is no doubt true that a distinction is made between pecuniary interest and other kinds of interest. In the case of the former, pecuniary interest would at once disqualify a person from acting as a judge. But in the other kind of alleged bias, it may be necessary to consider whether there is a reasonable ground to consider the possibility of bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. AIR 1957 S C 425. Foll. (1962) 2 Lab L J 482 : (1962-63) 23 F J R 193 : AIR 1963 Mad 76 (77) (Pt A) (Prs 4, 6).

——Art. 226 — Natural justice — Rules of—Departmental enquiry—Inquiry Officer gathering evidence against accused — It violates principles of natural justice.

In departmental disciplinary proceedings, it is certainly not necessary that there should be a separate prosecutor and in the nature of things, no objec-

tion could be taken to an Inquiry Officer himself getting and gathering all the material against the accused officer so long as he conforms to the juridical norms and holds all the proceedings in the presence of the accused official and informs him of any material which he is likely to use against such an official. ('66) 68 Pun L R 174.

——Art. 226 — Natural justice — Investigation into affairs of company — Investigating Inspector, an employee in Company Law Administration — Natural Justice if violated. See Companies Act (1956) (as amended by Act 53 of 1963), S. 240 (5). I L R (1965) 2 Punj 339 (DB).

78 (f). Notice.

● —Art. 226—Natural justice—Reasonable opportunity of being heard — Absence of notice — Not necessarily fatal.

If a reasonable opportunity of being heard cannot be given without the service of a notice, the omission to serve the notice would be fatal. Where, however, proper hearing can be given without service of notice, it does not matter at all, and all that has to be seen is whether, even though no notice was given, a reasonable opportunity of being heard was given. Fazal Bhai v. Custodian-General Evacuee Property, A I R 1961 S C 1397 (1399) (Pt A) (Pr 7).

——Art. 226—Natural justice—Deciding appeal without notice to opposite party is against rule—Natural Justice. See Motor Vehicles Act (1939), S. 64. A I R 1956 Ajmer 41.

——Art. 226 — Natural Justice—Income-tax recovery proceedings — Order granting or vacating stay—Ex parte order vacating stay, passed on extraneous considerations and incorrect information—Order is violative of principles of natural justice. (1965) 2 I T J 85 : AIR 1966 All 176 (180, 181) (Pt B) (Prs 20, 21, 24).

——Art. 226 — Natural Justice — Order imposing penalty without prior notice and opportunity to assessee to be heard is bad in law. See U. P. Agricultural Income-tax Act, 1948 (3 of 1949), S. 31. 1965 All L J 1102.

——Art. 226 — Natural Justice — Section 8, U. P. (Nagar Kshetra) Bhumi Aur Bhawan Kar Adhiniyam (XII of 1962), Ss. 8 and 4—Providing only general notice for cases not covered by Cl. (2) of S. 4 — No violation of principles of natural justice. See U. P. (Nagar Kshetra) Bhumi Aur Bhawan Kar Adhiniyam (12 of 1962), S. 8. 1965 All W R (HC) 35 : 1965 All L J 201 : I L R (1965) 1 All 427.

——Art. 226—U P. Zamindari Abolition and Land Reforms Act 1950 (1 of 1951), Ss. 46, 47 and 343—Only when State appears in response to notice under S. 46, that it is entitled to notice under S. 47—Second part of S. 343 (1) provides the manner in which the notice is to be sent—State not appearing under S. 46, is not entitled to notice on basis of natural justice. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 46. AIR 1962 All 590 (DB).

——Art. 226—Motor Vehicles Act (1939) (as amended in 1956), S. 64-A — Notice to show cause why permit should not be revised — Ambiguity as to whether issued under S. 64-A or S. 60 (1) (d)—Effect—Writ to quash notice, issued See Motor Vehicles Act (1939) (as amended in 1956), S. 64-A. A I R 1959 All 495.

——Art. 226 — Natural justice — Violation — (U. P. Excise Act (4 of 1910), S. 11).

No rules had been prescribed which made it obligatory for the Excise Commissioner to give any notice to a party interested in the subject matter of the appeal. In making his order the Excise Commissioner acted only, at best, in a quasi-judicial manner.

Held, that the basis of the order of the Appellate Authority was administrative convenience, and there had been no violation of any rule of natural justice in regard to notice. I L R (1959) 1 All 529 : 1959 All L J 514 : 1959 All W R (H C) 380 : A I R 1959 All 460 (462, 463) (Pt C) (Pr 14) (DB).

——Art. 226—Election petition dismissed for default—Petitioner not getting information of dates of hearing of his petition — Power to restore petition under Art. 226. See Civil P. C. (1908), O. 9, R. 13. A I R 1958 All 587 (DB).

——Art. 226 — Natural justice — Opportunity to be heard — Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) (Amendment) Act (13 of 1962), S. 4 — First order by Chancellor, disapproving appointment of petitioner as lecturer but allowing him to continue as lecturer only for certain period, passed without notice to petitioner — Subsequent order disapproving appointment passed after issuing show-cause notice — Held, second order must govern petitioner's case as first order though illegal and void was superseded by second order. A I R 1966 Andh Pra 11 (13) (Pt B) (Pr 7).

——Art. 226—Principles of natural justice — Auction sale set aside without notice — Auction sale for very low value—Special Deputy Tahsildar conducting sale alleging collusion and fraud among auctioners in his report to Revenue Divisional Officer — Auction sale set aside after three years without giving reasonable opportunity to auction-purchaser to represent against allegations of collusion and fraud — Orders setting aside auction sale quashed as there was violation of principles of natural justice. (1965) 1 Andh L T 65 : (1965) 1 Andh W R 118.

——Art. 226—Rules of natural justice—Order under S. 8 (3) (d) of Rice Milling Industry (Regulation) Act (1958)—No provision for notice to aggrieved parties and for hearing objections — Order held not opposed to principles of natural justice.

The rules of natural justice have to be inferred from the nature of the Tribunal, the scope of its enquiry and the statutory rules of procedure laid down by the law for carrying out the objectives of the statute. Since there was no rule under the Rice Milling Industry (Regulation) Act which required that before any order under S. 8 (3) (d) is passed, notice should be given to the parties affected and their objections heard and considered before a final order is made, only because the objections were not heard and considered before granting the expansion of a rice mill, the order cannot be held to be opposed to the principles of natural justice. 1915 A C 120 and (1943) 2 All E R 337 and (1949) 1 All E R 199 and A I R 1957 S C 232 and A I R 1958 S C 398 and A I R 1961 S C 705, Rel. on. (1962) 2 Andh W R 156 : I L R (1963) Andh 595 : (1962) 2 Andh L T 268 : A I R 1962 Andh Pra 363 (367, 368) (Pt B) (Pr 12).

——Art. 226—Partnership firm of C and B — Assessment completed — Notice of demand served — Non-compliance — Certificate under S. 46 (2) issued — B died thereafter — Proceedings pursuant to certificate continued—Properties in hands of B's son attached—S. 29 not violated though B's son was not served with notice — Certificate under S. 46 (2) was valid—Hence, not interfered under Art. 226 of Constitution.

See Income-tax Act (1922), S. 29. (1962) 46 I T R 882 (Andh Pra).

——Art. 226 — Certiorari — Quasi-judicial orders by administrative authority — Audi alteram partem — Andhra University—Election dispute—Appeal against election — Absence of provision requiring appellate authority to give notice to affected person — Order passed without notice violates principles of natural justice — Andhra University Act (2 of 1926), S. 27— Andhra University Code, Vol. 1, R. 4. (1961) 1 Andh W R 437 : 1961 Andh L T 371 : A I R 1961 Andh Pra 465 (466, 467) (Prs 8, 15, 16) (DB).

——Art. 226—Certiorari, writ of — Sales-tax assessment order behind back of petitioner — Denial of natural justice—Order may be quashed.

A sales-tax assessment order passed against a person without an opportunity being given to him to attend the hearing must be held to be void on the ground of denial of natural justice and may be quashed by the High Court by the issue of a writ of certiorari in spite of the fact that other remedies are available. (1960) 11 S T C 804 (Andh Pra).

——Art. 226—Natural justice — Order directing payment of compensation—Appeal — Notice not given to accused — Effect — Legality of order. See Criminal P. C. (1898), S. 250 (3). 1958 Cri L J 726 : A I R 1958 Andh Pra 335.

——Art. 226 — Quasi-judicial order of Government relating to assignment on Darkhast of Sivoijama land, setting at naught the order of Revenue Board, without notice held illegal and ought to be set aside. A I R 1957 Andh Pra 447 (450) (Pt E) (Pr 13).

——Art. 226—Notice of hearing—Requirements of—Though issuing of notice on other operators is not obligatory under R. 268, the principle of natural justice require that they should be given notice before alteration is made. See Motor Vehicles Act (1939), S. 64-A—Rules under R. 268. I L R (1956) Andh 319.

● ——Art. 226 — Writ of certiorari — Principles of natural justice — Confiscation of goods under S. 167 (8), Sea Customs Act, 1878 — Enquiry held behind back of petitioner — There is violation of principles of natural justice — (Per Majority — Nayudu, J. Contra).

The Collector of Customs, when adjudging confiscations and imposing penalties under S. 167 (8) of the Sea Customs Act, 1878, acts judicially. Under S. 182, the authority has to adjudge the confiscation and the penalty to be imposed. There is no fixed definition of the term 'natural justice' and what is natural justice will depend on the circumstances of each individual case. But there are certain cardinal principles of law which must be followed in every trial. Thus, a man must not be condemned without being given a reasonable opportunity to meet the case against him. Again the prosecution must prove the guilt of an accused beyond reasonable doubt and this burden never shifts. These are two of the cardinal principles which if not observed lead to complete failure of justice At the hearing of a writ petition filed against an order of confiscation of goods passed under S. 167 (8) of the Sea Customs Act, 1878, it is not correct to contend that as soon as the result of any inquiry made behind the back of the petitioner is brought to the notice of the petitioner, the only opportunity which he is entitled to is to give his explanation and if such an opportunity is given, the principles of natural justice have been complied with and the petitioner cannot complain of any violation of such principles. The inquiring officer has to adjudicate whether the goods under reference are liable to be confiscated and an order of confiscation cannot be passed unless the authority is satisfied that the goods have been imported without licence. The adjudication required under S. 182 is necessarily the satisfaction of the inquiring officer on the inquiry made by him and not on materials which were before the verifying officer or to act on the decision of the verifying officer. Sanwarmal Purohit v. Collector of Central Exise and Land Customs, Shillong, 1964 (2) Cri L J 507 : A I R 1964 Assam 121 (124, 127, 134, 135, 136) (Pt B) (Prs 4, 15, 16, 42, 50) (FB).

——Art. 226—Natural Justice— Respondent exporter of Molumma refuse lac — Customs Authorities contending that lac content was more than 80% — Dispute regarding test to be applied whether direct or indirect — Authorities also consulting experts on matter of dispute—Opinion not taken in presence of respondent nor was he informed — Held, that there had been violation of principles of natural justice.

The respondent was an established exporter of various forms of lac including refuse lac. He entered into a contract for sale and export of Molumma refuse lac to West Germany and was granted an export licence for the same. The Customs Authorities took two samples for chemical examination out of the two lots purported for shipment and according to them the lac content of both the lots was above 80%. The authorities also consulted experts on the disputed question of the test to be applied whether direct or indirect, and had acted upon the advice given by them. The opinion of the experts was not taken in the presence of the respondent nor was he informed about such opinion.

Held, that there had been a violation of the principles of natural justice. AIR 1963 S C 375 and A I R 1957 S C 648, Rel. on. (1963), 1 All E R 66, Disting; It is true that a party is not entitled to a hearing at every stage of an investigation. But it is equally true that he must get an opportunity to offer his explanation to the case made against him. That explanation may or may not be acceptable to the adjudicator, but the opportunity cannot be denied to him. In so far as the opinion of the experts was not communicated to the respondent and an opportunity to deal with such opinion, or give his explanation regarding the same, was denied to him, there had been a violation of the principle of natural justice. If it was necessary for the adjudicator to take the opinion of the experts, and if the weight of the opinion was such as to enable him to come to the decision which he recorded, the respondent should have been given the opportunity to give his explanation to the opinion in so far as it was against his contentions.

However, the mere fact that the Customs Officer had affirmed an affidavit in which he had contested the case of the respondent did not create such grounds as to raise a doubt as to the fairness of the conduct of the Officer as the adjudicator. He could not have any interest in the matter except the discharge of the statutory duty imposed upon him under the Sea Customs Act. If he had held against the respondent on the question of the test to be applied, he had done so on expert advice which he sought and obtained. That is not such evidence of bias as to preclude all possibility of the respondent's getting justice from the Customs Authorities. The Customs Officer was one of the Officers prescribed to deal with the matter and whatever he had done, was in discharge of his duties as a Statutory Officer. If in discharge of his duties he had acted contrary to law or had violated the procedure prescribed by law, his decision was liable to be set aside in the High

Court or in the other proceedings prescribed by the Sea Customs Act. ('65) 69 Cal W N 439.

——Art. 226 — Partnership Act (1932), S. 63 (1) — Notice of dissolution of firm dated 30-8-1961 from M received by Registrar — Entry in Register showing that M had retired on 14-3-1958 — Registrar without giving any notice to other partners dissolving firm by entering word 'dissolved' in Register—M held was not person who was authorised to give notice of dissolution under S. 63 (1). Partnership Act (1932) — Registrar held acted illegally and in violation of S. 63 (1) and of all principles of natural justice by making entry without notice and without hearing other partners—Appeal from Original Order No. 212 of 1963, Reversed. See Partnership Act (1932), S. 63 (1). ('65) 69 Cal W N 929.

——Art. 226—Natural Justice — Statutory right of appeal—Right of hearing.

Where there is a statutory right of appeal, there is an inherent right given to the parties to be heard in support of the appeal. Where there is a violation of a rule of natural justice, an application for a high prerogative writ will always lie. 1962 Cal L J 18.

——Art. 226—Natural justice—Opportunity of hearing—Exercise of powers under S. 51—Electricity Act—Notice to party affected—Necessity. See Electricity Act (1910), S. 51. AIR 1960 Cal 311.

——Art. 226 — Order of confiscation — Failure to consider relevant documents — Violation of principle of natural justice. See Land Customs Act (1924), S. 5. 1959 Cri L J 700 : AIR 1959 Cal 356.

——Art. 226 — Natural justice — Service of notice — Presumption. See Sales Tax — Bengal Finance (Sales Tax) Act (6 of 1941), S. 11. AIR 1958 Cal 171.

——Art. 226 — Criminal P. C. (1898), Ss. 436 Proviso, 230, 259 and 437—Prosecution on Police report — Magistrate passing order of discharge of accused in absence of complainant and without going into evidence — Resummoning of accused by Magistrate — Jurisdiction to do so — Notice before resummoning not necessary — S. 436 not applicable — Principles of natural justice not offended — S. 259 also not applicable See Criminal P. C. (1898), S. 436 Proviso. ILR (1958) 1 Cal 411.

——Art. 226—Bengal Finance (Sales Tax) Act, 1941, S. 16 — Authorities have no duty cast on them to send notices to any other address other than the registered address—In facts, in law there is no duty to send notices of adjournment at all — Initial notice being served, it is duty of assessee to be present at hearing and on adjourned dates. See Sales Tax — Bengal Finance (Sales Tax) Act (6 of 1941), S. 16. AIR 1957 Cal 463.

——Art. 226 — Building in imminent danger of collapsing — Power of Commissioner to order its demolition — Notice to occupier— Exception to rule of natural justice. See Municipalities—Calcutta Municipal Act (33 of 1951), S. 415 (c). AIR 1956 Cal 410.

——Art. 226—Customs Act (1962), S. 124 — Quasi-judicial tribunal—Decision violating rule of natural justice—Effect — Notice under S. 124 — Petitioner asked to appear before authority who was not the adjudicating authority — Petitioner held was not given reasonable opportunity to be heard—Decision set aside—(Natural justice).

Where a domestic tribunal fails to act in accordance with natural justice, the persons affected by its decision can always seek redress in the Court. Denial of justice to a man is causing prejudice to him. He will not however, be entitled to damages if he suffered none. But he can always ask for the setting aside of the decision against him. In the case of an adjudication by a quasi-judicial authority also the same principle would apply. (1961) 3 All E R 621, Rel. on.

Section 124 of the Customs Act requires that the petitioner should be given an opportunity of being heard before the Collector who has made the adjudication. If the notice under S. 124 is defective in this respect inasmuch as it only indicated that the petitioner should appear with his evidence before the Assistant Collector of Customs and not before the Collector, such opportunity cannot be said to be given to the petitioner and thus there would be a miscarriage of justice. The question whether that denial resulted in any substantial prejudice to the petitioner is irrelevant.

Held, that as the complaint of the petitioner that he had been denied an opportunity of being heard before the Collector was well founded, the order should be quashed. 1965 Ker L T 53 : 1965 Ker L J 198 : 1965 (2) Cri L J 773 : AIR 1965 Ker 286 (287) (Pr 6).

——Art. 226—Natural Justice—Fixation of advertisement tax by municipality — Notice and hearing if necessary. See Municipalities — Kerala Municipalities Act (1961), S. 126. AIR 1965 Ker 237.

——Art. 226—Natural justice — 'Audi Alteram Partem'—Act of executive bodies—Natural justice.

A was appointed Headmaster of a Primary School. B contended before D. P. I. that he was legitimate claimant to that. The contention was not accepted. B took up the matter before the Government. The order was passed in his favour. The Government gave no notice of the petition to A and he was not heard in the matter.

Held that, the error was, fundamental; it involved a violation of natural justice, and the order had to be quashed.

Even when an executive body is given the power to decide something in its discretion the Courts would still keep it in the leading strings of fair procedure. The rule is not confined to the conduct of strictly legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals. 1963 Ker L J 1200 : (1963) 2 Ker L R 305 : 1963 Ker L T 1051 : (1964) 1 Lab L J 528.

——Art. 226 — Natural justice—Kerala Cinemas (Regulation) Act (1958), S. 5 (7) — Grant of licence — Appeal against — Appellate authority acts as quasi-judicial body — Notice to licensee not given — Principles of natural justice held violated — Order of appellate authority setting aside order granting license quashed. See Kerala Cinemas (Regulations) Act (32 of 1958), S. 5 (7). I L R (1961) 2 Ker 6.

——Art. 226—Public safety — M. P. Public Security Act (25 of 1959), S. 3 (1) (a)— Validity — Imposing of restriction without notice of hearing—Unreasonability of procedure does not affect validity of S. 3 (1) — Doctrine of natural justice—Applicability—Order not quasi-judicial — Action under, is preventive in nature — Therefore exception to rule of natural justice. See Public Safety—M. P. Public Security Act (25 of 1959), S. 3 (1) (a). 1964 (2) Cri L J 160 : AIR 1964 Madh Pra 175 (DB).

——Art. 226 — Certiorari — Natural justice, rule of, requiring prior notice of hearing to party affected —

Rule is attracted when authority making order acts judicially or quasi-judicially. The rule does not apply when the power to make order is exercised subjectively. 1964 Jab L J 242 : 1964 M P L J 238.

——Art. 226—Quasi-judicial order—Mines and Minerals (Regulation and Development) Act, 1957, S. 13—Rules under—Mineral Concession Rules (1950), R. 54—Revision application — Application barred by time—Still applicant is entitled to notice of hearing of application and opportunity to represent his case. 1964 M P L J (Notes) 155.

——Art. 226 — Certiorari — Industrial Disputes Act (1947), S. 12—Dismissal of workman — Investigation by Conciliation Officer — Notice to workman not necessary. See Industrial Disputes Act (1947), S. 12. AIR 1961 Mad 58.

——Art. 226—Natural justice — Principles of—Member of Advisory Board appointed under scheme — Absence from meetings—Order of removal by district Court without notice—Order is illegal. ('59) 72 Mad L W 80.

——Art. 226—Natural justice—Order of confiscation or penalty under Sea Customs Act without notice and enquiry—Legality—Interference—(Sea Customs Act (1878), Ss. 167 (8), 182 and 183).

Where the Collector of Customs passes an order of confiscation or penalty without notice and without enquiry, the order contravenes every principle of natural justice and must be deemed to be a nullity. But where the proceedings of the Collector were properly initiated after notice to the respondent, the mere circumstance that the order was vitiated by a wrong assumption that the respondent had a branch within the jurisdiction of the High Court would not make the order a nullity. 1957 Mad W N 256 : I L R (1957) Mad 642 : 70 Mad L W 328 : (1956) Mad L J (Cr) 283 : (1957) 2 Mad L J 41 : AIR 1957 Mad 496 (503, 504) (Pt C) (Prs 21, 22, 23) (DB).

——Art. 226 — Certiorari — Order for delivery of possession under S. 87, Madras Hindu Religious and Charitable Endowments Act — Notice to persons affected not given — Order should be set aside as it offends the principles of natural justice. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 87. AIR 1954 Mad 500 (DB).

——Art. 226—Administrative order—Lease of fishery rights by Government—Order of cancellation of lease—Interference.

Where in the case of a lease of fishery rights by Government the Rules provide for the Deputy Commissioner, who is a servant of the lessor, to cancel the lease in favour of the lessee without even a notice to him, if the Deputy Commissioner is satisfied that any terms of the lease have been infringed, it is a matter for the subjective satisfaction of the Deputy Commissioner. It is not a matter where the Deputy Commissioner acts as a tribunal and decides a case between two parties in which he is bound to give opportunity to both the parties to be heard and to hold an enquiry in accordance with the principle of natural justice. The order of cancelling the lease on such satisfaction, therefore, is purely an administrative order. It is not a quasi-judicial order in any sense and cannot be questioned in proceedings for a writ of certiorari. Proper remedy for the lessee is by way of a civil suit for damages. AIR 1961 Manipur 28 (30, 31) (Pt C) (Prs 8, 9, 10).

——Art. 226—Natural justice—Labour Commissioner setting aside election to Works Committee without notice to elected candidates — Principles of natural justice violated.

No order can be passed affecting a person without hearing him. The person who is duly elected acquires certain rights of which he cannot be deprived without due notice to him. A notice to a particular Union of which the elected candidate happens to be a member, cannot be said to be a notice to the successful candidate. (1965) 10 Fac L R 12 : (1963-64) 25 F J R 332. (1964) 2 Lab L J 451 : AIR 1965 Mys 39 (41) (Pt B) (Prs 14, 15) (DB).

——Art. 226—Natural justice—Master and servant—Termination of services of college lecturer without previous notice — Provision for notice not made in statute — Termination held violated principles of natural justice and was therefore illegal—Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) (Amendment) Act (13 of 1962), S. 4. See Master and servant — Termination of services of college lecturer. AIR 1964 Pat 41.

——Arts. 226 and 227 — Natural justice—Petitioner's name struck off from certificate proceeding — No notice given to him of appeal — No hearing given to him in appeal—Additional Collector's order in appeal making him liable for certificate demand is illegal. 1961 B L J R 442.

——Art. 226 — Income-tax Act (1922), S. 23 (4) — Order refusing registration of firm—Notice not necessary — Administrative proceedings — Principle of natural justice satisfied by giving hearing at some stage. See Income-tax Act (1922), S. 23 (4). AIR 1960 Pat 516.

——Art. 226 — Natural justice—Violation of principles—Decree or final order without previous notice to party affected — Minor not represented in suit or execution—Defect if one of form—Civil P. C. (1908), O. 32, R. 3 (4).

One of the elementary rules of natural justice is that no decree, or order finally deciding a question between parties should be made absolute ex parte, without previous notice to the party affected by it. A party has a right to appear and plead his cause on all occasions when that cause comes on for hearing, and a party should not be deprived of that right, and in fact the Court has no option to refuse that right, unless the Civil P. C. deprives him of it. No forms or procedure should, therefore, ever be permitted to exclude the presentation of a litigant's defence. A Court has no jurisdiction to sell the property of persons who were not parties to the proceedings, or properly represented on the record. As against such persons, decrees and sales purporting to be made could be a nullity and might be disregarded without any proceeding to set them aside. If, therefore, a minor is not effectively represented in a suit, or in an execution proceeding, such a defect is not one of mere form, but of substance; and, it goes to the root of the jurisdiction of the Court, and therefore, such a minor in the eye of law is not a party to such a suit, or an execution proceeding, and, as such no order passed, or decree made against him in such a suit, and no proceeding taken, or sale held in execution proceeding against him ex parte in his absence will bind him or his estate at all. AIR 1957 Pat 260 (263, 264) (Pt A) (Prs 13, 14, 18) (DB).

——Art. 226 — Natural justice — Suspension pending enquiry — Show-cause notice is not necessary. See Panchayats—Punjab Gram Panchayat Act, 1952 (4 of 1953), S. 102 (1) (As amended). ('65) 67 Punj L R 698: I L R (1965) 2 Punj 472.

——Art. 226 — Natural justice — Amount due from directors of Co-operative Society, on account of their misconduct, cannot be unilaterally determined by Registrar without show cause notice. See Punjab Co-operative Societies Act (25 of 1961), S. 67. 67 Punj L R 268 : 1965 Cur L J 162.

——Art. 226—Order under Industries (Development and Regulation) Act, S. 18-A for taking over management of company passed without giving opportunity to company to show cause against action — Order is illegal. See Industries (Development and Regulation) Act (1951), S. 18-A. AIR 1964 Punj 368.

——Art. 226—Natural justice— Order suspending resolution of no confidence —Whether the fundamental rule of natural justice of giving a hearing to parties affected by order is attracted even though S. 102 (3), Punjab Panchayat Samitis and Zilla Parishads Act, 1961, does not expressly provide for giving such hearing. See Panchayats — Punjab Panchayat Samitis and Zilla Parishads Act (3 of 1961), S. 102 (3). 1964 Cur L J 333.

● ——Art. 226—Quasi-judicial authority—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 36 — Work of consolidation under Act—Officer functioning under S. 36—Function is of judicial nature — Observance of rules of natural justice by officer is required—Order passed under S. 36 without notice to interested right holders quashed.

Per Full Bench —The proceedings under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, with a view to affect consolidation of holdings and determine ancillary matters, the procedural provisions touching the preparation of the draft scheme, the filing of objections appeals and revisions, partake of judicial character. The functions of a Settlement Officer acting under S. 36 involves the review of property rights and other civil rights in respect of areas allotted to the individual proprietors, the consideration of the claims of their creditors and tenants and also of certain rights vesing in the Gram Panchayat with respect to particular areas with reference to a scheme of consolidation of tholdings which is already in operation. Essentially, this function is of a judicial nature and can, therefore, fitly be styled as quasi-judicial requiring the observance of rules of natural justice. The authority is not entrusted with an unfettered discretion permitting it to transgress the principles underlying "audi alteram partem" rule. Nothing contained in the provisions of S. 36, read singly or along with the cognate provisions can lend support to a construction in favour of the exculsion of the rule of natural justice by necessary implication. A I R 1962 S C 1110 and AIR 1950 S C 222 and AIR 1962 S C 1217, Rel. on.; AIR 1959 S C 107, Dist.

When, therefore, exercising powers under S. 36, it is incumbent upon the authority to give a prior notice to the parties concerned and an opportunity to present their case for its consideration. The hearing may not necessarily be oral. Where the authority in proceedings under S. 36 revoked the scheme of consolidation without notice to the respective right-holders who were the parties interested, without giving any opportunity to them to submit their objections against the proposed change long after they had entered into possession in accordance with the scheme after the preparation of the new record of rights:

Held, that the proceedings taken under S. 36 deserved to be quashed as also any proceedings taken in pursuance of the orders of the Director, Consolida- of Holdings. Bhikhan Bobia v. Punjab State, 65 Pun L R 368 : ILR (1963) 1 Punj 660 : 1963 Cur L J 169 : A I R 1963 Punj 255 (274, 275, 277, 278, 280) (Pt G) (Prs 56, 57, 65, 68, 70, 76) (FB).

——Arts. 226 and 227 — Property notified as evacuee property denotified by Government—Sale of property by owner after denotification — Government assuring purchase and that order restoring property to the vendor will not be cancelled and that the sale in favour of the purchaser would remain unaffected—Subsequent order passed by Government cancelling the order of restoration without notice to the purchaser.— Order must be quashed on the ground of non-issue of notice to purchaser—As the rights of the purchaser in the property were being adversely affected by the impugned order principles of natural justice required that the purchaser should have been given a reasonable opportunity of being heard against the proposed order: AIR 1960 S C 606, Rel. on. ('61) 63 Punj L R 893.

——Art. 226—Natural justice—Order rejecting objection—Appeal—Record not traceable—Failure to give proper notice—Effect — Principles of Natural Justice not followed—Issue of writ. See Punjab Urban Immovable Property Tax Act (17 of 1940), S. 10. A I R 1960 Punj 278.

——Art. 226 — Displaced Persons (Claims) Supplementary Act (1954), S. 5 — Displaced Persons (Verification of Claims) Supplementary Rules (1954), R. 19A —Substituted service through newspaper against claimant along with several others regarding hearing on different dates before different authorities — Claimant not subscriber to newspaper — Claimant not aware of date of hearing — Service held not due service — No reasonable opportunity of making defence. See Displaced Persons (Claims) Supplementary Act (1954), S. 5. AIR 1960 Punj 153 (DB).

——Art. 226—Principles of — Applicability—Person appointed on temporary basis for fixed period—Continuance even after expiry of period—No order as to confirmation—Subsequent suspension and dismissal—Notice to show cause and hearing — Necessity. See Municipalities— (Punjab) Small Town Appointment Suspension and Dismissal Rules (1925), S. 3 (1). ILR (1957) Punj 731.

——Art. 226—Application under for issue of writs—Controller of Insurance issuing notice under S. 52A Insurance Act to companies— On facts relief held could not be granted.

The Controller of Insurance, New Delhi, issued a notice under S. 52A, Insurance Act, on 17-2-51 to the three applicant companies viz. (i) Jupiter General Insurance Company Ltd. Bombay (ii) Empire of India Life Assurance Co. Ltd. Bombay and (iii) Tropical Insurance Co. Ltd. New Delhi to the effect that he had reason to believe that the said companies were acting in manner likely to be prejudicial to the interests of the holders of life insurance policies of those companies and informing them that he would hear them on 26-2-1951 at his office at New Delhi and unless satisfactory cause was shown he would make a report to the Central Government for the appointment of an administrator to manage the affairs of the Companies. Grounds for action under S. 52A were stated in the notice. On the same date i.e. 17-2-51 the companies were informed that the hearing would be at Bombay instead of New Delhi. The Companies applied to the Controller Delhi, twice for postponement of the date of hearing but the applications were refused. On the date of hearing i.e. 26-2-51 the companies appeared before the Controller in Bombay and again applied in writing for postponement of the date of hearing for at least fifteen days. Each of the companies complained that the grounds for action under S. 52A were vague and indefinite and refused to show any cause unless more particulars were given. The Controller neither adjourned the proceedings nor did he give particulars of the grounds. The companies thereupon applied under Art. 226 Constitution of India for writs against the Controller and the Union of India.

Held on the facts and circumstances of the case that a writ of certiorari or prohibition was not the appropriate remedy. It could not be maintained in

the circumstances that the Controller had failed to give an opportunity to the companies to be heard on the points arising under S. 52A of the Act or that the grounds for action given in the notice were not sufficient and as such even a writ of mandamus could not be issued at that stage against the controller.

Held further that the Union of India was wholly unnecessary party as no case had been made out against it. 22 Comp Cas (Ins) 33 : I L R (1952) Punj 11 : AIR 1952 Punj 9 (20, 21, 34) (Pt N) (Prs 74, 80, 82, 146) (DB).

——Art. 226—Natural Justice—Constitution of market committee for first time—Nomination of certain members by Government — Grievance of writ petitioners that members were not properly qualified—Members not impleaded as parties to writ petition—Decree about validity of their nomination would not be justified. See Rajasthan Agricultural Produce Markets Act (38 of 1961), S. 7 (2) (b). **AIR 1966 Raj. 142 (DB).**

——Art. 226—Natural justice — Audi alteram partem —Appellate authority under Motor Vehicles Act must give notice of appeal not only to appellant and to Regional Transport Authority but also to persons whose interests are likely to be adversely affected. See Motor Vehicles Act (1939), S. 64. A I R 1960 Raj 201 (DB).

——Art. 226—Rectification of permit—Notice to party affected. See Rajasthan Minor Mineral Concession Rules (1955), R. 56. **AIR 1959 Raj 220 (DB).**

——Art. 226—Natural justice—Tenancy laws—Rajasthan Produce Rents Regulating (Second Amendment) Act (1953), Ss 4A, 4B — Proceedings against several tenants — Each case to be separately dealt with—Notice to each is essential — Natural justice. See Tenancy Laws - Rajasthan Produce Rents Regulating (Second Amendment) Act (22 of 1953), S. 4A. **AIR 1957 Raj 343.**

——Art. 226 — Natural justice—Grant of permit—Notice—Hearing parties — Procedure not followed—Certiorari. See Motor Vehicles Act (1939), S. 57. **AIR 1959 Tripura 35.**

78 (g). Evidence and procedure, rules of.

● ——Art. 226—Natural justice.

Domestic enquiry—Enquiry into conduct of workman—Finding of misconduct - Enquiry not in accordance with principles of natural justice — No reasonable opportunity to lead evidence in support of defence — Tribunal will discard finding of domestic enquiry and consider matter on merits. Tata Oil Mills Co. Ltd. v. The Workmen. (1964) 2 Lab L J 113 : (1964-65) 26 F J R 199 : (1964) 9 Fac L R 142 : AIR 1965 S C 155 (158) (Pt B) (Pr 4).

● ——Art. 226—Domestic Tribunal—Natural justice —Appearance of witnesses — It is for parties to produce them—Refusal to adjourn hearing to enable charge-sheeted workman to call witnesses — It may introduce element of infirmity in enquiry.

In a domestic enquiry, the officer holding the enquiry can take no valid or effective steps to compel the attendance of any witness. The parties themselves should take steps to produce their witnesses. It would be unreasonable to suggest that in a domestic enquiry, it is the right of the charge-sheeted employee to ask for as many adjournments as he likes. It is true that if it appears that by refusing to adjourn the hearing at the instance of the charge sheeted workman the Enquiry Officer failed to give the said workman, a reasonable opportunity to lead evidence that may, in a proper case, be considered to introduce an element of infirmity in the enquiry but the Enquiry Officer goes out of his way to assist the workman in writing to the witnesses to appear before him and if the witnesses do not turn up to give evidence in time it is not his fault Tata Oil Mills Co., Ltd. v. The Workmen, (1964) 2 Lab L J 113 : (1964-65) 26 F J R 199 : (1964) 9 Fac L R 142 : AIR 1965 S C 155 (158, 159) (Pt C) (Pr 5).

● ——Art. 226—Natural justice—Rules of—Procedure —Employee charged with misconduct — Elaborate cross examination of employee at commencement of enquiry constitutes infirmity — Desirability of intimating employee about date of inquiry— Industrial Disputes Act (1947), S. 10 (1) (d)—Constitution of India, Art. 226—Domestic Tribunal — Natural justice.

Although it is true that domestic enquiries need not be conducted in accordance with the technical requirements of criminal trials, yet they must be fairly conducted and, in holding them, considerations of fair play and natural justice must govern the conduct of the enquiry officer, Domestic enquiries must be conducted honestly and bona fide with a view to determine whether the charge framed against a particular employee is proved or not and care must be taken to see that these enquiries do not become empty formalities. Where the officers holding an enquiry into the misconduct of an employee claim that they themselves had witnessed the alleged misconduct of the employee, that fact, by itself, disqualifies them from holding the enquiry and vitiates the entire proceedings of the enquiry. In such a case steps should be taken to see that the task of holding the enquiry is assigned to some other officers who are not likely to import their personal knowledge into the proceedings. Where it is obvious that in coming to the conclusion that the employee was guilty of misconduct the enquiry officers have plainly relied on their own knowledge, that fact is reasonably calculated to create an impression in the mind of the employee that the enquiry is nothing more than a sham or empty formality. So also, it is not fair in domestic enquiries against industrial employees that, at the very commencement of the inquiry, the employee should be closely cross-examined even before any other evidence is led against him, It cannot be overlooked that in a large majority of cases the employees are likely to be ignorant and so, it is necessary not to expose them to the risk of cross-examination of this nature. In domestic inquiries the employer should take steps first to lead evidence against the employee charged, give an opportunity to the employee to cross-examine the said evidence and then should the employee be asked whether he wants to give any explanation about the evidence led against him. Where this procedure is not followed and the employee is elaborately cross-examined at the commencement of the enquiry it constitutes an infirmity in the enquiry. It may be that failure to intimate to the employee concerned about the date of the enquiry may, by itself, not constitute an infirmity in the enquiry, yet it is necessary to bear in mind that it would be fair if the employee is told as to when the enquiry is going to be held so that he has an opportunity to prepare himself to make his defence at the said enquiry and to collect such evidence as he may wish to lead in support of his defence. It would not be right that the employee should be called on any day without previous intimation and the enquiry should begin straightway. Such a course should ordinarily be avoided in holding domestic inquiries in industrial matters. Associated Cement Companies, Ltd. v. Workmen, (1963) 7 Fac L R 269 : (1963) 2 Lab L J 396 (S C) : (1964-65) 26 F J R 289 : (1964) 3 S C R 652.

● ——Art. 226—Natural justice—Rules of—Procedure —Enquiry against employee charged with misconduct—Reasons for disbelieving evidence adduced by employee in defence held to be infirmities — Final

conclusion held unacceptable— Enquiry held not in accordance with principles of natural justice— Industrial Disputes Act (1947), S 10 (1) (d) — Constitution of India, Art. 226 — Domestic Tribunal — Natural justice.

In an enquiry held against an employer for misconduct, the reasons which led the enquiry officers to disbelieve the evidence adduced by the employee in his defence were as follows. The first reason was that the version of the defence witnesses could not be believed as some of them were absent from duty on the date of the incident. This fact appeared to have been ascertained by the enquiry officers from the attendance register without notice to the employee. The second reason was that. while the incidents took place at 7 a. m. on the day in question, one of the defence witnesses was on duty at 3 p. m but he mentioned only in his cross examination that he came to duty between 6 45 a. m. and 7 a. m. The witness was not asked to explain the discrepancy. The third reason was based on the evidence recorded by the enquiry officers in a separate enquiry against another employee. The evidence in that enquiry was not recorded in the presence of the employee whose defence evidence was disbelieved and he had no opportunity to test the said evidence by cross-examination.

Held, that (1) all the three reasons on which the final conclusion of the enquiry officers was based constituted serious infirmities which introduced an element of unfairness in the whole inquiry and the report made by the enquiry officers against the employee could not be accepted as a report made after holding a proper inquiry in accordance with the principles of natural justice; (2) the second reason was open to serious challenge inasmuch as in disbelieving the particular witness on a ground not put to him, the enquiry officers had acted unfairly against the employee. The rule that a witness should not be believed on the ground of inconsistency between his statement and another document, unless he is given a chance to explain the said document, could not be treated as a technical rule of evidence and the principle on which the said rule was based was one of natural justice ; (3) As regards the third reason, it was unfair to rely upon the evidence in the enquiry against the other employee when the enquiry officer was dealing with the case of the employee whose evidence was disbelieved. Associated Cement Companies, Ltd. v. Workmen, **(1963) 7 Fac L R 269: (1963) 2 Lab L J 396 (S C) : (1964-65) 26 F J R 289 : (1964) 3 S C R 652.**

● —Art. 226—Natural Justice—Domestic Tribunal — Enquiry by — Natural justice — Enquiry against workman's conduct—Enquiring officer not examining any witness—Only the workman against whom the enquiry was, examined — Report of officers against workman not read out—Officers though present not examined before workman nor allowed to be examined by the workman—Rules of natural justice held not followed—Industrial tribunal cannot rely on the finding of the domestic tribunal in order to decide whether permission to should be granted to management under S. 33 to dismiss the workman pending the proceeding before the tribunal—Industrial Disputes Act (1947), S. 33. Bharat Sugar Mills Ltd. v. Shri Jai Singh, **1962 (3) S C R 684 : (1961-62) 21 F J R 118.**

● —Art. 226—Hearing before tribunals—Applicability of Evidence Act. See Evidence Act (1872), S. 1. **AIR 1957 SC 882.**

—Art. 226 — Natural justice—Election—Kshettra Samiti—Election of Pramukh by preferential voting — Indication of preference — Finding of returning officer that in particular ballot papar the voter had marked figure 1 showing first preference vote—Finding held based on evidence and observation and not on conjectures—No violation of rules of natural justice or of evidence—Finding cannot be interfered with in writ jurisdiction. **ILR (1964) 1 All 701.**

—Art. 226—Natural justice—Criminal P. C., S. 512 (1) — Rule in S. 512 (1), Criminal P. C.—If one of natural justice—General rule as to taking evidence against accused is that it must be taken in his presence—Section engrafts exception on general rule—Rule in section is one of natural justice, in asmuch as evidence can be recorded in absence of person affected who by his conduct has chosen to be, absent, when it was being tendered—Natural justice must take account of both sides of the picture because it is essentially a rule of fair play. See Criminal P. C. (1898), S. 512 (1). **1958 Cri L J 324 : AIR 1958 All 214 (DB).**

—Art. 226—Natural Justice—Administrative Tribunals — University — Enquiry into charge of malpractice at examinations by Board of examiners—No rules or regulations in University Code — Failure to tender witness for examination — No violation of natural justice — Mandamus — Jurisdiction of High Court—Exercise.

The requirements of natural justice depend upon the character of the Tribunal, the nature of the enquiry and the effect of adjudication. The question whether or not any rules of natural justice have been contravened would be decided in the light of statutory rules and provisions under which statutory body functions. (1943) 2 All E R 337 and AIR 1957 S C 232 and AIR 1958 S C 398, Rel. on.

In cases, however, where no rules or regulations have been framed in regard to the matter in which the tribunal passes certain orders, natural justice could only mean that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case;, and thirdly, that the tribunal should act in good faith. (1958) 2 All E R 579, Foll.; 1919 A C 606 and (1949) 1 All E R 109 and (1960) 1 All E R 631, Rel. on.

Petitioner, a student in the University was rusticated for a period of two years for having adopted malpractice at the examination. The petitioner filed a writ petition contending that the witnesses on whose statements University relied were not examined and that he was not allowed to cross-examine them.

Held (i) that as no form of procedure was prescribed, it was for the Vice-Chancellor to determine the procedure to be followed, as he thought best, subject to the obvious implication that some form of inquiry must be made such as would enable him fairly to determine whether he should hold himself satisfied that the charge in question had been made out. Beyond that, there was no obligation on the part of the University to have witnesses examined in the presence of the petitioner so as to enable him to cross-examine them. Thus, the failure of the Tribunal to tender witnesses for examination did not constitute any violation of natural justice. (1960) 1 All E R 631, Rel. on. ; AIR 1961 Mys 164, Dist. (ii) that the High Court in the exercise of its jurisdiction under Art. 226 would interfere and issue a writ of mandamus only if the statutory tribunal in question has refused to do what in law it is bound to do, or is attempting to do something which in law it has no power to do. It would not go into the question of disputed facts and review evidence and come to its own conclusions on facts. **(1962) 2 Andh L T 106 : AIR 1963 Andh Pra 83 (85, 86, 87) (Prs 9, 11, 16, 19).**

—Art. 226 — Natural justice—Material regarding delinquency of person gathered behind his back—No violation of natural justice. **AIR 1961 Andh Pra 378 (383, 384) (Pt E) (Prs 26, 28) (DB).**

——Art. 226—Natural justice—Violation—Effect — Central Excises and Salt Act, S. 35.

Whether in a case the refusal of a document has in fact caused prejudice or not, will depend upon the nature of the Tribunal, the character of the enquiry, the contents of the document asked for and all other relevant circumstances. Even in cases where there are certain statutory rules governing the procedure of enquiries, the mere violation of such rules will not give a party a cause of action unless there has been, in consequence, prejudice caused. AIR 1957 Andh Pra 197 and AIR 1958 Andh Pra 240, Rel. on.

Where the petitioner did not make any attempt before the primary authority, either to ask for a certified copy of the deposition of a witness or to examine him orally which he had a right to do, it cannot be said that the petitioner is prejudiced merely because he was refused a certified copy of the statement of a witness at the time of filing the appeal. In such a case it cannot be said that the principles of natural justice have been violated. **AIR 1961 Andhra Pra 350 (353, 354) (Pt B) (Pr 17).**

——Art. 226—Natural justice—Constitution of India, Art. 311—Disciplinary proceedings—Inquiries conducted by Tribunals — Rules of evidence not applicable. See Ibid, Art. 311. **1960-2 Lab L J 464 (Andh Pra).**

——Art. 226—Certiorari—Administrative Tribunal—Quasi-judicial orders — Violation of principles of natural justice—Interference—Order under S. 167 (8) of Sea Customs Act—Reliance upon statements taken in absence of person charged—Gross violation of natural justice — Order liable to be quashed—Sea Customs Act (1878), S. 167 (8).

An order of a Collector passed in an enquiry in the matter of confiscation of goods and imposition of penalty under Sea Customs Act is not an administrative order and is amenable to a writ of certiorari. The Collector in such an enquiry has got to adjudicate which necessarily implies determination based on principles of natural justice. One of the principles of natural justice being that a person cannot be convicted on the evidence taken behind his back, it is a gross violation of principles of natural justice to allow in an enquiry under S. 167 (8) of the Sea Customs Act certain alleged statements made by witnesses behind the back of person concerned to prejudice the mind of the enquiring officer without giving an opportunity to such person to cross-examine those witnesses. The order of confiscation passed in such circumstances can be quashed by a writ of certiorari. AIR 1957 S C 882 and AIR 1959 S C 1111 and AIR 1961 Mys 203, Rel. on. **I L R (1962) 14 Assam 305 : 1962 (2) Cri L J 174 : AIR 1962 Assam 108 (109) (Pr 3) (DB).**

——Art. 226—Natural justice—Principles of.

The Rules of natural justice require that a party should have an opportunity of adducing all relevant evidence on which he relies that the evidence of the opponent should be taken in his presence and that he should be given an opportunity of cross-examining the witnesses examined by that party and that no materials should be relied on against him without his being given an opportunity of explaining them. AIR 1957 SC 882, Rel. on. **AIR 1961 Assam 56 (62, 63) (Pt C) (Prs 13, 14) (DB).**

——Art. 226—Bengal Finance (Sales Tax) Act (VI of 1941), S. 11 (1)—Best judgment assessment—Decision is quasi-judicial—Violation of principles of natural justice — Disregard of evidence, oral or documentary led by assessee — Assessee not disclosed material on which assessment is being made — Order referring only to "other collateral circumstances"—Assessment can be quashed—Principles relating to such assessment—Non-compliance with — Order held invalid. **AIR 1965 Cal 498 (501, 502) (Pt B) (Prs 7, 11, 14, 15).**

——Art. 226—Petitioner's case was that tax on goods was not payable and not that it was paid—No violation of the principles of natural justice by not summoning Excise Officials to prove fact of payment of duty. **AIR 1965 Cal 203 (206) (Pt D) (Pr 9 (vi)).**

——Arts. 226 and 227—Certiorari and Mandamus — Order of dismissal under Railway Rules for taking bribe—No evidence adduced legal or otherwise to prove guilt of petitioner—Order based on conjecture and surmises violates principles of natural justice. AIR 1958 Cal 633, AIR 1956 Cal 662, Appellate Decree No. 939 of 1956, D/- 8-4-1960. AIR 1951 Cal 179, Ref. **1964 Cal L J 89.**

——Art. 226—Dismissal of petitioner from service relying on case diary without granting inspection thereof by him—Order of dismissal quashed in writ application with direction that if further enquiry was to be held and it was intended to rely on the case diary inspection thereof and cross-examination of witnesses if demanded by petitioner must be granted —Direction by High Court does not amount to a prohibition against reference to evidence on record — Second enquiry held—Though evidence of witnesses contained reference to case diary enquiry officer specifically stating that he relied on other evidence on record and not on the case diary—Held, that the omission to allow petitioner to inspect the case diary or to cross-examine witnesses during second enquiry did not amount either to a violation of principles of natural justice or the direction given by the High Court, on the writ application. **(1964) 8 Fac L R 227 (Cal).**

——Art. 226—Natural Justice—Fair hearing — Elements — Quasi-judicial orders — Orders under Sea Customs Act—Denial of opportunity to inspect documents held up in evidence against petitioner — No fair hearing. **1962 (2) Cri L J 342 : AIR 1962 Cal 460 (DB).**

——Art. 226 — Income-tax Act (1922), S. 34 (1-A)—Initiation of proceedings under — Income-tax Officer not bound to disclose source of his information prior to filing of return and inquiry — No violation of natural justice — Quashing of proceedings — See Income-tax Act (1922), S. 34 (1-A). **AIR 1960 Cal 619.**

——Art. 226—Sea Customs Act (1878), S. 167 — Opportunity to examine documents—Held on facts and evidence that applicants objection to an order imposing penalty under Sea Customs Act that he did not get an opportunity to examine documents on which he has been found guilty under Sea Customs Act, S. 167, was a mere after-thought and that he had ample opportunity for the same—See Sea Customs Act (1878), S. 167. **AIR 1959 Cal 533.**

[Reversed in AIR 1962 Cal 460.]

——Art. 226—Natural justice—Denial of — Review of Sales Tax Assessment—Demand for adjournment to produce evidence—Refusal—Interference—(Bengal Sales Tax Rules (1941), R. 79).

It is true that the question of granting adjournment of a proceeding is entirely in the discretion of the tribunal or the authority concerned and the High Court under Art. 226 of the Constitution cannot interfere with the exercise of the discretion unless it is arbitrarily exercised by the lower Court. 55 Cal W N 667. Rel. on.

Held, on facts that the refusal of the Commercial Tax Officer to give an opportunity to examine a wit-

bess on the ground that he was satisfied as a result of an ex parte enquiry made by him the evidence of the witness would serve no useful purpose was an arbitrary exercise of the discretion. Further it was clear law that if any finding was based on his personal knowledge or mere guess work such finding would not be warranted by law. Thus there can be no doubt that the petitioner had been prejudiced by non-disclosure of the sources of such information and there was thus violation of the principles of natural justice. 61 Cal W N 953 : AIR 1958 Cal 289 (293, 294 295) (Pt D) (Prs 12, 13, 15).

——Art. 226—Natural justice—Affidavit allowed to be filed—Opposite party also should be allowed to file affidavit—No notice taken of affidavit in deciding case—Decision will not be set aside. AIR 1955 NUC (Cal) 2060.

——Art. 226—Natural justice—Employee for breach of discipline under S. 25, of Bombay Police Act (22 of 1951) Section contemplates subjective satisfaction of removing authority—Quantum of punishment held no ground for holding breach of principle of natural justice. 1965 (2) Cri L J 743 : AIR 1965 Guj 283 (292, 293) (Pt F) (Prs 25, 26) (DB).

——Art. 226—Co-operative Society granting loan to workers in Mill - Default in repayment — Deductions from wages—Petition under Payment of Wages Act—Authority holding deductions illegal — Society not party to findings Order held not bad on ground of breach of principles of natural justice. See Bombay Co-operative Societies Act (7 of 1925), S. 24A. (1965) 6 Guj L R 539 : A I R 1966 Guj 67 (DB).

——Arts. 226 and 311—Government servant — Departmental enquiry against—Procedure to be followed in—Principles of natural justice—Evidence taken in absence of servant—Procedure not violative of natural justice. See Ibid, Art. 311 (2). AIR 1962 Ker 43.

——Art. 226—Natural justice—Principles of—Compliance of.

After the charge was read out in Malayalam, to the petitioner evidence was let in by examination of five witnesses. The questions and answers were explained to the petitioner in Malayalam as the examination went on and were recorded in both the languages. At the end of the examination of every witness in chief, the petitioner was asked to cross-examine but he refused and this refusal was also recorded. On 27-8-58, after the witnesses' examination was over, the petitioner put in request for copies of all the depositions in Malayalam. But this was refused on the ground that the proceedings were all conducted in petitioner's presence and were explained to him finally and it was not also the practice to give such copies.

Held that in the circumstances, it could not be said that any principle of natural justice had been violated so far the petitioner's enquiry was concerned. AIR 1957 S C 882, Rel. on. 1958 Ker L J 1066 : (1959) 1 Lab L J 153.

——Art. 226—Natural justice—Decision under Industrial Disputes Act, S. 25A(2)—Quasi-judicial — Party must be given opportunity to produce evidence in rebuttal of information got by Government. See Industrial Disputes Act (1947), S. 25A (2). AIR 1957 Ker 30 (DB)

——Art. 226—Punishment awarded to public servant in departmental proceedings — High Court setting aside punishment after investigating into charges on merits and not upon jurisdictional or other ground—Commencement of fresh proceeding against the public servant upon same allegations offends the principles of natural justice. See Ibid, Art. 310. AIR 1964 Madh Pra 155 (DB).

——Art. 226—Principles of natural justice—Absence of statutory provision governing procedure — Substantial compliance with rules of natural justice is enough — Removal of Municipal President by State Government.

Where the petitioner (Municipal President who had been removed by State Government) not only had a full opportunity of cross-examining witnesses produced in support of the complaints but also that he had a like opportunity of adducing evidence both oral and documentary and when subsequently he was called upon to furnish an explanation, he referred to the same evidence it cannot be said that there was a violation of the principles of natural justice only because, upon the formulation of charges against him, he was not afforded a fresh opportunity to meet those charges. Rules of natural justice vary with the varying provisions of statutes and the rules made thereunder. AIR 1958 S C 398 Rel. on.

Where there is no provision in an Act or the rules made thereunder governing the procedure to be followed in the matter a substantial compliance with the principles of natural justice should be regarded as sufficient. 1960 Jab L J 678 : 1960 M P C 325 : 1960 M P L J 633 : ILR (1960) Madh Pra 216.

——Art. 226—Natural justice.

Petitioner was confirmed manager of the Co-operative Agricultural Association. He was suspended by the managing committee under direction from Assistant Registrar, Co-operative Societies who during inspection found instances of defalcation, shortage and misconduct committed by the petitioner.

Held, that since there was no procedure prescribed for punishment, the proceedings must be regulated by principles of natural justice. 1952 Nag L J Note No. 219, Foll. 1958 M P L J (Notes) 90.

——Art. 226 — Natural Justice — Rules as to—Abrogation of—When amounts to—Principle of waiver — Evidence Act (1872), S. 115.

There can be no infringement of the rules of natural justice for the mere reason that the officer who ultimately decided the case did so on the evidence recorded by his predecessor. Conduct of trials by a succeeding Judge from the stage at which it was left by his predecessor, is recognised by the Civil P. C. It is not unknown in the trial of criminal cases also. It cannot be otherwise in departmental enquiries. In matters where the administrative enquiry is of a quasi-judicial nature, what the person would be entitled to is that the enquiry should be conducted with due regard to the rules of natural justice. There are no rules which require that the officer ultimately passing the final order as a result of the departmental enquiry should have himself examined all the witnesses. The rule of natural justice does not require that the evidence recorded in one part of the enquiry by one officer cannot be used by his successor who completes the enquiry, so long as such evidence was taken in the presence of the person charged after giving him a fair opportunity to cross-examine those witnesses.

An administrative enquiry on certain charges was made against a subordinate. Part of the evidence was recorded in his presence by one officer and the rest of it was recorded by another officer. Both sets of evidence were recorded in the presence of the person charged. Every opportunity was given to him to

cross-examine the witnesses. Nothing more was required to be done under the rules or under any principle of natural justice.

Held, that allowing the succeeding officer to continue the enquiry from the stage it was left by his predecessor, would mean that the person against whom the enquiry was conducted deliberately took the chance of the enquiry being continued from where it was left culminating in his favour. It should not be open to such a person after the inquiry is over, to complain that the witnesses must have been examined de novo by the officer. Secondly the mere fact that the previous officer might have gathered certain impressions about the witnesses examined by him and those impressions would not be available to the second officer, could not by themselves amount to an abrogation of any principle of natural justice. 77 Mad L W 659 : (1965) 2 Mad L J 98 : I L R (1965) 1 Mad 242 : (1965) 1 Fac L R 318 : A I R 1965 Mad 316 (317, 318) (Prs 2, 3, 5) (DB).

——Art. 226 — Domestic Tribunal — Enquiry by — Driver charged for overspeeding — Driver's licence suspended by Regional Transport Authority on finding of overspeeding — Finding conclusive and in subsequent domestic enquiry for overspeeding can be relied upon—Officer on whose report the finding was based need not be examined — No violation of principle of natural justice—(Motor Vehicles Act (1939), S. 16—Natural justice).

A charge against a driver of a transport before a domestic tribunal was that he was guilty of overspeeding and the Tribunal for proof of the charge relied on the fact that the driver was punished by a quasi-judicial authority, viz., the Regional Transport Authority, on the same charge.

Held, when the order suspending the driver's licence for overspeeding was passed by the Regional Transport Authority, it was exercising quasi-judicial powers, and it was also an appealable order. There being no evidence that the driver appealed against the order of the Regional Transport Authority suspending his licence, the position of the driver was that his driving licence had been suspended by a quasi-judicial authority on a finding that he had overspeeded, which had become conclusive against him. The substance of the charge was really that he had been guilty of overspeeding and to prove that charge, the fact of his being punished by a quasi-judicial authority which had the duty to determine the very same issue would be a relevant piece of evidence on which the domestic tribunal was entitled to rely. There was no violation of the principle of natural justice, because the tribunal did not examine the officer who was alleged to have actually detected the overspeeding and on whose report the finding of the quasi-judicial authority was based. (1965) 1 Lab L J 88 : (1965) 2 Mad L J 364 : (1966) 12 Fac L R 219.

——Art. 226 —Master and servant—Enquiry into conduct of municipal servant — Rule as to recording of oral evidence—Copies of depositions already recorded read over and got verified by witnesses in presence of person charged — Held there was substantial compliance with rule—There was no violation of principles of natural justice. A I R 1964 Mad 491 (492, 493) (Pr 8) (DB).

——Art. 226 —Natural Justice — Employee convicted of an offence by criminal Court—Employer dismissing employee in conformity with relevant rule on subject —No failure of natural justice — Separate enquiry before dismissal not necessary. A I R 1952 Mad 853, Rel. on. ILR (1964) 1 Mad 589 : 77 Mad L W 348 : (1964) 2 Mad L J 349 : 1964 Mad L J (Cr) 579.

——Art. 226—Natural Justice Principles—Postponement of payment—Time granted till specified day — Imposition of penalty in advance of the day—Principles of natural justice violated—Immunity from penal provisions — When available. See Estate Duty Act (1953), S. 70. AIR 1963 Mad 235.

——Art. 226—Principles of natural justice—Violation of—Appeal under — Tanjore Tenants and Pannaiyal Protection Act (14 of 1952), S. 13 (2) — Petitioner given ample opportunity which he availed of, to participate in the further enquiry ordered by Revenue Court and held by the conciliation officer—The order directing that further evidence be taken cannot be violative of the principles of natural justice. A I R 1955 N U C (Mad) 3197.

——Art. 226—Natural justice—Violation of principles — Conviction without hearing evidence—Imposition of fine jointly and severally — Judgment must be set aside. See Criminal P C. (1898), S. 537. 1957 Cri L J 1426 : AIR 1957 Manipur 34.

——Art. 226—Natural justice—Enquiry into conduct of employee—Charges should be framed—Extraneous matter should not be considered See Bombay District Municipal Act (3 of 1901), S. 46 (e), Rules under. AIR 1961 Mys 181 (D B).

——Arts. 226, 311 — Enquiry against public servant before Tribunal—Writ petition against the decision — Jurisdiction and powers of High Court — Nature and scope of enquiry before Tribunal—Principles of natural justice.

Where in an enquiry of a public servant before the Administrative Tribunal the previous statements of some of the witnesses were proved in the presence of the delinquent who was given full opportunity for cross-examination, there was nothing illegal in treating those previous statements as substantive evidence and there was no denial of reasonable opportunity. It is within the jurisdiction of a Tribunal of fact to draw adverse inference from the omission as much as from the commission The High Court has no jurisdiction, if the findings of the Enquiring Officer or the Tribunal prima facie make out a case against the delinquent, to direct the authority to reconsider that order, on the ground that in respect of some of the findings, but not all, it appears that there had been violation of the rules of natural justice. A I R 1963 S C 779, Relied on ; A I R 1964 S C 334. Considered and Distinguished. AIR 1963 S C 404 and AIR 1961 S C 1623, Rel on. (1965) 1 Lab L J 173 : (1965) 7 O J D 147 : A I R 1964 Orissa 241 (245, 246) (Pt D) (Prs 9, 10, 13) (DB).

——Art. 226 —Natural justice — Cases of preventive detention — Procedure before Advisory Board. See Public Safety—Preventive Detention Act (1950), S. 10. AIR 1965 Punj 270 (DB).

——Art. 226—Natural justice—Principles of—Law as to service of summonses—Personal service. See Civil P. C. (1908), O 5, R. 12. 67 Punj L R 643 : I L R (1965) 2 Punj 274.

——Art 226—Natural justice—Rules 69. (2)(b), 39 of the Rules made under Act—Return filed before appropriate Assessing Authority and tax paid — Notice by other Assessing Authority authorised to tax requiring dealer to appear before it—Held, order of transfer of assessment proceedings operates to serious prejudice of assessee's rights. See Sales-tax—East Punjab General Sales-tax Act (46 of 1948), S. 21. 67 Punj L R 465 : 1965 Cur L J 259.

——Art. 226—Natural justice—Seizure of contraband gold — Onus to show that it is smuggled — Secret

enquiry during hearing — Breach of rule of natural justice. See Sea Customs Act (1878). S. 178-A. 1964 (1) Cri L J 68 : AIR 1964 Punj 23 (DB).

——Art. 226—Educational authority — Enquiry Proceedings—Power to interfere — Quasi-judicial order by standing committee of University — Use of unfair means in examination by student—Student disqualified without any supporting material on record — High Court can interfere in writ jurisdiction. 1964 Cur L J 348 : 66 Punj L R 852.

——Art. 226—S. 96, Motor Vehicles Act — Proceedings under. do not violate principles of natural justice. See Motor Vehicles Act (1939), S. 96. AIR 1959 Punj 297 (DB).

● ——Art. 226 — Criminal P. C. (1898), S. 476-B — Appeal against filing of complaint — No limitation is prescribed—In consonance with principles of natural justice, time would be taken to start from the date of appellant's knowledge of filing of complaint and in every case he should be entitled to extension of time on score of sufficient cause. — (Limitation Act (1908), Art. 154). See Criminal P. C. (1898), S. 476B. A I R 1957 Punjab 134 (FB).

——Art. 226 — Writ of certiorari—Tribunal constituted under Act—Classification of Tribunals—Natural justice — Writ not issued — [Abducted Persons (Recovery and Restoration) Act (1949), S. 6].

The Tribunal constituted under S. 6, Abducted Persons (Recovery and Restoration) Act, 1949, falls within Cl. (2) of the classification made by Lord Esher, M. R. in (1888) 21 Q B D 313. The Act has given to the Tribunal the power to determine facts and to exercise jurisdiction, and the mere fact that wrong decision has been given on those facts is not a question which goes to the jurisdiction of the Tribunal. Hence, the High Court cannot issue a writ of certiorari for the purpose of quashing the order made by the Tribunal holding that certain persons (in this case two women) are abducted persons. A I R 1952 S C 319, Ref. Note.—It was held in this case that there has been no infringement of the concept of natural justice because (1) the Rules made under the Act themselves prescribe a procedure which has been followed ; and (2) reasonable opportunity was given to petitioners to appear and lead evidence. Case-law Ref. 1954 Cri L J 1056 : ILR (1954) Punj 857 : AIR 1954 Punj 145 (148, 149) (Pt C) (Prs 18, 27, 28) (DB).

79. **Nature and scope of proceedings under.**
See also, Note 69.

(a) **Question of fact.**
(b) **Judicial.**
(c) **Matter not justiciable.**
(d) **Original proceedings.**
(e) **Presidency High Courts, powers of, before Constitution.**
(f) Special jurisdiction.
(g) Summary.
(h) Decision on merits.
(i) Appreciation of evidence.
(j) Discretionary orders.
(k) **Proceeding, whether suit.**
(l) **Conversion of proceedings.**
(m) Whether civil proceedings.
See also, Notes 10 and 79.
(n) **Error of law.**
(o) **Constitutional issue.**
(p) **Question of title.**

79. **Nature and scope of proceedings under.**
See also, Note 69.

● ——**Art. 226 — Nature and scope of jurisdiction of High Court.**

The High Court can issue writs in the nature of prerogative writs as understood in England, but the scope of those writs also is widened by the use of the expression 'nature', which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under Art. 226 with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the article itself. But this does not mean that the High Courts can function arbitrarily under this article. There are some limitations implicit in the article and others may be evolved to direct the article through defined channels. A I R 1961 S C 1731 and A I R 1954 S C 440 Foll. Dwarka Nath v. Income-tax Officer, Special Circle, D Ward, Kanpur. (1965) 2 S C A 868 : (1965) 2 I T J 218 : (1965) 2 S C J 296 : (1965) 57 I T R 349 : (1965) 2 S C W R 391 : AIR 1966 S C 81 (84, 85) (Pt A) (Pr 4).

● ——**Art. 226 — Nature and scope of proceedings under Art. 226.**

Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. Persons other than those claiming fundamental rights can also approach the High Court seeking a relief thereunder. Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal. (1962) 2 S C A 147 : (1963) 1 S C J 106 : (1962) Supp 3 S C R 1 : AIR 1962 S C 1044 (1047, 1048) (Pt A) (Pr 5).

——**Arts. 226, 32 and 133 — Proceedings for enforcement of fundamental rights are civil and not extraordinary in nature.**

The rights conferred under Part III of the Constitution are ordinary civil rights which were enjoyed by the citizens before 1950. The Constitution merely raised them to the status of fundamental rights which means that the State cannot infringe them. In England the proceedings for the enforcement of these rights are civil in nature, and the position in India is not different. **AIR 1965 All 106 (116) (Pt D) (Pr 44) (DB).**

——**Art. 226 — Exercise of writ jurisdiction only in interest of justice and cannot be invoked for obtaining unfair advantage — Motor Vehicles Act (1939), S. 57 (8).**

The writ jurisdiction of the High Court can be exercised only in the interest of equity and justice. Hence where a petitioner wants to continue to take advantage of an order made in her favour under S. 57 (8) of Motor Vehicles Act extending her route, and comes up to challenge another order by which a more equitable arrangement has been brought into existence so as to do away with the hardship of the other bus operators, which is the result of the order earlier made favouring the petitioner :

Held, that the ground by itself was sufficient to throw out the writ petition. **1963 All L J 909.**

——**Art. 226 — Jurisdiction of High Court — Can be invoked only when there is infringement of petitioner's right or alleged threat to it — Mere declara-**

tion of intention to requisition house for residence of High Court Judge — Not per se illegal — Remedy by way of writ petition misconceived. AIR 1962 All 8.

——Art 226—Proceedings under—Nature of—When civil proceeding, stated. See Ibid, Art. 133. AIR 1960 All 84 (DB).

——Art. 226—Proceedings under—Nature of—Whether civil proceedings — Tests indicated. See Ibid, Art. 133 (1). AIR 1958 All 621 (DB).

——Art. 226—Nature of proceedings under — Whether civil proceedings.

A proceeding under Art. 226 for a writ is not a civil proceeding.

Article 225 retains the civil, criminal testamentary intestate and matrimonial jurisdictions conferred upon the High Court under the Letters Patent and Art. 226 confers additional jurisdiction. Since it is additional jurisdiction, it must be different from the jurisdiction mentioned above. The nature of a proceeding under Art. 226 does not depend upon the nature of the earlier proceeding before the inferior Court or tribunal. Nor is there any connection between the nature of the proceeding under Art. 226 and the fact whether a civil suit would lie or not.

The Allahabad High Court has framed rules regulating the procedure in petition under Art. 226. If the test of a civil proceeding is that it is governed by the Code of Civil Procedure, a proceeding under Art. 226 is not a civil proceeding under these rules. It is well established that even when the jurisdiction of a civil Court is barred, the High Court's jurisdiction to issue a writ under Art. 226 is not barred. this again points to a proceeding under Art. 226 being different from a proceeding in a civil Court.

Per Beg J., Contra. — A proceeding which deals with right of a civil nature and is otherwise civil does not cease to be so just because a party chooses to resort to Art. 226 for the enforcement of such a right.

No doubt, Art. 226 has carved out a new area of power for the High Court. The High Courts exercise these new powers as part of their ordinary general jurisdiction. 1957 All W R (HC) 268 : A I R 1957 All 505 (511, 512, 514, 515, 522, 523, 524) (Pt E) (Prs 7, 8, 11, 14, 33, 35) (DB).

——Art. 226—Scope.

The power given by Art. 226 of the Constitution is of a very wide nature. In the exercise of this power the High Court can issue a mandamus order or direction for the enforcement of any legal right and the performance of any legal duty. I L R (1954) 1 All 582 : A I R 1954 All 393 (411) (Pt M) (Prs 90, 91) (DB).

● ——Art. 226—Exercise of the power to issue writs under—Duty of courts.

The terms of Art. 226 of the Constitution are very wide. The fact that the High Court has been vested with such vast powers imposes a heavy responsibility upon it to use them with circumspection. But it does not mean that either the High Court will be hesitant in issuing the appropriate writ, order or direction or that there is any universal or general principle which governs the grant or refusal of the writs, orders or directions. Asiatic Engineering Co. v. Achhru Ram, I L R (1952) 2 All 838 : 1951 A L J 576 : AIR 1951 All 746 (768) (Pr 54) (FB).

● ——Art. 226—Scope.

Malik C. J. — Powers under Art. 226 which are very wide should be sparingly used, only when there is no other adequate remedy, and an application under Art. 226 is the only convenient, beneficial and effectual means of the getting redress.

Further, power of issuing directions and orders, than writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, are intended to enable Court to secure inter alia, the enforcement of any rights conferred by Part III, in cases where one or more named writs is or are not justified.

[Notion and theory of fundamental rights and directions discussed by Sapru J.]

Agarwala J —(Malik C. J. contra).—The condition that there ought to be a demand and refusal before an application for mandamus is made ought not to be considered as an absolute legal bar, so as to deprive the applicant of redress to which he is otherwise entitled.

[In view of the undertaking given by the Advocate-General that the Regional Transport Authority will consider applications made in future for the issue of permanent permits under Motor Vehicles Act in accordance with law, Malik C. J. and Mootham and Wanchoo JJ. did not consider it necessary to issue any directions in this respect. But Sapru J. held that there was no reason why the direction should not issue even when the Advocate General has given an undertaking.] Moti Lal v. Govt. of Uttar Pradesh, ILR (1951) 1 All 269 : AIR 1951 All 257 (265, 274, 284, 285, 298, 317, 333) (Pt J) (Prs 35, 84, 134, 135, 194, 203, 310, 473) (FB).

——Art. 226—Power of High Court.

A writ, order or direction under Art. 226 of the Constitution will issue to remedy a wrong not to promote one. It will not issue where it is likely to work a public or a private mischief. (1964) 1 Andh L T 403 : (1964) 2 Andh W R 342 : AIR 1965 Andh 20 (25) (Pt D) (Pr 20).

——Art. 226—Nature of jurisdiction under.

Under Art. 226, the High Court does not sit in appeal over the decision of the tribunal, its powers under Art. 226 being restricted and confined to cases of excess of jurisdiction or want of jurisdiction or there being a palpable abuse of the process of the Court or an error apparent on the face of the record. Where none of these is established, the High Court will not interfere with the Tribunal's finding of fact. (1959) 2 Lab L J 261 (AP).

——Art. 226 — Extent of jurisdiction of High Court —Grounds of interference.

The jurisdiction of the High Court in an application under Art. 226 of the Constitution is very much limited. Not all matters which can be canvassed before an appellate Court can be urged before the High Court in these proceedings. The essential grounds on which the order of a quasi-judicial tribunal can be sought to be quashed are: (1) on the ground of there being an error apparent on the face of the record; (2) the order being manifestly against the principles of natural justice. (1959) 1 Lab L J 235 (Andh Pra).

——Art. 226 — Nature of proceedings under. See Andhra Court-fees and Suits Valuation Act (7 of 1956), S. 79 (2). AIR 1958 Andh Pra 60 (DB).

——Art. 226 — Powers of High Court—Decision of District Judge under S. 51, Madras District Municipalities Act — Interference with — (Municipalities —Madras District Municipalities Act (5 of 1920), S. 51).

Under S. 51 of the Act the Legislature has constituted a responsible judicial officer of the rank of a District Judge for deciding questions of disqualifications of councillors and has also constituted him as a persona designata. Section 51 provides that his deci-

sion shall be "final" that is to say, not subject to appeal. This provision does not, however, bar petitions for writs under Art. 226 of the Constitution. In hearing these petitions the High Court cannot assume the powers of an appellate Court and decide whether the evidence is sufficient in quantity to support a finding of fact arrived at by the District Judge. 1955 Andh W R 972 : ILR (1956) Andh Pra 127 : AIR 1957 Andh Pra 900 (DB).

——Art. 226 — Interference under.

The tests laid down for interference under Art. 226 of the Constitution are whether there has been violation of any principle of natural justice or violation of any statutory principles or any malice in fact or law. ILR (1958) 10 Assam 108

——Arts. 226 and 227—Jurisdiction of High Court —Nature and extent of.

The High Court is not a Court of Appeal and, it cannot under Arts. 226 and 227 convert itself into an Appellate Tribunal with a view to examining on merits the correctness of the order impugned.

The jurisdiction exercised by the High Court under the above provisions is a supervisory jurisdiction with the result that it cannot review findings of fact arrived at by an inferior Court, Body or Tribunal even if such findings were erroneous.

But, where a subordinate Tribunal or body of officers acts without jurisdiction or in excess thereof or acts with illegality in the exercise of its jurisdiction or in disregard of the principles of natural justice or where there is error apparent on the face of the record, the High Court is not only entitled, but bound to act in the exercise of its constitutional powers to avoid mischief and injustice. The power of judicial superintendence conferred by Art. 227 of the Constitution can be exercised by the High Court in appropriate cases in order to keep the subordinate Courts or Tribunals within the bounds of their authority. AIR 1957 Assam 182 (184, 188) (Pt A) (Prs 5, 13) (DB).

——Art. 226 — Interference — Grounds.

Generally the necessary pre-requisites for interference with decisions arrived at by Tribunals whose conclusions on questions of fact are final, can be classified as, (1) where the Tribunal acts in excess of the jurisdiction conferred upon it under the statute or regulation creating it or where it ostensibly fails to exercise a patent jurisdiction; (2) where there is an apparent error on the face of the decision and (3) where the Tribunal has erroneously applied well-accepted principles of jurisprudence. It is only when error of this nature exist, that interference is called for. AIR 1957 S C 78, Foll. (1959-60) 16 FJR 7 : (1959) I Lab L J 565 : AIR 1957 Assam 111 (113) (Pt A) (Pr 9) (DB).

——Art. 226 — Powers of High Court — (Motor Vehicles Act (1939) S. 47).

If writ petitions the High Court has got no appellate powers. It can interfere only if there is a defect of jurisdiction in the orders or if there is a patent illegality which results in a failure of justice. To allow stage carriage permits is in the discretion of authorities under Motor Vehicles Act. Therefore where the order of such authority is not illegal, the High Court even if it felt that some injustice has been done to the petitioner for no fault on his part, can give no relief to him. ILR (1956) 8 Assam 507.

——Art. 226—Power to interfere—Considerations in the exercise of.

In an application made under Art. 226, all that High Court is concerned with is to see whether the appellate authority (in this case acting under the Motor Vehicles Act) had jurisdiction to make the order it did. And if it is satisfied that there was no want of jurisdiction in making the order and that there was no violation of principles of natural justice then the High Court would refuse to interfere in the order made. AIR 1954 Assam 17 (18) (Pt B) (Prs 4, 6) (DB).

——Art. 226 — High Court does not act as Court of appeal.

When acting under Art. 226 the High Court does not act as a Court of appeal particularly where the law confers no right of appeal Even if the High Court could come to a different conclusion on facts, interference with the order would not be justified. ILR (1953) 5 Assam 447 : AIR 1954 Assam 12 (16) (Pt E) (Pr 24) (DB).

——Art. 226 — Duty of petitioner — Petitioner to satisfy Court that justice lies on his side.

It is not sufficient that a party should come to the High Court and make out a case that particular requisition order is not valid. In order to get that relief from the Court on a writ petition, not only must he come with clean hands, not only must he not suppress any material facts, not only must he show the utmost good faith, but he must also satisfy the Court that the making of the order will do justice and that justice lies on his side. 61 Bom L R 318 : ILR (1959) Bom 990.

——Art. 226 — Proceedings under — Nature of proceedings — Applicability of O. 27-A, Civil P. C. — Notice to Attorney-General — Necessity. See Civil Procedure Code (1908), O. 27-A, R. 1. AIR 1957 Cal 702.

——Art. 226—Beneficial construction.

Being a provision contained in a written Constitution, the article must receive a construction which is most beneficial to the widest possible amplitude of its powers. 56 Cal W N 264 : A I R 1952 Cal 610 (612) (Pt B) (Pr 18).

——Art. 226—Powers of High Court.

The powers given to a High Court under Art. 226 are to be exercised in accordance with the principles which governed the high prerogative writs prior to the Constitution. 87 Cal L J 149 : AIR 1952 Cal 315 318 (Pt B) (Pr 11).

——Art. 226 — Proceedings under — Nature of. See Industrial Disputes Act (1947), S. 33-A. A I R 1959 Ker 291.

——Art. 226—Powers under—Extent.

(Per Mack J.)—Art. 226 confers on the High Court extremely wide powers of interference and a corresponding extremely heavy burden of responsibility. The framers of the Constitution could never have contemplated High Courts constituting themselves on applications by all sorts of aggrieved persons into inquisitorial tribunals supervising, criticising, modifying or cancelling the actions and orders of different departments of executive authority, institutions, public bodies and last but not least of the Legislatures as regards their internal affairs which are controlled by the Speaker and the House and its committees. It is only in exceptional cases that writs under these wide powers "for any other purposes" can be issued, such as for instance when there has been a clear violation of statutory law, when principles of natural justice have been violated or perhaps where there has been mala fide discrimination against an individual to the detriment of his rights It is impossible to define with exactitude the cases in which Art. 226 of the Constitution can be rightly invoked. They should be comparatively exceptional and very few. ILR (1953) Mad 93 : 64 Mad L W

1031 : 1951 Mad W N Cri 258 : 1951 Mad W N 838 : 1952-1 Mad L J 1 : A I R 1952 Mad 117 (118) (Pt D) (Pr 5) (DB).

——Arts. 226 and 227 — Duty of High Court — Protection of rights of Indian citizens.

It must be emphasised that according to our Constitution, Courts are the ultimate authority to restrain all exercise of absolute or arbitrary power by subordinate tribunal. It is the duty of the High Court to protect the Indian citizens from having their personal rights and property taken away by any means which are not strictly legal. 61 Punj L R 905 : A I R 1960 Punj 278 (280, 281) (Pt B) (Pr 3).

79 (a). Question of fact.

● ——Arts. 226, 286 (1) (b)—Assessment of sales tax — Assessee claiming exemption under Art. 286 (1) (b) —Burden of proving facts is on assessee — Nature of jurisdiction of High Court under Art. 226 — Should not determine questions of fact—Rajasthan Sales Tax Act (29 of 1954), S. 3 ; A I R 1964 Raj 5, Reversed. Sales Tax Officer, Jodhpur v. Shiv Ratan G. Mohatta, 1965 Kant L J 90 : (1965) 16 S T C 599 : (1965) 2 S C W R 243 : AIR 1966 S C 142 (144, 145) (Prs 11, 13, 14).

● ——Art 226 — Scheme validly framed under Madras Hindu Religious Endowments Act, 1927—Executive Officer seeking to take over administration after repeal of Act of 1927 — Court will not examine in writ proceedings whether the scheme is consistent with Act of 1951 - See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 103, (d). A I R 1965 S C 502.

● ——Art. 226 - Certiorari—Inquiry into merits—In a petition for a writ of certiorari it would normally not be open to the employer petitioner to challenge the merits of the findings made by the authorities under the Industrial Employment (Standing Orders) Act (1946). Associated Cement Co., Ltd. v. P. D. Vyas, (1961-62) 20 F J R 59 : (1961) 2 Fac L R 569 : (1960) 1 Lab L J 563 : 1960 Nag L J 473 : 1960 Mad L J (Cr) 204 : 1960 S C J 1269 : (1960) 2 Mad L J (SC) 107 : 62 Bom L R 563 : (1960) 2 Andh W R (SC) 107 : (1960) 2 S C R 974 : A I R 1960 S C 665 (668, 669) (Pt B) (Pr 9).

● ——Arts. 226, 133, 227 — Question of fact—Interference. See Ibid, Art. 133. A I R 1957 S C 264.

——Art 226—Interference with findings of facts.

There is no law which prevents High Court from investigating a pure question of fact while exercising its writ jurisdiction under Art. 226 of the Constitution. No such limitations as are imposed under Ss. 100 and 101 of the Code of Civil Procedure in a second appeal have been imposed by the Constitution on the High Court while exercising its jurisdiction under Art. 226 of the Constitution. AIR 1962 All 439 (443) (Pt F) (Pr 12).

——Art. 226 - Order under S. 60, Motor Vehicles Act cancelling permit - Findings of R. T. A. that charges against petitioner were proved not manifestly wrong, perverse, grossly erroneous or such as which no one would reasonably arrive — Court will not function as a Court of appeal and examine the question whether the findings were based on a proper assessment of the probative value of the evidence. 1962 All L J 116.

——Art. 226 — Writ petition — Finding of fact by industrial tribunal - Interference by High Court.

A finding of fact recorded by an Industrial Tribunal, which is sole judge of facts arising in an industrial dispute referred to it for adjudication, cannot ordinarily be interfered with by the High Court in exercise of the extraordinary jurisdiction under Art. 226 of the Constitution (1961) 3 Fac L R 178 ; (1962) 1 Lab L J 455 (All).

——Art. 226 — Finding of fact—Court normally not to go behind findings of fact—But Court is entitled to examine questions of fact on which jurisdiction to pass orders, depends. 1961 All W R (HC) 86 : 1961 All L J 36.

——Art. 226—Evidence.

It is not possible for the High Court to take notice of alleged events which are not proved by the record. AIR 1960 All 304 (309) (Pt B) (Pr 15).

——Art. 226—Finding of fact - Except in exceptional cases, finding of fact of the subordinate authority entitled to decide the question is usually accepted by High Court in writ application. 1960 All L J 409.

——Art. 226 — Question of fact — High Court will not determine.

The question whether the ballot papers were valid, or whether they were invalidated because the voters had voted for more candidates, is a question of fact for determination by the Tribunal. The High Court in the exercise of its writ jurisdiction is not an appellate Court and it can only quash the order of the tribunal if it is satisfied that the tribunal has misdirected itself on a question of law. 1960 All L J 12 : 1960 All W R (HC) 40.

——Art. 226—Scope of inquiry - Comment on merits.

It is not the normal function of the High Court, in proceedings under Art. 226 to comment upon the findings of the tribunal on merits. A I R 1959 All 795 (798) (Pt D) (Pr 15).

——Art. 226 - Questions of fact—High Court, if can investigate.

It is not open to the petitioner to ask the High Court in proceedings under Art. 226 to enter into investigation of those questions of fact which are really the concern of the Tribunal concerned. So far as the High Court is concerned, it will in those proceedings refrain from making an enquiry, holding the fact one way or the other, unless the complaint is that the finding itself was arrived at by the tribunal without any evidence, etc. 1958 All L J 863 : (1959) 1 Lab L J 227 : A I R 1959 All 369 (372) (Pt C) (Pr 10).

——Art. 226—Question of fact.

There is no bar to the decision of a question of fact in writ proceedings. Of course when it cannot be conveniently decided the High Court will not decide a question of fact. 1959 All L J 477.

[Overruled on another point in A I R 1965 All 382 (F B).]

——Art. 226—Finding of fact.

A finding of fact cannot be allowed to be questioned in writ proceedings. 1958 All W R (HC) 97 : 1958 All L J 37 : 1958 Cri L J 984 : 1959 All Cr R 79 : A I R 1958 All 575 (577) (Pt C) (Pr 6) (DB).

——Arts. 226 and 227—Finding of fact.

A finding of fact based upon evidence cannot be challenged in petition under Arts. 226 and 227. 1957 All L J 325 : 1957 All W R (HC) 388.

——Arts. 226, 227 — Question of fact—No interference—(Civil P. C. (1908), S. 115).

In the case of cumulative votes the question whether a voter has cast votes separately in favour of the three different candidates or he has cast more than one vote in favour of one of the candidates, is a pure question of fact and the finding of the Election Tribunal which is not vitiated by any error of law must

be accepted in the proceedings under Art. 226 or 227 of the Constitution. AIR 1955 All 163 (163, 164) (Pt A) (Pr 4).

——Art. 226—High Court s power under - High Court is not Court of appeal - Finding of Court of Revenue based on evidence will be accepted. AIR 1955 N U C (All) 3303.

——Art. 226—Mandamus.

Sanction to build granted by Executive Officer, subsequently revoked by Municipal Committee—Municipality urging that revocation was justified because the officer had sanctioned plan without applying his mind to the matter, that the plan was not in accordance with by-laws and that the petitioner had obtained sanction by fraud and misrepresentation — Held, High Court would not examine these matters in the proceeding for mandamus under Art. 226 ILR (1954) 2 All 41 : 1953 All W R (HC) 431 : 1953 All L J 386 : AIR 1953 All 681 (682) (Pt A) (Prs 6, 7) (DB).

——Art. 226—Jurisdiction under Article.

It is well settled that the determination of disputed questions of fact or law, and the consideration of the reliability or sufficiency of evidence, are matters which are outside the purview of a proceeding under Art. 226 of the Constitution and the High Court will not arrogate to itself a function which belongs elsewhere. (1965) 2 Andh W R 102 : 1965 (2) Cri L J 602 : AIR 1965 Andh Pra 415 (418) (Pt B) (Pr 14) (DB).

——Art. 226 — Procedure — Finding of fact based upon appreciation of relevant evidence—High Court has no jurisdiction to review the evidence under Art. 226. (1965) 2 Andh W R 179 (DB).

——Art. 226 — High Court sitting in writ petition will not interfere with finding arrived at on evidence on record. (1963) 2 Andh L T 421.

——Art. 226—Employee whether a workman—Finding is of fact—Finding by labour Court—Interference under Art. 226. See Industrial Disputes Act (1947), S. 2 (s). (1960) 1 Andh W R 133 : (1960) M L J (Cr) 165 : AIR 1960 Andh Pra 526 (DB).

——Art. 226—Question of fact — It is difficult to determine a question of fact in a writ petition on merely affidavits and counter affidavits. (1959) 2 Andh W R 565 : 1959 Andh L T 938 : 1959 Mad L J (Cri) 970 : (1960) 1 Lab L J 55 : AIR 1960 Andh Pra 147 (149) (Pt B) (Pr 5).

——Art. 226—Writ proceedings—Disciplinary tribunal's finding — High Court's power to examine sufficiency of evidence for. See Ibid, Art. 311. AIR 1960 Andh Pra 15 (DB).

——Art. 226 — No interferfence with conclusion of fact. (1959) 2 Lab L J 712 (AP).

——Art. 226—Finding of fact arrived at on evidence cannot be interfered with. (1959) 2 Lab L J 271 (Andh-Pra).

——Arts. 226 and 227 — Finding of fact — Interference.

Decisions on facts are not interfered with in exercise of powers under either of Arts. 226 and 227 if the finding is supported by evidence. Where some evidence does exist to support the conclusions reached by the inferior tribunal, the probability of a different conclusion by the High Court on the material is no ground for interference by a writ of certiorari. Where the writ petitioners had a fair opportunity of meeting the case the other party was putting against them, any decision on the evidence produced can hardly be treated as vitiated by surprise. (1959) I Lab L J 563 (Andh Pra).

——Art. 226—Question of fact.

It is not possible to determine a question of fact within the limited scope of an application under Art. 226. (1958) 2 Andh W R 580 : AIR 1958 Andh Pra 773 (778) (Pt B) (Pr 21).

——Art. 226—Question of fact — Inquiry into—Permissibility.

Questions of fact requiring evidence cannot be enquired into or determined in a writ petition under Art. 226. (1958) 33 I T R 457 : (1958) 1 An W R 322.

——Art. 226—Additional evidence — Power of High Court to admit.

No order of an inferior tribunal can be quashed in exercise of the High Court s jurisdiction under Art. 226 of the Constitution on the basis of evidence not put before the inferior tribunal and not considered by it. At all events, the additional evidence sought to be adduced does not go to establish the total lack of jurisdiction of the tribunal. When the question raised is one of fact properly determinable by the tribunal and when so determined it is not open to attack. ILR (1958) Andh Pra 183 : (1958) 1 Lab L J 17.

——Art. 226—Scope of inquiry — Matter involving questions of fact — Determination in writ petition—(Madras Hindu Religious and Charitable Endowments Act XIX of 1951). S. 38.

Where the ground for setting aside the appointment of additional trustees is that their interests are adverse to the institution, the ground involves the determination of questions of fact which is not possible within the limited scope of a writ petition. AIR 1957 Andh Pra 108 (109) (Pt A) (Pr 9).

——Art. 226—Question of fact.

It is not open to the High Court to reassess the evidentiary material in order to reach an independent conclusion of fact. ILR (1956) Andhra 448.

——Art. 226—Writ petition under—Court cannot embark upon an elaborate consideration of question of fact based on evidence. ILR (1963) 15 Assam 366 : AIR 1963 Assam 186 (188) (Pt B) (Pr 6) (DB).

——Art. 226—Nature of inquiry—Questions of fact.

Where on an application under Art. 226 for quashing a particular order the Court is required to decide several questions of facts which cannot be decided without examining voluminous documentary evidence and hearing oral evidence the Court would not embark upon such enquiry to decide if writs, which are entirely discretionary should be issued. The Court should not do so as the writs are considered to be speedy remedies in order to save the petitioner from a possible injury and the object cannot be achieved if a long inquiry is involved.

Where the existence of a legal right, or even a fundamental right rests upon facts which have to be proved, remedy by way on a writ under Art. 226 is highly inappropriate. Facts which give rise to such a right or duty must ordinarily be proved by the person alleging the right in the ordinary civil Courts of first instance having jurisdiction. AIR 1951 Assam 163, Rel. on. AIR 1954 Bhopal 1 (2 3) (Pt B) (Prs 8, 10, 11).

——Art. 226—Finding of fact—Labour Commissioner or Industrial Court acting on consideration wholly irrelevant under S. 16, C P. and Berar Industrial Tribunal Settlement Act—Finding is perverse -Order liable to be set aside. See C. P. and Berar Industrial

Disputes Settlement Act (23 of 1947), S. 16. 1960 Nag L J (Notes) 72.

——Art. 226—Question of fact — Rent Control proceedings —Issue of writ. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3). 1959 Nag LJ (Notes) 64.

——Art. 226—Powers of High Court—Departmental inquiry — Inquiry officer accepting testimony of superior officer — Case turning on appreciation of evidence—High Court's power to interfere — Art. 311.

There is no rule of evidence which compels a tribunal to disbelieve a superior officer if that superior officer comes to give evidence before it, and an inquiry officer in a departmental inquiry cannot be convicted of partiality merely because he prefers the testimony of the superior officer to the other circumstances on which the petitioner relies. If the case ultimately turns on the appreciation of the evidence, as in these matters the High Court exercises a limited jurisdiction, it is not for it to say whether the inquiry officer is right in accepting the testimony of the superior officer. 59 Bom L R 22 : ILR (1957) Bom 120 : (1957) 2 Lab L J 23 : A I R 1958 Bom 167 (176) (Pt H) (Pr 18) (DB).

——Art. 226—Question of fact — Investigation—Bona fide requirements—Question of extent is one of fact—Present needs are to be considered, See Houses and Rents —C. P. and Berar Rents Letting of Houses and Rent Control Order (1949), Cl. 13 (3) (vi). 1957 N L J (Notes) 140.

——Art. 226—Question of fact — Company whether bogus or real.

The qestion whether a certain company is a bogus Company or a real one, is a question of fact and cannot be decided upon in a writ petition. 58 Bom L R 20 : ILR (1956) Bom 51 : AIR 1956 Bom 749 (752) (Pt B) (Pr 8) (DB).

——Art. 226—Finding of fact—Other remedy open—Finding not shown as tainted with any error of law apparent on record or vitiated for contravention of rules of natural justice or want of jurisdiction—Relief under Art. 226 is barred. A I R 1965 Cal 203 (204) (Pt A) (Pr 4).

■ ——Art. 226 — Disputed question of fact — It is discretionary with High Court to consider — It is matter of convenience and not of jurisdiction.

In many reported decisions it has been repeatedly pointed out that where there is a question on which there is a serious dispute that cannot be satisfactorily decided without taking evidence, it is not the practice of the High Courts to decide it in a writ petition filed under Art. 226 of the Constitution. A I R 1957 S C 529 ; AIR 1957 S C 733 and AIR 1957 S C 882; A I R 1959 S C 942 ; AIR 1961 S C 1526, Rel. on.

Assuming that there are seriously disputed facts disclosed in petition for issue of writ, the Supreme Court in AIR 1959 S C 725 has however held that an application under clause (2) of Art. 32 cannot be refused merely on the ground that it involves determination of disputed questions of fact. The observations of the Supreme Court in : AIR 1959 S C 725 have given rise to serious controversy as to whether an application under Art. 226 for issue of a writ should be thrown out only on the ground that disputed questions of fact have to be gone into.

Per P. N. Mukerjee and S. P. Mitra, JJ.—The matter is really one of discretion or convenience and not of jurisdiction. Even if a dispute of fact is to be held sufficient to disentitle the applicant to relief by way of a writ it must be such a dispute as will require detailed investigation into serious and complicated questions of fact, which would not be possible without going into elaborate evidence, Where the materials do not prima facie involve a dispute of fact of such magnitude or complication, the application, as it stands cannot be thrown out in limine on the ground that it involves any such dispute.

Held that it would not be proper in the circumstances of the case to refuse a rule nisi inasmuch as the application involved investigation of disputed questions of fact as to the age of the applicant. Jyoti Prokash Mitter v. Hon'ble Mr. Justice H. K. Bose, Chief Justice of High Court, Calcutta, 67 Cal W N 662 : AIR 1963 Cal 483 (487, 492, 493, 499) (Pt D) (Prs 22, 52, 54, 55, 89) (SB).

——Art. 226—Finding of fact —Finding as to sufficient cause under S. 15 (2), Proviso (2), Payment of Wages Act—Finding based on facts and circumstances of the case—No interference under Art. 226 — Limitation Act (1908), S 5—Payment of Wages Act (1936), S. 15 (2), Proviso 2.

When the Authority under the Payment of Wages Act considers all the facts and circumstances of a case and finds that sufficient cause has been made out for condonation of the delay in making the application under S. 15, the High Court under Art. 226 of the Constitution would not interfere with the finding as to sufficiency of cause for the delay. (1963) 2 Lab L J 473 : (1963) 7 Fac L R 193 (Cal).

——Art. 226—Question of fact —High Court will not generally go into question of fact. AIR 1960 Cal 740 (741) (Pt A) (Pr 3).

——Art 226—Findings on facts by the Subordinate Court —High Court will not interfere with such findings in revision or under Art. 226 of the Constitution. See Civil P C. (1908), S. 115 I L R (1960) 1 Cal 643.

—Art. 226 — Essential Commodities Act (1955), S. 3 (2) (f) —Order mentioning purchasers — Power of Court to go behind order and determine the real purchaser. See Essential Commodities Act (1955), S. 3 (2) f). AIR 1958 Cal 257.

——Art. 226—Question of fact — Interference
The High Court cannot sit as a Court of appeal on facts. ('58) 62 Cal W N 397.

——Art. 226—Scope — Question of facts cannot be decided. AIR 1955 N U C (Cal) 4499.

——Art. 226 — Scope — Article is not designed to abrogate suits altogether —When controversy requires facts to be decided parties should be relegated to suit. AIR 1955 N U C (Cal) 1789.

——Art. 226—Disputed questions of fact — Investigation of facts cannot be done by High Court. See Income-tax Act (1922), S. 34. AIR 1954 Cal 564.

——Art. 226—Question involving inquiry into facts.
Question involving inquiry into facts cannot be gone into in the petition under Art 226. I L R (1955) 2 Cal 28 : 58 C W N 18 : A I R 1954 Cal 60 (66) (Pt M) (Pr 106) (DB).

——Art. 226—Questions of fact — Question not entertainable in writ jurisdiction unless total want of evidence or unreasonableness of inference is patent on record. 1965 (2) Cri L J 743 : A I R 1965 Guj 283 (292) (Pt E) (Pr 24) (DB).

——Arts. 226 and 227—Application for writ to set aside order of Accommodation Officer requisitioning for public purpose the additional room constructed by petitioner on the terrace of his bungalow — Held, relying on affidavits of Accommodation officer, that the room was capable of being let out and was 'premises' within the ambit of Bombay Land Requisition Act, 1948 and that it was not a fit case in which evidence should be recorded as to the facts alleged by petitioner—But there will be cases where it would be

desirable, in the interests of justice, that evidence should be recorded to determine the disputes raised in the petition under Arts. 226 and 227. (1960) 1 Guj L R 89 : (1960) 1 Guj H C R 140.

——Arts. 226, 227—Finding of fact—Interference.

The scope of Art 227 is not wider than that of Art. 226 and if anything it is narrowed. Where there was evidence in support of the finding of fact recorded by the lower Court, the finding is not liable to be interfered with in the exercise of writ jurisdiction. AIR 1961 Him Pra 2 (5) (Pt B) (Prs 8, 9).

——Art. 226 — Question of title to property — Decision of questions of facts—Writ application will not be entertained. AIR 1955 N U C (Hyd) 2364.

——Art. 226 —Finding of fact —Evidence not considered at all.

Where the custodian of evacuee property has not at all taken into consideration the evidence and has not weighed the same his finding that payment of certain amount as earnest money has not been proved is not merely a matter of appreciation of evidence and cannot be called a mere finding of fact but is a question of law. AIR 1952 S C 319, Disting. I L R (1952) Hyd 1036 : AIR 1953 Hyd 64 (65) (Pt B) (Pr 2) (DB).

——Art. 226—Questions of fact — Complaint of certain charges against P — On enquiry, P exonerated by Government — Another complaint against P—On investigation, charge against P framed — Suspension of P—P filing writ contending that charge framed against him is in substance the same from which he was exonerated — Respondent contending that two charges are different — Held, that Court would be travelling beyond scope of writ petition if it went meticulously into the details of factual aspects of the charge — Petition rejected. 1965 Kash L J 171: 1965 (2) Cri L J 505 : AIR 1965 J & K 91 (93) (Pt C) (Pr 14) (DB).

——Art. 226 —(Constitution of Jammu and Kashmir, S. 103)—Certiorari—Writ of—Power to review findings of fact.

Certiorari may and is generally granted when a Court has acted without or in excess of its jurisdiction. The Court issuing writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. It will not, therefore, review findings of fact reached by the inferior Court or tribunal even it they be erroneous. AIR 1955 S C 233 and AIR 1954 S C 440; AIR 1957 S C 804, Foll. A I R 1960 J & K 115 (116) (Pt B) (Pr 4).

——Art. 226—Oral evidence—If can be taken.

It is unusual to take oral evidence in a writ petition for the purpose of ascertaining facts. Such a practice is inconvenient and alien to writ proceedings, and has been discountenanced in the authoritative decisions of Courts. AIR 1959 J & K 83 (85) (Pt C) (Pr 8).

——Art. 226 — Powers of High Court — Question of fact — High Court can scan material to ascertain whether there was evidence before authority for coming to the conclusion.

In a writ application the High Court is not a Court of fact and is not entitled to draw inferences or to assess the evidence or to sit in judgment on the findings of fact entered by the respondent authorities. The High Court certainly can scan the material which is supposed to exist and on which reliance has been placed by the respondent authority to come to the conclusion, with a view to ascertaining whether there was any material or evidence at all before the authority for coming to that conclusion AIR 1963 S C 822, Rel. on. 1964 Ker L J 149 : 1964 Ker L T 1109 : 1965 (2) Cri L J 279 (281) (Pt B) (Pr 6).

——Art. 226 — Question of fact — Powers of High Court to interfere. See Industrial Disputes Act (1947), S. 2(s). 1959 Ker L T 611.

——Art. 226—Question of fact.

It is impossible to resolve a pure question of fact in writ proceedings under Art. 226. 1957 Ker L T 739 : (1957) Ker L J 712.

——Art. 226—Powers of High Court — Question of fact—No interference.

Whether the opportunity given in a particular case is sufficient or not, is a question of fact and can ordinarily be no ground for interference of the High Court under Art. 226 A I R 1952 S C 192, Rel. on. Madh B L R 1956 Civ 819: AIR 1957 Madh B 26 (30) (Pt B) (Prs 46, 48) (DB).

——Arts. 226, 227 —Finding of fact—Interference in proceedings under, is not permitted. AIR 1955 N U C (MB) 4312.

——Art. 226—Question of fact—Question can be properly determined in suit and not in writ proceedings. 1965 M P L J 690 : 1965 Jab L J 892.

——Arts. 226 and 227 — Finding of fact — Interference—Grounds—Miscarriage of justice.

A finding of fact cannot be disturbed in proceedings under Art 226 of the Constitution. Under Art. 227 the High Court has a right to interfere with the decisions of Courts and Tribunal under its power of superintendence. But that power has to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts and Tribunals within the bounds of their authority and not for correcting mere errors, and for seeing that they do what their duty requires and that they do it in a legal manner. The power of superintendence under Art. 227 cannot be exercised to disturb a decision of a Court or a tribunal merely because it has misconceived a point of law or come to a wrong decision on facts; that this power is not restricted to cases of non-exercise or illegal exercise of jurisdiction but extends also to cases where there has been an obvious miscarriage of justice because a Court or tribunal has approached a matter entrusted to it in an arbitrary or despotic way and against all rules of natural justice. AIR 1954 S C 215, Rel. on. 1961 M P L J (Notes) 111.

——Art. 226—Question of fact—No interference under Art. 228. See Motor Vehicles Act (1939), S. 64-A. 1960 M P L J (Notes) 157.

——Art. 226—Finding of fact. See Sales Tax — C. P. and Berar Sales Tax Act (21 of 1947), (As Extended to Vindhya Pradesh, s. 2(h)). 1960 M P L J 150

——Art. 226 —Question of fact — Question of fact in controversy—Petition for writ of quo warranto is not maintainable. See Municipalities C. P. and Berar Municipalities Act (2 of 1922), S. 15(1). A I R 1957 Madh Pra 88.

——Art. 226—D trafficking in permits forming company - Entire interest in company possessed by D—Disqualification attached to company also — Scope of enquiry under S. 59 — Previous recognition of transfers does not bar consideration of the bona fides of transfers when considering company's application for permit along with other applications—Whether transfer of stage carriage permit amounts to trafficking is question of fact—No interference with finding in writ proceeding. See Motor Vehicles Act (1939), S. 47. (1964) 1 Mad L J 140 : AIR 1965 Mad 305 (DB).

——Art 226—Jurisdiction of Labour Court — Reference made by Government under—Questions whether employees are workmen and whether industrial dispute exists — Labour Court can decide — High Court cannot examine them in writ proceedings. See Industrial Disputes Act (1947), S. 15. AIR 1964 Mad 192.

——Art. 226–Petition under – Finding of fact by lower tribunal—Finding to be accepted in such petition. (1962) 1 Lab L J 94 : 1961-62) 22 F J R 12 : AIR 1963 Mad 79 (79) (Pt A) (Pr 1).

——Art. 926—Construction of statute by Tribunal – Construction found wrong — High Court will interfere with finding.

Where a question of construction of a statute arises, there can be only one view, the view that is ultimately accepted by the superior Court. If, as a result of interpretation, it is found that the inferior tribunal has erred, it will really be a case of the tribunal not administering the law which it is bound to administer and the High Court will interfere with the finding of Tribunal. A I R 1961 S C 970, Rel. on. (1961) 2 Lab L J 771 : (1962) 4 Fac L R 429 : (1961-62) 21 F J R 387 : (1961) 1 Mad L J 285 : I L R (1962) Mad 345 : 75 Mad L W 500 : A I R 1962 Mad 327 (335) (Pt F) (Pr 20) (DB).

——Art. 226—Procedure—Additional evidence.

On the question whether fresh evidence could be admitted before the High Court in order to test the correctness of the conclusion of the inferior Tribunal, Held, the scope of enquiry under Art. 226 for the purpose of issuing a writ of certiorari is limited to the question whether the findings of fact arrived at by the Tribunal are warranted by the material placed before it. It was, however, held that in the interests of justice an opportunity should be given to the petitioner to prove his case especially when he had a piece of clinching evidence which he had not put before the Tribunal either because he had not been assisted by counsel or because he took an erroneous view that the document already produced would be sufficient. 1960 Mad W N 835 (2) : (1961) 2 Fac L R 94 : (1960-61) 18 F J R 289 : (1960) 2 Lab L J 430 : AIR 1961 Mad 285 (287) (Pt B) (Pr 4) (DB).

——Art. 226—Finding of fact—No interference.

A finding of fact based on the appreciation of the evidence and to some extent oral evidence which the lower Court has heard, cannot be set aside in writ proceedings. The quantum of sufficiency of such evidence is not a matter for investigation in the exercise of the limited jurisdiction under Art. 226. (1960) 1 Lab L J 485 : (1960) 2 Mad L J 254 : 1960 Mad W N 423.

——Art. 226 – Question of fact.

When exercising writ jurisdiction, the High Court will not investigate disputed questions of fact. 1959 Mad W N 387 : 72 Mad L W 434 : ILR (1959) Mad 770 : (1959) 2 Mad L J 402 : AIR 1959 Mad 548 (553) (Pt B) (Pr 35) (DB).

——Art. 226–Question of fact.

A question of fact cannot be investigated in writ proceedings. (1959) 1 Lab L J 520 : (1959-60) 16 F J R 106 : 72 Mad L W 386 : (1959) 2 M L J 173 : 1959 M L J (Cr) 627 : I L R (1959) Mad 891 : AIR 1959 Mad 441 (444) (Pt D) (Pr 15).

——Art. 226—Scope of inquiry — Questions of fact cannot be determined –Proper course— Determination of question whether land was estate on the basis of statement in affidavit and documents filed in writ petition—Not proper — (Madras Estates Lands Act (1 of 1908), S. 3 (2).) 70 Mad L W 84 : (1957) 1 Mad L J 185 : AIR 1957 Mad 361 (362) (Prs 1, 2) (DB).

——Art. 226—Mandamus—Petition for—Procedure — Question of fact — High Court cannot go into the question. (1956) 26 Com Cas 431 : 70 Mad L W 28 : (1957) 1 Mad L J 254 : ILR (1957) Mad 383 : A I R 1957 Mad 309 (319) (Pt j) (Pr 25) (DB).

——Art. 226 — Question of fact — Question of available surplus profits for distribution as bonus.

Held, on facts that in a writ petition it would not be open to the employers to challenge the statement filed on their behalf. Nor will it be open to the High Court to verify within the scope of the limited jurisdiction vested in it by Art 226 of the Constitution whether the computation of the surplus profits available to each of the employers, made by the employers themselves and accepted by the Appellate Tribunal, was correct. 69 Mad L W 1020 : (1957) 1 Lab L J 282 : (1957) 1 M L J 11 : A I R 1957 Mad 223 (225) (Pt B) (Pr 9).

——Art. 226 – Question of fact—High Court's power to re-examine facts and decide whether order was correct or wrong on facts—(Madras Places of Public Resort Act (2 of 1888), S. 14—Rules under—Rule 18 (a)).

It is for the licensing authority under the Madras Places of Public Resort Act to come to a decision on the question whether the condition laid down in the proviso to Rule 18 of the Rules framed under that Act is or is not satisfied to any particular case. It is not the province of High Court to re-examine the facts and decide whether the condition is actually fulfilled that is, whether the order of a licensing authority was correct or wrong on the facts. In the case of exceptional perversity or when mala fides is established, High Court will be inclined to interfere. 69 M L W 883 : (1956) 2 M L J 556 : AIR 1957 Mad 221 (222) (Pt A) (Pr 5) (DB).

——Art 226 — Motor Vehicles Act (1939), S. 47— Finding of fact arrived at by Government under— High Court will be reluctant to interfere except under circumstances, which establish that no reasonably minded tribunal could have reached the conclusion it did. (1956) 1 M L J 324 : 69 Mad L W 58.

——Art. 226–Proceedings under–Finding of fact— Court cannot decide its correctness.

It is not open to the High Court in an application under Art. 226 to canvass the correctness of a finding of fact arrived at by an inferior tribunal. ILR 1955 Mad 972 : (1956) 1 M L J 93 : AIR 1955 Mad 75 (78) (Pt D) (Pr 11) (DB).

——Art. 226 — Industrial disputes—Illegal lock-out or unfair labour practice–Jurisdiction of Tribunal to determine—Decision that closure of industry amounted to unfair labour practice — Writ of certiorari cannot be issued. 1952 Mad W N 731 : 65 Mad L W 947 : (1952) 2 Mad L J 547 : (1952) 2 Lab L J 587 : AIR 1953 Mad 30 (31, 32) (Prs 3, 4).

——Art. 226–Motor Vehicles Act (1939), Ss. 47 and 64—Grant of permit – Findings of fact—Interference in writ proceedings not permissible. See Motor Vehicles Act (1939), S. 47. (1965) 2 Mys L J 30 (DB).

——Art. 226 — Powers of High Court — Nature and scope.

High Court dealing with an application under Art. 226 of the Constitution does not and cannot constitute itself a Court of facts. It is only when facts are either admitted or established to the satisfaction of the Court and when the question to be decided is one of law that a High Court will make up its mind to consider the matter. Disputed questions of fact cannot satisfactorily be decided in a summary proceeding as the one under Art. 226. ILR (1956) Mys 274 : AIR 1957 Mys 16 (18) (Pt D) (Pr 9) (DB).

——Art. 226–Finding of fact–Interference.

The High Court in dealing with writ matters does not enquire into facts and must take the findings as good. 1955 Nag L J 735 : ILR (1956) Nag 60: A I R 1956 Nag 174 (175) (Pt B) (Pr 9) (DB).

——Art. 226—Question of fact—See Representation of the People Act (1951), S. 100 (1) (c). AIR 1956 Nag 67.

——Art 226—Determination of basic rent—Findings of Rent Controller if can be challenged in writ proceedings. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 7. AIR 1955 Nag 158 (DB).

——Art. 226—Writ — Certiorari—Correction of findings of fact—Certiorari does not issue for correcting findings of fact of inferior Courts. 1952 Nag L J (Notes) 62 (DB).

——Art. 226—Question of fact cannot be agitated in writ proceeding. (1965) 2 Lab L J 691 : (1966) 13 Fac L R 89 : AIR 1966 Pat 330.

——Art. 226 — Finding of facts—High Court cannot interfere. See Industrial Disputes Act (1947), S. 33 (3) (b). (1965) 2 Lab L J 530 : AIR 1966 Pat 197 (DB).

——Art. 226—Certiorari—Question of fact—Absence of material for passing order under S. 5-A of Bihar Private Irrigation Works Act before the tribunal alleged—Question raised for first time in writ petition — Question being essentially one of fact will not be entered into in writ petition — Adequacy of reasons for orders under S. 5-A cannot be challenged in writ petition. Braj Kishore Bahadur v. State of Bihar, 1963 B L J R 701 ; A I R 1963 Pat 314 (315, 316) (Pt B) (Pr 4) (FB).

——Art. 226—Question of fact — Interference. 1958 B L J R 343 : A I R 1959 Pat 72 (73) (Pt A) (Pr 2) (DB).

——Art. 226—Question of fact—High Court will not entertain question of fact for first time and determine it. (1959) 10 S T C 601 (Pat).

——Art. 226 — Finding of fact — Interference — (Motor Vehicles Act (1939), S. 64).

In a proceeding under Art. 226 against the order of State Transport Authority under S. 64, Motor Vehicles Act refusing to renew permit, the High Court is not sitting in appeal over the State Transport Authority and hence it is not open to the High Court to go into the facts. ILR 34 Pat 429 : AIR 1956 Pat 437 (439) (Pt B) (Pr 4) (DB).

——Arts. 226 and 227—Questions of fact can be agitated in writ petitions. A I R 1955 N U C (Pat) 2151 (DB).

——Art. 226—Scope—Proceeding under, for investigating question of fact.

A proceeding under Art. 226 is not a proper machinery for investigating questions of fact. Such questions should properly be agitated in civil suit. 1953 B L J R 656 : A I R 1954 Pat 279 (279) (Pt C) (Pr 5) (DB).

——Art. 226—High Court in exercise of writ jurisdiction cannot reappraise evidence recorded by Enquiry officer to determine whether his finding of fact are correct or not. 68 Pun L R 174.

——Art. 226—Question of fact —Interference—A dispute on a question of fact is outside the purview of the writ jurisdiction of High Court. 1965 Cur L J 582 : ILR (1965) 2 Punj 747.

——Art. 226— Disputed question of facts — Original order allotting certain land in lieu of property left by displaced person in Pakistan—Subsequent cancellation of that order on ground that according to entries in Jamabandi prepared for 1946-47 in Pakistan, the area in question was mostly Gair munkin land value of which would be treated as zero for the purpose of any allotment against it —Writ Petition against order of cancellation — Question whether jamabandi for 1946-47 was latest held was not a disputed question of fact of kind which disentitles petitioner to claim relief under Art 226—Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 19. 1965 Cur L J 817 (Punj) (DB).

——Art. 226 — Question of fact—Question whether petitioner had or had not stood surety for repayment of certain loan—Held question could not be gone into in proceedings under Art. 226. 1965 Cur L J 726 (Punj).

——Art. 226— Writ petition under—Disputed questions of fact—Not considered.

It would be quite inappropriate to go into the disputed questions of fact as regards in individual petitioners under Art. 226 of the Constitution particularly :when the Act concerned provides ample machinery for the redress of those grievances, to which recourse has not been taken by the petitioners, A I R 1962 Punj 32, Disting. 65 Pun L R 754 : I L R (1963) 2 Punj 773 : A I R 1964 Punj 90 (99) (Pt C) (Pr 13) (DB).

——Arts. 226 and 227 — Powers under — Scope of — Conclusions of lower Court — Interference on writ side.

Conclusions drawn by the lower Court are binding and unassailable when these conclusions are not shown to be tainted by any such serious infirmity as would justify exercise of the discretionary power of a high prerogative writ for re-evaluating the material on which these conclusions are based. (1963) 65 Pun L R 157 : (1962) 5 Fac L R 405 : (1963) 1 Lab L J 231.

——Arts. 226, 14—Disputed question of fact — Discretion of High Court to decide question — Duty of Government officials opposing petition to give correct facts — Petitioner can request High Court to decide petition on basis of respondent's allegation of disputed fact—Amendment of petition not necessary — Question whether concession granted by railway in freight rates is discriminatory against petitioner—High Court acting under Art. 226 not appropriate venue for deciding question.

It is in discretion of the High Court to decide or not to decide a disputed question of fact in a particular case and the exercise of this discretion depends on the circumstances of each case. If the dispute about an essential fact can be determined only after a lengthly and elaborate enquiry, then it is for the High Court to decide whether or not to hold such an enquiry. In this context the existence of alternative remedy is an important factor. If the alternative remedy is available then the High Court will more readily refrain from holding the enquiry than otherwise.

It is duty of the Government officials to give correct facts in clearest possible terms with a view to bring correct position before the High Court and not to file a reply with the sole purpose of defeating the petition. AIR 1959 S C 725, Rel. on.

The question whether the concession granted by the Railway Authorities in the matter of freight rates to certain mills is discriminatory against the petitioner so as to violate Art. 14 of the Constitution, is of a technical and complicated nature, and necessitates an elaborate enquiry to decide it. Proceedings under Art. 226 are not suited to decide it. ILR (1960) Punj 763. Rel. on. 63 Punj L R 206 : A I R 1961 Punj 268 (269, 270, 271, 272) (Pt A) (Prs 5, 6, 12) (DB).

——**Arts. 226 and 227**– Question of fact –Interference. See Representation of the People Act (1951), S. 98. **A I R 1959 Punj 309 (DB).**

——**Art. 226– Question of fact.**

Where decision depends on facts and circumstances of the case it is not open to scrutiny by the High Court in the proceedings under Art. 226. 61 Pun L R 140 : AIR 1959 Punj 54 (58) (Pt C) (Pr 11).

——Art. 226 –Finding of fact –Interference. 60 Pun L R 272 : A I R 1958 Punj 212 (213) (Pt A) (Prs 7, 8).

——**Art. 226–Question of fact.**

The petitioner cannot be allowed to raise questions of fact for the first time in proceedings under Art. 226. I L R (1958) 8 Raj 1161 : 1959 Raj L W 3.

——Art. 226–Question of fact.

For the purpose of deciding an application under Art 226, the High Court cannot enter into matters of fact. I L R (1958) 8 Raj 311 : A I R 1958 Raj 140 (142) (Pt D) (Pr 7) (DB).

——Art. 226–Question of fact.

It is not for the High Court to determine a question of fact in its extraordinary jurisdiction under Art 226. 1958 Raj L W 286 : I L R (1958) 8 Raj 320 : A I R 1958 Raj 96 (98) (Pt A) (Pr 6) (DB).

Complicated and disputed question of fact.

● ——Art. 226–Question of fact — Investigation in writ proceedings.

The questions whether the trusts are public or private trusts or the properties are private or trust properties are questions which involve investigation of complicated facts and recording of evidence and such investigation could not be done in writ proceedings. Moti Das v. S. P. Sahi, (1959) 2 S C A 432 : I L R 38 Pat 639 : (1959) Supp (2) S C R 563 : 1959 S C J 1144 : A I R 1959 S C 942 (951) (Pt I) (Pr 17).

● ——**Art. 226–Scope of inquiry — Disputed questions.**

Where there is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence, it is not the practice of Courts to decide it involving much time and expense in a writ petition. Union of India v. T. R. Verma, (1957) 13 F J R 237 : 1958 Mad L J (Cr) 123 : 1958 All W R (H C) 165 : 1958 M P C 61 : 1958 All L J 126 : 1958 S C R 499 : 1958 S C J 142 : 60 Punj L R 126 : 1958 S C A 110 : (1958) 1 Mad L J (S C) 67 : (1958) 1 Andh W R (SC) 67 : I L R (1958) Punj 274 : A I R 1957 S C 882 (884) (Pt B) (Pr 6).

——**Art. 226–Disputed question of fact.**

It is not for the Judicial Commissioner to decide a disputed question of fact in the summary enquiry under Art. 226 particularly when the documents relied on by the petitioner do not lead to a clear inference in his favour. 1956 Cri L J 358 (1) : A I R 1956 Ajmer 40 (2) (40) (Pr 3).

——**Art. 226–Writ jurisdiction–Scope of–Disputes on facts — Interference in — Dispute cannot conveniently be resolved upon in a petitioner under Art. 226. 1965 All L J 886 : (1965) 11 Fac L R 97.**

——**Art. 226–Finding of fact will not be interfered with–Jurisdiction of High Court to interfere.**

While exercising jurisdiction under Art. 226, High Courts do not usurp the functions of a Court of Appeal and for that reason can interfere with an order passed by subordinate authorities only if there exists any error in the exercise of jurisdiction or there exists an error apparent on the face of the record. Where two opinions are possible and the subordinate authorities adopted one, that would not be a case for interference by the High Court, though it shall be open for the parties to seek such other remedy as they may be advised. Where the question was whether the accomodation was new or old and the subordinate authorities were of opinion that it was old and that U. P. (Temporary) Control of Rent and Eviction Act applied, the High Court will not interfere with such finding under Art. 226. A I R 1964 All 395 (403, 404) (Pt D) (Pr 25).

——Art. 226 — Whether an alleged partnership is a real or fictitious one is a question of fact–Finding on such question cannot be set aside in a writ proceeding. 1964 All L J 20 : 1964 All W R (H C) 36 : A I R 1964 All 221 (225) (Pt E) (Pr 8) (DB).

——Art. 226 — Whether A and B were President and General Secretary of a Labour Union are disputed questions of fact — High Court cannot go into such questions in petition under Art. 226. (1964) 2 Lab L J 65 : (1964) 8 Fac L R 306 (All).

——**Art. 226–Finding of fact cannot be challenged.**

The fact whether A was or was not in cultivatory possession is a pure question of fact. On that finding of fact, certain rights accrue to him. That is not a question of law. Whether the Marfat entry should have been interpreted to mean actual cultivatory possession in the particular circumstances of the case is not a finding that can be challenged in a writ petition. A I R 1964 S C 477, Foll. 1964 All W R (H C) 716 : 1964 All L J 906.

——Art. 226–Scope of writ proceeding — Controversial questions of fact cannot be decided — Evidence Act (1872), S 124–Official communications between superior authorities with regard to confirmation or non-confirmation of a Government servant in a particular post–Privilege claimed by State Government in respect of — Procedure — Controversial question left upon for final decision in a regular suit. **A I R 1963 All 415 (419) (Pt B) (Pr 17).**

——Art. 226–Writ jurisdiction — Disputed questions of fact–Writ to quash notice under S. 34, Income tax Act — Dispute about facts on which legal status of assessees could be determined — Quashing of notice under Art. 226 held premature. **I L R (1960) 2 All 671 : A I R 1962 All 291 (295, 296) (Pt B) (Pr 9) (DB).**

——Art. 226–Controversial questions of fact–Cannot be decided in writ petition — Proper remedy is a separate suit. A I R 1957 S C 882, Rel. on. **A I R 1962 All 166 (168) (Pt A) (Pr 9).**

——**Art. 226–Disputed questions of fact–Termination of private service–Proper remedy is by way of suit–No certiorari.**

In a writ petition if there are controversial questions of fact the proper jurisdiction is not by way of a writ petition, but by way of a regular suit. In a private institution a person whose services have been wrongfully terminated is entitled to institute a suit to vindicate his rights and the High Court will not decide such questions in a writ petition. A I R 1957 S C 882, Relied on. **A I R 1961 All 282 (284) (Pt C) (Pr 13).**

——**Art. 226–Question of fact — Complicated question of fact.**

The question whether a person has voluntarily acquired the citizenship of Pakistan is a complicated question of fact and a writ proceeding is hardly appropriate for an elaborate factual inquiry. The onus of proving that he has not voluntarily acquired the citizenship of Pakistan is on him. Again, the

question of citizenship is essentially political in nature, and the Central Government should be permitted to decide the matter in the first instance. The Court should not ordinarily take the matter into its own hands until it is absolutely necessary for protecting the liberty of person. 1960 Cri L J 1176 : A I R 1960 All 559 (561) (P B) (Pr 15).

——Art. 226—Question of fact — Disputed question of fact.

It is not the practice of the Courts to decide serious disputes on questions of fact which could not be satisfactorily decided without taking evidence, in a writ petition, where no evidence can be taken and the matter has to be decided simply on affidavit. A I R 1957 S C 882 Rel. on. (1960) 1 Fac L R 477 : 1960 All L J 288 : (1960) 2 Lab L J 146 : A I R 1960 All 551 (555, 556) (Pt C) (Pr 26).

——Art. 226 - Question of fact—In proceedings under Art. 226 High Court does not usually enter into controversial questions of facts and forms an opinion on consideration of broad features of the case. A I R 1960 All 382 (383) (Pt A) (Pr 2).

——Art. 226—Scope of inquiry — Difficult and complicated questions of fact — Liquidation proceedings — Writ to quash — Maintainability — Relationship between Court and official liquidators in liquidation proceedings — (Companies Act (1913), S. 179) — (Companies Act (1956), S. 457).

Held, on facts that before the lease could be cancelled or quashed on any ground, difficult and complicated questions of fact and law would have to be gone into; and a proceeding under Art. 226 was not appropriate for this purpose.

Liquidators might be officers of the Court but strictly speaking they represented not the Court but the company which was being wound up. A I R 1936 Lah 152, Expl. and Disting. The lease in favour, of the appellant could not be considered to be a judicial or quasi-judicial order or decision of the Court so as to be the subject of a writ of certiorari. So far as the sanction under S. 179, Companies Act, 1913, was concerned, it was in the discretion of the Court either to refuse or to grant it; it obviously could not be compelled by a writ to exercise that discretion in a particular manner. A writ of certiorari could not be used for the purpose of compelling a tribunal to exercise its jurisdiction in a particular manner. That was so also in the case of a writ of mandamus. AIR 1957 S C 529, Rel. on.

It was not possible, in proceedings under Art. 226 of the Constitution, either to order dispossession of the appellant or to direct that the respondent be put in possession of the mills. A I R 1955 All 501 and A I R 1956 All 511 (FB) and A I R 1956 Nag 34, Disting. Nor could the liquidators be directed under Art. 226 of the Constitution to execute a lease in favour of the respondent.

A writ of mandamus could not be issued to enforce a contractual obligation : A I R 1947 Cal 307 and AIR 1952 Raj 151 and A I R 1953 Punj 239 and A I R 1954 Mad 549, Rel. on. On the basis of the facts in this case it was not open to the respondent to say that if a writ could not be granted a direction or order should be made. It was not possible for the High Court in summary proceedings under Art. 226 to grant any order or direction such as was sought by the respondent. ILR (1958) 1 All 549 : (1958) 28 Com Cas 587 : A I R 1958 All 447 (453, 454, 455, 456) (Prs 15, 16, 18, 19, 20, 22, 23, 25, 29) (DB).

——Art. 226 — Grounds for issue of writ — Facts in controversy—Petitioners are not entitled to any relief under Art. 226. A I R 1958 All 141 (147) (Pt B) (Pr 21).

——Art. 226—Question of fact—Disputed facts—No interference.

In writ proceedings the High Courts usually do not go into questions of disputed facts but accept the findings reached on them by the Courts concerned. 1958 All L J 491 : 1958 All W R (HC) 643.

——Art. 226—Scope of inquiry — Controversial questions of fact raised — High Court will not go into. A I R 1957 All 375 (376, 377) (Pt A) (Pr 8).

——Art. 226—Power of High Court — Controversial questions of fact.

Where there is a controversy between the parties on the question as regards the nature of the road and the right of the public, the High Court in writ petitions will not enter into these controversial questions of fact dependent on evidence. The petitioner, if he has any right which has been infringed by the Cantonment Board, has his remedy by means of a regular suit. 1957 All L J 288 : 1956 All W R (HC) 771.

——Art. 226 — Petition under—Contention requiring consideration of facts—Maintainability. See Civil P.C. (1908), O. 27, R. 1. A I R 1955 N U C (All) 3595.

——Art. 226—Petition under—Disputed question of fact involved — Other appropriate remedy open — Maintainability.

Where the petitioners for writ, who are tenants of certain land claim a right to cultivate that land they would have a right under the general law to go to the appropriate Court for relief which would be in a better position to decide the question of fact in dispute as to whether the land was brought under cultivation before a particular date or afterwards. 1954 All W R (HC) 540 : A I R 1954 All 753 (754) (Pt A) (Pr 4) (DB).

——Art. 226—Mandamus—Computation of compensation under Madras Estates (Abolition and Conversion into Ryotwari) Act — Extent of land in dispute—Court will not decide the controversy in writ proceedings—Tenancy laws—(Madras Estates (Abolition and Conversion into Ryotwari Act (26 of 1948)). (1965) 2 Andh L T 290 (DB).

——Art. 226—Disputed question of fact—Hyderabad Opium and Intoxicating Drugs Act (IV of 1333 F), S. 2 (iv)—Chloral Hydrate — Whether narcotic substance—Notification declaring it as intoxicating substance—Cannot be challenged.

The contention that 'Chloral Hydrate' is not a narcotic substance within the meaning of S. 2 (iv) of the Act and as such the State Government had no power to declare it as such by the impugned Notification cannot be entertained in writ proceedings. The reasons are: firstly, that controversial questions of fact are not within the purview of these proceedings and secondly, that the Intoxicating Drugs Act contemplates a subjective satisfaction on the part of the Government to notify a substance having regard to its effects on the human body. ILR (1964) Andh Pra 1092: (1964) 1 Andh L T 285 : A I R 1964 Andh Pra 430 (432, 433) (Pt B) (Pr 10) (DB).

——Art. 226—Question of fact.

In a writ petition the High Court cannot adjudicate upon the truth or otherwise of the relative assertions as it is not within the province of the High Court to go into the question of fact. 1959 Mad L J (Cr) 788 : (1959) 2 Andh W R 426 : ILR (1959) Andh Pra 620.

——Art. 226—Decision of question of fact.

In an application under Art. 226, it is not open to the High Court to come to any finding on a question of fact. 1955 Andh W R 909.

——Art. 226 — Disputed question of fact—Power of High Court to remit issue.

The High Court under Art. 226 is empowered to remit an issue on a disputed question of fact and get a decision by a competent Court after giving opportunity to the parties to adduce evidence and dispose of the petition on the findings given by such Court. 1962 Mad L J (Cr) 84 : AIR 1961 S C 1526, Dist. **ILR (1962) 14 Assam 313 : A I R 1962 Assam 103 (104) (Pt A) (Pr 6) (DB).**

——Art. 226 — Civil P. C. (1908), S. 115 — Exercise of jurisdiction—Disputed questions of fact — Question as to interpretation of notification—No interference in absence of patent mistake of law or error of jurisdiction.

The Government of Assam in exercise of powers under S. 3 sub-s. (1), sub-cl. (b) of the Minimum Wages Act (11 of 1948), issued two notifications prescribing the minimum wages. The Authority under the Act having held that the latter notification was in supersession of the first notification the decision was challenged in a petition under Art. 226 of the Constitution and under S. 115 of Civil P. C.

Held, that in an application under Art. 226 of the Constitution of India or even under S. 115 of the Civil P. C., it is not obligatory on the High Court to find out the correct interpretation of the notification after examining the surrounding circumstances in which the impugned notification was issued, unless the error is patent and one of jurisdiction. (1962) 2 Lab L J 211 : (1962-63) 23 F J R 248 : A I R 1961 Assam 154 (156) (Pt A) (Pr 9) (DB).

——Art. 226—Question of fact — High Court will not go into any controversial questions of fact. Parbananda Das v. Executive Engineer, Assam, **I L R (1960) 12 Assam 356 : (1960) 1 Assam L R 150 : AIR 1961 Assam 101 (111) (Pt D) (Pr 30) (FB).**

——Art. 226—Disputed question of fact.

In an application under Art. 226 of the Constitution, the High Court should not go into disputed facts to ascertain which version is correct. Hiranmoy v. State of Assam, **A I R 1954 Assam 224 (253, 254) (Pt O) (Pr 64) (FB).**

——Art. 226 — Question requiring further investigation of facts—Question will not be decided. **A I R 1953 Assam 137 (141) (Pt D) (Pr 19) (DB).**

——Art. 226 (1)—Facts stated by petitioner disputed by opposite party—High Court will decline to issue writ under Art. 226. AIR 1953 Assam 12 (13) (Pt A) (Pr 8) (DB).

——Art. 226—Question of fact—Dispute relating to existence of custom—Held, dispute involved, detailed investigation of facts which could not be done in proceedings under Art. 226. **67 Bom L R 234 : AIR 1966 Bom 70 (91, 92) (Pt G) (Pr 38) (DB).**

——Art. 226—Applicability—Petition under—Certain statement annexed to petition—Accuracy of the statement not accepted by other side—It would not be possible for the High Court to consider such a statement in petition under Art. 226. 63 Bom **L R 323 ;** (1961) 1 Lab L J 702 : (1961) 3 Fac L R 122 : 1961 Nag L J 384 : ILR (1961) Bom 491 : **A I R 1962 Bom 97 (101) (Pt C) (Pr 8) (DB).**

——Art. 226 — Powers of High Court — Finding of fact—Court not entitled to determine complicated facts in petition under Art. 226. See Income-Tax Act (1922), S. 34. **AIR 1961 Bom 5.**

——Art. 226—Disputed question of law and fact—Issue of writ.

An order for refund of moneys paid pursuant to a voluntary settlement under S. 8-A of the Taxation on Income (Investigation Commission) Act, 1947, which has been declared to be ultra vires the Union Parliament, cannot be claimed in a petition under Art. 226.

Against the claim made by the petitioner for refund of the amount if the Central Government is entitled to set up agreement evidently disputed questions of law and fact will fall to be determined; and normally a petition under Art. 226 of the Constitution is not an appropriate proceeding for adjudicating upon disputed questions of fact. AIR 1959 S C 149, Expl. and Distinguished; AIR 1955 SC 1 and AIR 1955 S C 257, Relied on. **(1960) 40 I T R 624; 62 Bom L R 11; AIR 1960 Bom 353 (360, 361) (Pt A) (Pr 22) (DB).**

——Art. 226 — Finding of fact — Art. 226 cannot be resorted to, to decide disputed questions of fact. **61 Bom L R 764 : ILR (1959) Bom 1175 : (1959) 2 Lab L J 578 : AIR 1960 Bom 299 (308) (Pt F) (Pr 27) (DB).**

——Art. 226 – Scope of proceedings—Disputed question of fact cannot be gone into. **60 Bom L R 624 ;** (1958) 2 Lab L J 692 : **A I R 1960 Bom 9 (10, 11, 12) (Pt C) (Pr 5) (DB).**

——Art. 226—Disputed questions of fact—Court will refuse to determine question upon a writ. ('55) 57 Bom LR 938.

——Art. 226—Disputed questions of fact—Cannot be decided in writ jurisdiction. AIR 1965 Cal 380 (386) (Pt D) (Pr 10).

——Art. 226—Person whether foreigner or Indian citizen is disputed question of fact—Such question cannot be decided in Writ Jurisdiction. AIR 1961 S C 1526, Foll. AIR 1965 Cal 160 (162) **(Pt B) (Pr 3) (DB).**

——Art. 226—Order illegal on merits and on procedure adopted by Registrar—— High Court will not go into disputed questions of fact

Where the order passed by a High Court Judge under Art. 226 is illegal both on merits as well as on the procedure adopted by Registrar of firms, it is not necessary for the High Court in appeal to go into the disputed questions of fact on which the Judge dismissed the petition under Art. 226. **('65) 69 Cal W N 929.**

——Art. 226—No dispute as to factual state of affairs —Can be resolved in writ petition. ('65) 69 Cal W N 203.

——Art. 226—Proceedings under — Disputed questions of fact — Question whether conditions in R. 9, Citizenship Rules have been satisfied — Cannot be enquired into in writ proceedings—Citizenship Act, 1955, S. 18—Citizenship Rules, R. 9.

A disputed question whether a person is a foreigner is a question of fact requiring a detailed examination of evidence and a proceeding under Art. 226 of the Constitution is not appropriate for its decision : AIR 1961 S C 1526, Rel. on.

Question whether a person has satisfied all the conditions under Rule 9 of the Citizenship Rules is a question of fact and cannot be enquired into in proceedings under Art. 226 of the Constitution. **AIR 1964 Cal 324 (326) (Pt C) (Pr 10).**

——Art. 226 — Disputed questions of fact in petition under Art. 226—Cannot be resolved on affidavits only.

(1962) 2 Lab L J 541 : (1962) 5 Fac L R 147 : AIR 1963 Cal 359 (363) (Pt C) (Pr 18).

● ——Art. 226—Question of fact—Whether petitioner is Indian national cannot be decided in writ petition —Foreigners Act (1946), S. 8—C. P. Code (1908), S. 9.

If a case raised disputed questions of fact as to whether or not a person is an Indian national a decision of that question cannot properly be rendered in a writ application. The matter ought to be decided by a suit. AIR 1961 S C 1526, Rel. on.

Where there is a dispute as to the fact of a person being a foreigner or an Indian national, the jurisdiction of the Courts is not ousted. The Courts have authority to decide the dispute. It is only in a given, set of circumstances that that jurisdiction has been taken away as has been pointed out clearly by the Supreme Court in AIR 1961 S C 1467. (1963) 2 Cri L J 210 (Cal).

——Art. 226—Application by person ordered to leave India under S. 3 (2), Foreigners' Act Question arising for decision whether petitioner had migrated to Pakistan in 1949 and had never become a citizen of India under the Constitution—Bar of S. 9 (2) Citizenship Act does not apply and hence Court of law and not the Central Government has to decide question—But writ application is not maintainable where all facts in case are disputed. AIR 1961 S C 1526, Rel. on; AIR 1961 S C 1467 : AIR 1962 S C 70 and AIR 1961 S C 1522, Distinguished—Foreigners Act (1946), S. 3 (2); Citizenship Act (1955), S. 9 (2). ('62) 66 Cal W N 108.

——Art. 226 — Question of fact — Existence of alternative remedy—Effect.

In a petition under Art. 226, the High Court will not go into questions, which are primarily questions of fact, when there is a clear alternative remedy available, in which evidence can be taken and a complete adjudication can be made of the points advanced. ('61) 65 Cal W N 908.

——Art. 226—Disputed questions of fact—If can be gone into — (Industrial Disputes Act (1947), S. 10 (1)).

Where the validity of a reference under S. 10, Industrial Disputes Act, 1947 was called in question by a writ petition which raised issues involving disputed questions of fact which could not be satisfactorily decided without taking evidence.

Held, that the application was premature and should be dismissed. 64 Cal W N 191 : (1960) 1 Lab L J 472.

——Art. 226—Scope of inquiry—Question of disputed facts.

The facts being disputed, it is not possible for the High Court under Art 226 to decide the point finally. 63 Cal W N 101 : AIR 1959 Cal 402 (406) (Pt D) (Pr 18).

——Art. 226—Question of fact.:

Questions of highly disputed facts that whether certain dekhilas (rent receipts) create a title cannot be entertained by the High Court in writ jurisdiction. ('59) 63 Cal W N 933.

——Art. 226—Facts disputed—Refusal to issue writ.

That it was impossible to decide the question without determination of facts which were disputed is a good ground for refusing to issue a writ. (1959) 10 S T C 68 (Cal).

——Art. 226—Matters of the internal administration of a College involving disputed questions of fact are not proper matters for enquiry by the Courts under Art. 226. 62 Cal W N 259 : ILR (1959) 1 Cal 28 : AIR 1958 Cal 131 (134) (Pt A) (Pr 14) (DB).

——Art. 226—Complicated questions of fact.

A proceeding under Art. 226 is entirely unsuitable for determination of the title of a party, specially when it depends on disputed questions of fact. The Court cannot take evidence or resolve the disputed questions of fact in this jurisdiction. 62 Cal W N 49 : AIR 1958 Cal 114 (115, 117) (Pt A) (Prs 6, 11).

——Art. 226—Powers of High Court.

Held, that the High Court could not decide on affidavits whether there actually occurred any parental favouritism or not which depended on controversial facts stated in the affidavits. 61 Cal W N 414 : AIR 1957 Cal 656 (657) (Pt A) (Pr 4).

——Art. 226—Complicated questions of fact.

Held, that the question whether the petitioner was functioning as the Headmistress or as the Assistant Headmistress of the School and whether she was entitled to pay on the scale claimed by her and as to what amount was actually due to her if at all, and whether the appeal of the petitioner against the decision of the Managing Committee was competent or not were disputed questions of fact which could not be gone into in proceedings under Art. 226 of the Constitution. 61 Cal W N 110: AIR 1957 Cal 182 (184) (Pt A) (Pr 7).

——Art. 226—Scope—Controversial question requiring expert evidence.

Where a controversial question cannot be decided in the absence of expert evidence, adjudication on that point becomes impossible in an application under Art. 226 and for such an adjudication the petitioner will have to institute proceedings where evidence can be taken. ILR (1957) 3 Cal 187 : (1956) 7 S T C 527 : AIR 1956 Cal 299 (302, 303) (Pt D) (Pr 13).

——Art. 226—Controversial questions.

When the subject-matter of the contest is not any question of principle, but a question of the merits of the division actually made of a Union into wards under the powers vested by the Bengal Village Self-Government Act, it is a matter hardly to be agitated on an application under Art. 226 of the Constitution. 1963 Cal L J 214 : 59 Cal W N 1031 : AIR 1955 Cal 529 (532) (Pt D) (Pr 12) (DB).

——Art. 226—Disputed questions of fact.

In an application under Art. 226, the Court does not (except in exceptional circumstances) go into disputed questions of fact. Where the matter involves disputed questions of fact a suit would be the proper remedy. ILR (1956) 1 Cal 247 : 58 Cal W N 457 : AIR 1955 Cal 189 (191, 192) (Pt A) (Prs 10, 18).

——Art. 226—Disputed questions of fact.

In an application under Art. 226, the High Court cannot go into the disputed questions of fact. 58 Cal W N 617 : AIR 1955 Cal 72 (74) (Pt A) (Pr 7).

——Art. 226—Mandamus—Complicated or extended questions of fact such as mala fides, service of notice, knowledge of facts and questions of title, depending on futher evidence, cannot be entered into. AIR 1955 N U C (Cal) 1789.

——Art. 226—Disputed question of fact.

It is not right that the High Court should deal with a disputed question of fact in an application under Art. 226 and the petitioner ought to have preferred an appeal before the Tribunal provided for by

the West Bengal Food Grains (Intensive Procurement Order (1952). AIR 1953 Cal 756 (757, 758) (Pt E) (Pr 7).

——Art. 226 — Determination involving complicated questions of fact cannot be undertaken in proceedings on Habeas Corpus petition. See Ibid, Art. 7. 1964 (2) Cri L J 24 : AIR 1964 Guj 128 (DB).

——Art. 226—Petitioner's right to possession of land in substantial dispute — Determination of disputed questions of fact depending on taking of evidence—Petitioner should seek his remedy under ordinary law—High Court will not interfere in writ proceedings. AIR 1964 S C 1419 and AIR 1958 Madh Pra 115, Rel. on AIR 1965 Him Pra 53 (54, 55) (Pt A) (Prs 7, 10).

——Art. 226 — Serious dispute on question of title which cannot be decided without taking evidence—Question will not be decided in writ petition. AIR 1957 S C 882 and AIR 1960 All 551, Relied on. AIR 1964 Him Pra 19 (22) (Pt B) (Pr 9).

——Art. 226—Question of fact.

A Court exercising jurisdiction under Art. 226 does not ordinarily allow evidence to be led before it on disputed questions of fact: AIR 1960 Raj 86, Foll. AIR 1980 Him Pra 30 (31) (Pt A) (Pr 5).

——Art. 226—Scope of inquiry—Disputed questions of fact.

The question as to whether the petitioner was guilty of an attempt to cheat at the examination or not is, obviously, one which cannot be gone into in summary proceedings like writ proceedings. AIR 1953 Him Pra 33 and AIR 1952 Cal 757, Rel. on. AIR 1958 Him Pra 8 (9) (Pt A) (Pr 5).

——Art. 226—Scope of inquiry—Complicated questions of fact.

The High Court cannot deal with disputed questions of fact in an application under Art. 226. AIR 1953 Cal 756, Rel. on. AIR 1957 Him Pra 31 (32) (Pt B) (Pr 7).

——Art. 226 — Nature and scope of High Court's power under—Order suspending Small Towns Committee without giving opportunity to show cause—Validity—(Municipalities—Punjab Small Towns Act, 1921 (II of 1922), S. 49)—(Municipalities — Punjab Municipal Act (III of 1913), S. 16).

The Judicial Commissioner's Court of Himachal Pradesh can issue a writ under Art. 226 for the enforcement of any of the rights conferred by Part III of the Constitution or for any other purpose. Part 3 deals with Fundamental Rights. If the petitioner is unable to show which particular Fundamental Right has been infringed, the expression, 'for any other purpose', may cover a case, but then a particular case may not be disposed of in a summary proceeding as in a writ petition.

An order was passed by the Lieutenant-Governor, Himachal Pradesh, purporting to be under S. 49, Punjab Small Towns Act, as applied to Himachal Pradesh, suspending the Small Town Committee of Bilaspur on the ground that it had persistently made default in the performance of its duties and abused its powers. The members applied under Art. 226 on the ground that they were not given an opportunity of showing cause against the suspension order.

Held, that S. 49, Punjab Small Towns Act, does not say that before a Committee is suspended, an enquiry should be held and an opportunity be given to the Committee to clear its position.

(ii) The case could not be disposed of in a summary proceeding under Art. 226 because although the order did not indicate which particular duty was neglected by the Committee or which power was abused by it, that fact alone was not sufficient to invalidate the order. The real dispute between the parties was whether the Committee was or was not guilty of the sins of commission or omission, attributed to it. This could be decided only after recording evidence of the parties and, obviously, that could be done only in a regular suit. AIR 1952 Punj 176; AIR 1954 Madh B 161; AIR 1952 All 753 (FB), Disting. AIR 1955 Him Pra 11 (12) (Prs 5, 7).

——Art. 226—Scope of.

Proceedings under Art. 226 being of a summary nature, no writ will issue where the right to it depends on proof of complicated questions of fact which are not capable of establishment in such proceedings. But where the disputed questions of fact are easily provable, as for example, by the filing of originals or certified copies of incontrovertible documents, relief will not be disallowed in such proceedings on the mere ground of the facts stated by the petitioner being disputed by the opposite party. AIR 1953 Assam 12; AIR 1953 Cal 172, Ref. AIR 1953 Him Pra 95 (100) (Pt F) (Pr 20).

——Art. 226 — Nature of jurisdicton of the High Court.

While exercising its writ jurisdiction the High Court does not constitute itself a Court of facts and ordinarily it is only where facts are admitted or clear on affidavits and the only question to be decided is one of law that the High Court condescends to take up matters for disposal under Art. 226 of the Constitution assuming of course that the other essentials necessary for the passing of an appropriate writ are present. This is because if the suitor can get an equally adequate and speedy remedy by recourse to the normal process of law where both parties can produce their evidence and complicated questions of fact can be more satisfactorily gone into, it would be unfair and risky to determine the dispute in a summary manner by permitting resort to the extraordinary jurisdiction of the High Court. Where parties are in disoute on several questions of fact and in order to get at the truth it is necessary that each of them should be given ample opportunity of examining its witnesses and canvassing its respective assertions, they should be left to the ordinary remedy for resolving the differences between them since a Court of facts would be in a better position to judge between the two conflicting versions. Judicial investigation should on principle not be allowed to be sacrificed for the convenience of the petitioners. Case-law referred. I L R (1954) Hyd 350 : AIR 1954 Hyd 203 (204) (Pt A) (Pt 3) (DB).

——Art. 226—Writ petition under — Construction of conflicting documents involved — Not a fit case for interference — Complicated question of fact — Effect of.

Where an order is sought to be quashed under Art. 226 by construing, comparing, contrasting and accepting one version against the other in two documents, it is not at all a fit case in which the extraordinary writ jurisdiction should be exercised. AIR 1960 S C 137, Rel. on. Furthermore, where the contract is rather complicated and raises many legal issues, and where contradictory statements of fact are made, deciding of such cases is clearly beyond the scope of writ petition. 1964 Kash L J 306 : AIR 1965 J & K 39 (42) (Pt B) (Pr 19) (DB).

——Art. 226 — Disputed question of fact — High Court, when will enquire into.

The Court is not powerless to embark upon an enquiry into the disputed questions of fact where such an enquiry can be made and resolved on the basis of documents and affidavits filed in the Court. More

particularly when an infringement of a fundamental right is involved in a case, the Court should normally resolve the disputed question of fact unless the disputed question is very complicated. A I R 1959 S C 725, Rel. on. AIR 1962 J & K 48 (58) (Pt C) (Pr 19).

——Art. 226—Disputed questions of fact cannot be gone into in writ proceeding. See Constitution of Jammu and Kashmir, S. 103. **A I R 1959 J & K 136 (DB).**

——**Art. 226—Relief against proceedings under Employees' Provident Funds Act, 1952 — Question whether management employs 20 or more persons — Finding recorded by authority functioning under statute, without collecting materials — Court not justified in adjudicating upon question.**

Where a writ petition is filed by the management of certain factories challenging the proceedings taken by the Regional Provident Fund Commissioner under the Employees' Provident Funds Act, 1952, by way of demanding contributions, and the question arises whether, in the cases under consideration, it could be held that the management employs 20 or more persons, so as to attract the applicability of the Act, if both the parties, namely, the management and the authorities concerned, are in a position to place before the High Court agreed facts from which the question of the nature of the relationship between the management and the workers, as a point of law, can be decided by the High Court, it may be that the High Court can embark upon that enquiry. Or if an authority competent under the statute to adjudicate upon facts, has investigated the facts and recorded findings one way or the other, on the basis of findings so recorded, the High Court may proceed to adjudicate upon the legal relationship that exists between the parties concerned.

Where neither of the circumstances indicated above is present, the High Court is not justified in going into the question and adjudicate one way or the other regarding the existence or non-existence of a relationship of employer and employee. Where materials have been collected and a finding has been recorded by an authority functioning under the statute, it will then be open to a Court to consider whether the essential conditions for the application of the statute exist in a given case or not.

The mere registration of a factory under the Factories Act and the further circumstance that the factory is having a muster roll and the workers working in the factory are by themselves not enough to prove a relationship of employee and employer. **1963 Ker L J 885 : (1964) 1 Lab L J 528 : I L R (1963) 1 Ker 261 : A I R 1963 Ker 219 (235, 236) (Pt B) (Prs 132, 135, 139).**

——**Art. 226—Question of fact — Proceedings under Art. 226 are particularly inept to investigate complicated questions of fact — Petition challenging land acquisition proceedings on allegations showing mala fide object of Government — Allegations denied or challenged by Government — Allegations cannot be inquired into in writ proceedings. (1960) 2 Ker L R 547 : 1960 Ker L T 630 : 1960 Ker L J 1185 : A I R 1960 Ker 355 (355) (Pt A) (Pr 1) (DB).**

——**Art. 226—Finding of fact — Disputed questions of fact.**

Whether the person who conducted the auction had the right to confirm the sale and whether he, as a matter of fact, did so, are disputed questions of fact which it is impossible to resolve in proceedings on a petition. The person aggrieved has to seek remedies in ordinary suit. **1957 Ker L T 1000.**

——**Art. 226—Income-tax Act, S. 34—Question whether all material was or was not disclosed by petitioner is one of fact—Facts disputed — Writ will not issue—Orders by Taxing authorities—No interference in writ proceedings ordinarily — Remedy by way of appeal should be pursued. (1962) 44 I T R 726, Foll. 1964 M P L J (Notes) 178.**

——**Art. 226—Disputed questions of facts could not be investigated for relief in writ proceedings — Administrative orders are outside the purview of correction by writ of certiorari.**

Held on facts, that it was obvious that there were disputed questions of facts which could not be investigated or made the foundation for relief in the writ proceedings. A I R 1957 S C 882, Rel. on. The orders challenged were administrative orders which were outside the purview of correction by certiorari. The petitioner's case was grounded on facts which were seriously disputed, in a situation in which the petitioner has another alternative and efficacious remedy of a suit. In such a case, as laid down in A I R 1957 S C 882, it would be a sound exercise of discretion to decline to interfere. **1964 M P L J (Notes) 121.**

——**Art. 226—Question of fact.**

The purpose of directions, orders or writs under Art. 226 of the Constitution is to enforce a right which had already been established and is not to establish a legal right. That being so, the right sought to be enforced under Art. 226 must be clear and undisputable. If the right which is intended to be enforced is in substantial dispute or is one which admits of reasonable doubt or controversy and depends on facts which are disputed and which have to be established, then it would not be proper for the High Court to enter into an investigation of facts which have to be established before any writ, direction or order can be issued under Art. 226. In case in which facts have to be established, it would be proper for the High Court to refer the applicant to a suit. AIR 1958 M P 115 and A I R 1957 S C 529, Ref.. **1961 M P C 368 : 1961 Jab L J 437 : 1961 M P L J 508 : I L R (1959) Madh Pra 873.**

——**Art. 226 — Discretion of High Court — Other remedy open — Disputed questions of fact — High Court not bound to exercise powers under Art. 226 simply because violation of fundamental right is alleged — Distinction between Art. 32 and Art. 226.**

The High Court unlike the Supreme Court under Art. 32 of the Constitution, is not bound to exercise its discretionary powers under Art. 226 when there is an equally efficacious remedy by way of a Civil suit. Article 32 is placed in Part III dealing with fundamental rights and, therefore, it can be plausibly contended that an approach to the Supreme Court in the event of a denial of the right conferred by this Part is itself a fundamental right. But such a contention cannot be made in regard to the High Court's power under Art. 226. Where there is controversy in regard to facts, and where at least some of the rights concerned are contractual, a civil suit is more appropriate than an application under Art. 226. **1961 M P L J 138 : 1960 M P C 570 : 1960 Jab L J 1028 : AIR 1960 Madh Pra 282 (285) (Pt A) (Pr 10).**

——**Art. 226—Question of fact—Disputed question of fact—Cannot be gone into in a writ petition. 1960 M P C 22 : 1960 Jab L J 158 : 1959 M P L J 771 : AIR 1959 Madh Pra 377 (379) (Pt A) (Pr 16).**

——**Art. 226—Scope of inquiry — Investigation into disputed facts.**

The object of Art. 226 of the Constitution is the enforcement of fundamental rights and other rights and not the establishment of a legal right. That being so, the right to be enforced must be clear and undisputable. If the right which is intended to be

enforced is in substantial dispute or is one which admits of reasonable doubt or controversy and depends on facts which are disputed and which have to be established, then it would be proper for the High Court to refer the applicant to a suit. AIR 1957 S C 529, Rel. on.

The above rule cannot however apply where the doubt or dispute is as to the construction of a document or a judicial order or as to the effect and meaning of a record. When the right sought to be enforced is clear and undisputable and is a fundamental right, the petitioner cannot be directed to avail himself of the remedy of a suit. AIR 1954 S C 403 : 1964 S C J 445 : (1954) 1 Mad L J 690 & A I R 1957 Madh Pra 109, Rel. on. ILR (1957) Madh Pra 658 : 1957 M P C 725 : 1957 Jab L J 1088 : AIR 1958 Madh Pra 115 (122) (Pt A) (Pr 10) (DB).

——Art. 226—Remedy under—If could be invoked to decide controversial questions of fact — Madras Village Panchayats Act (35 of 1958), Ss. 27 and 28 — Disqualification of members — Matter in controversy—If could be raised in a writ proceeding challenging the validity of a no-confidence motion passed at a meeting.

The Madras Village Panchayats Act provides for a machinery to decide questions relating to disqualification of members of a panchayat. Where a controversy is raised relating to a matter of this character such controversial facts should be decided only by the machinery provided under the Act. The jurisdiction of the High Court under Art. 226 of the Constitution cannot be invoked to investigate into disputed questions of fact and give relief on that basis.

Where a 'no-confidence' motion has been passed by a Panchayat against its President, it is not open to the aggrieved President to challenge the validity of the resolution in proceedings under Art. 226 of the Constitution on the ground that the members of the Panchayat who voted for the resolution were disqualified, especially when the controversy was raised at the meeting and it was found against. 78 Mad L W 196 : (1965) 2 M L J 375 : AIR 1965 Mad 431 (432) (Pr 3) (DB).

——Art. 226 — Disputed questions of fact — Discretion.

As regards the disputed question of facts it is a matter of discretion with the High Court to consider or not. It is a matter of convenience and not of jurisdiction. AIR 1965 Manipur 39 (42) (Pt C) (Pr 23).

——Art. 226 — Nature and scope of High Court's power—Disputed questions of fact.

Proceedings under Art. 226 are of a summary nature where issues are decided on affidavits, and are not appropriate for deciding disputed questions of fact or of title, and therefore in such cases, other remedies that may be open must be sought. AIR 1953 All 477 ; AIR 1956 Cal 257, Rel. on. AIR 1957 Manipur 4 (7) (Pt B) (Pr 13).

——Art. 226 –Power of High Court—Disputed questions of fact.

Where the disputed questions of fact are easily provable, as for example by the filing of originals or certified copies of incontrovertible documents, relief will not be disallowed in proceeding under Art. 226 on the mere ground of facts stated by the petitioner being disputed by the opposite party. AIR 1953 Him Pra 95, Foll. AIR 1956 Manipur 4 (6, 7) (Pt B) (Pr 8).

——Art. 226 — Disputed question of fact — Question cannot be raised for first time in writ proceedings. ILR (1965) Cut 653 : (1965) 2 ITJ 826 : AIR 1966 Orissa 124 (129) (Pt B) (Pt 16) (DB).

——Art. 226—Investigation of disputed facts in writ proceedings — Petitioners challenging election and alleging that provisions of Orissa Municipal Act and Rules as to preparation and publication of electoral roll were contravened — Facts controverted in affidavits filed by opposite parties—Held, the application was liable to be dismissed. AIR 1959 S C 942, Foll. ILR (1965) Cut 765.

——Art. 226—Disputed questions of fact.

In a writ application the High Court cannot enter into disputed questions of fact, such as of relative merits of the candidates who were seeking admissions to a Medical College. I L R (1963) Cut 281 : (1963) 5 Orissa J D 203 : AIR 1963 Orissa 173 (174) (Pt A) (Pr 4) (DB).

——Art. 226—Election—Validity of election challenged on the ground of serious irregularities committed by the Election Officer - Petitioner alleging that voters whose names were on the election roll, were prevented from voting—Question involves facts and cannot be decided by the High Court in exercise of its jurisdiction under Art. 226—Proper remedy of petitioner is to claim relief from the Sub-divisional officer under R. 24 of Gram Panchayat Rules. See Panchayats — Orissa Gram Panchayat Rules (1949), R. 24. I L R (1963) Cut 499.

——Art. 226—Disputed question of fact—Petitioner making certain statement in his affidavit — A vague reply in counter-affidavit to the effect that there is nothing on record to show that the statement of the petitioner is correct will not amount to a denial of the facts alleged in that statement—Hence there is really no disputed question of fact in such a case. AIR 1931 All 423 and AIR 1956 Nag 27, Rel. on. 27 Cut L T 266 : I L R (1961) Cut 373 : (1961) 3 Orissa J D 174 : AIR 1962 Orissa 78 (82) (Pt E) (Pr 7).

——Arts. 226, 227—Finding of fact—Election tribunal—No error apparent on the face of record — Finding will not be disturbed. Panchayats — Orissa Grama Panchayats Act (15 of 1948), S. 10 (9) (c). (1962) 4 Orissa J D 148 : I L R (1962) Cut 217 : 28 Cut L J 446.

——Art. 226 — Finding of lower Appellate Court based on evidence — Cannot be interfered with in exercise of writ jurisdiction. ILR (1962) Cut 195.

——Arts. 226, 227—Certiorari, writ of — Disputed questions of fact—Writ proceedings to quash certificate proceedings to recover arrears of sales tax—Dispute as to facts for deciding whether sales tax was payable—Interference by High Court.

The powers of the High Court under Arts. 226 and 227 of the Constitution are very limited. It cannot enter into disputed questions of fact and come to an independent finding of its own. Where the necessary facts for deciding whether sales tax is payable or not were not admitted and the petitioner, by his own negligence, refused to lead any evidence regarding these facts, it will not be proper for the High Court, at a belated stage to examine this disputed question and come to a finding of its own as against the finding of the Sales Tax Officer. AIR 1956 S C 137 and AIR 1957 Orissa 240, Rel. on. (1961) 12 S T C 649 (Orissa).

——Art. 226—Application under—Disputed questions of fact cannot be decided. ILR (1959) Cut 63.

——Art. 226 — Nature of jurisdiction—Question of fact.

Where an elaborate investigation on facts will have to be made with a view to adjudicate on the rights of the parties the High Court in exercise of its juris-

diction under Art. 226 cannot obviously adjudicate the question. The appropriate forum in that case is the Civil Court. **AIR 1957 Orissa 219 (221) (Pt B) (Pr 9) (DB).**

——Art. 226 –High Court, if will decide questions of fact.

It is not the function of the High Court in an application under Art. 226 to decide questions of fact and to determine the liability of of a dealer for assessment on that basis. All that it can do is to determine whether, on the facts admitted or proved, the assessment has been correctly made. **ILR (1955) Cut 529 : (1956) 7 S T C 36 : 21 Cut L T 531 : A I R 1956 Orissa 7 (9) (Pt A) (Pr 5) (DB).**

[Reversed on another point in AIR 1961 SC 284].

——Art. 226 — Complicated questions of fact—Writ jurisdiction cannot be invoked where a disputed question of fact on the basis of which title to property has to be decided arises for consideration. Proper remedy is a civil suit. **1965 B L J R 744** (DB).

——Art. 226—Question of fact.

Where the allegations of the petitioners are controverted by the opposite parties, and when the facts are in dispute and an appropriate writ cannot be granted without investigation of complicated facts, a writ petition is not an appropriate remedy. A I R 1959 Pat 409 (412, 413) (Pt D) (Pr 7) (DB).

——Art. 226 – Question of fact.

The question whether the petitioners who were discharged from service were made permanent or not is a question of fact and it is not possible for the High Court to go into disputed questions of fact in a writ application especially when there is no material on the point for coming to a decision. 1958 B L J R 593 : AIR 1959 Pat 192 (193) (Pt A) (Pr 5) (DB).

——Art. 226 – Scope of inquiry – Question of fact—Determination of — Question whether proviso to S 85 (1). Factories Act, applies or not to particular person or persons — (Factories Act (1948), S. 85 (1), Proviso).

The question whether the proviso to sub-s. (1) of S. 85 of the Factories Act applies, or not, to a particular person or persons, or to a particular establishment owned by such person or persons, is a mixed question of fact and law both, and it is a matter of enquiry by the appropriate tribunal created by the Statute upon evidence to be adduced, pro and con, specially when that fact is denied on behalf of the other party. (1956.57) 11 F J R 96 : 1956 B L J R 717 : (1957) 1 Lab L J 536 : I L R 35 Pat 877 : A I R 1957 Pat 247 (250) (Pt B) (Pr 18) (DB).

——Art. 226—Controversial question of fact—Determination of — (Bihar Premises Requisition (Temporary Provisions) Act (15 of 1950), S. 3 (1)).

A High Court will not determine a controversial question of fact, such as whether notice under S. 3 (1), Bihar Premises Requisition (Temporary Provisions) Act, should have been given to all joint owners of the premises in question, in a proceeding under Art. 226—AIR 1954 Pat 266. Rel. on. 1957 B L J R 562 : A I R 1957 Pat 109 (109, 110) (Pt A) (Prs 4, 5) (DB).

——Art. 226—Finding of fact—Interference.

Where on fundamental facts there is considerable amount of disagreement and unless there be some very special reasons, it is not open to the High Court to take evidence for the purposes of coming to any findings on these facts. AIR 1956 Pat 384 (390, 393, 394) (Pt B) (Prs 13, 20) (DB).

——Art. 226—Controversial questions of fact—Issue of writ—Practice.

Pure questions of fact, if they are controversial, cannot ordinarily be gone into by the High Court on a writ application under Art. 226 of the Constitution. It is only where the facts are undisputed that the High Court exercises its jurisdiction under the above article if those facts attract the exercise of such jurisdiction. 1956 B L J R 270 : (1958) 1 Lab L J 84 : (1956-57) 10 F J R 255 : I L R 35 Pat 292 : (1958) 1 Lab L J 84 : A I R 1956 Pat 294 (296) (Pt B) (Pr 6) (DB).

——Art. 226 — Nature and scope of High Court's power — Complicated questions of facts and law — Question cannot be gone into. AIR 1955 NUC (Pat) 5696.

——Art. 226 — Question involving investigation of facts.

Whether the properties belong to a public or private endowment, is a question which involves investigation of complicated facts and involves recording of evidence, a proceeding under Art. 226 is not a proper machinery for investigating such complicated question of fact. If the petitioners contend that the properties are not trust properties they are at liberty to institute a properly framed suit claiming the reliefs they seek in a Court of competent jurisdiction. 32 Pat 1148 : AIR 1954 Pat 266 (278) (Pt N) (Pr 24) (DB).

——Art. 226 — Exercise of discretion — Disputed questions of fact.

The remedy given by Art. 226 is an extraordinary one and can be invoked only in exceptional circumstances by those who have no alternative remedy by way of suit or otherwise. The petitioner's disputed questions of fact cannot be satisfactorily determined in these summary proceedings. A I R 1952 Pat 194 (199) (Pt E) (Pr 23) (DB).

——Art. 226—Disputed question of fact.

Controversial points of fact which cannot be decided without elaborate enquiry and without reference to evidence which the parties may have to lead, cannot be taken up and decided in a petition under Art. 226. A I R 1956 Pepsu 14 (16) (Pt F) (Pr 13) (DB).

——Arts. 226 and 227 — Consolidation of holdings under S. 14, E. P. Act (L of 1948)—Dispute regarding fragmentation of holdings cannot be considered in writ proceedings under Articles – In proceedings under Articles High Court would ordinarily refrain from holding an enquiry into disputed facts. See Tenancy Laws—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948), S. 14. ('65) 67 Pun L R 310.

——Art. 226 — Proceedings under E. P. Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) S. 42 — Director, Consolidation of Holdings passing order of adjustment on basis that encroachment in plots allotted to petitioners was made during consolidation operations — Petitioners contending encroachment after termination of consolidation operations — Case was held not fit for interference in writ proceedings on disputed question of fact See Tenancy Laws—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948), S. 42. ('65) 67 Pun L R 176.

——Art. 226 — Power of High Court – Disputed questions of fact—Interference – Permissibility.

The High Court, in proceedings for a writ of certiorari under Art. 226 of the Constitution is not a fact finding tribunal and consequently cannot go into disputed questions of fact in such proceedings. AIR

1960 S C 137 : AIR 1958 S C 398 and AIR 1961 Punj 366, Foll. A I R 1959 S C 725, Dis. ('62) 64 Pun L R 155.

——Art. 226—Disputed question of fact.

In proceedings under Art. 226 of the Constitution it is not open to the High Court to hold an elaborate enquiry into disputed and complicated questions of fact. More so, when the right in question is created by a statute and the mode of redress is also provided therein. I L R (1959) Punj 212 : A I R 1959 Punj 638 (642, 643) (Pt E) (Pr 7).

——Art. 226 -Mixed question of fact and law.

It is not open to the High Court in proceedings under Art. 226 to hold a detailed enquiry into a complicated and mixed question of fact and law. A I R 1959 Punj 575 (577, 578) (Pt D) (Pr 6).

——Art. 226—Disputed facts — Existence of another remedy—Effect—(Specific Relief Act (1877), S 9).

It is not proper for the High Court in a petition under Art. 226 to decide the disputed questions of the fact and law particularly when it is still open to the petitioner, in spite of the decision in the proceedings, to go to a Civil Court under Section 9 of the Specific Relief Act. ILR (1958) Punj 210 : AIR 1959 Punj 220 (222) (Pt C) (Pr 6).

——Art. 226 — Disputed questions of fact — Other remedy open—Jurisdiction of High Court.

Where the petitioner under Art. 226 sought to challenge the vires of the East Punjab General Sales Tax Act, 1948, but the substantial dispute was not the validity of the Act but the application of that Act to disputed questions of facts in the case :

Held, that the High Court in the exercise of its extraordinary jurisdiction would not go into disputed questions of fact and interfere with the assessment proceedings especially when the Act itself provides a complete machinery for settlement of such disputes. (1959) 10 S T C 194 (Punj).

——Art. 226—Disputed questions of fact.

There should be no interference under Art. 226 where facts are in dispute or are contested. AIR 1957 Punj 191, Rel. on. 60 Punj L R 66 : ILR (1958) Punj 775 : AIR 1958 Punj 356 (361) (Pt C) (Pr 16).

——Art. 226 -Disputed question of law and fact — (Industrial Disputes Act (1947), S. 10 (1))

The contention that the dispute relating to an employee could validly not be referred to the Tribunal on the ground that he is not a workman within the meaning of the Act is a matter which can be and ought to be raised before and decided by the Tribunal itself rather than in a Writ petition in the High Court, since it is a disputed question involving both law and fact which can only be decided after evidence. (1957-58) 13 F J R 425: (1958) 2 Lab L J 107 : AIR 1958 Punj 14 (15) (Pt A) (Pr 6).

——Art. 226—Scope of inquiry— Disputed questions of fact.

The object to be accomplished by a writ of mandamus is not to determine controversies; it is simply to enforce a clear and specific legal right when such right depends solely on questions of law. When the question whether the petitioner was appointed to the service in a substantive provisional capacity or in some other capacity is a doubtful and disputed question of fact and it cannot be determined in these proceedings. 59 Punj L R 213 : ILR (1957) Punj 1222 : AIR 1957 Punj 191 (193) (Pt B) (Pr 7) (DB).

[Reversed on another point in AIR 1962 S C 1711.]

——Art. 226—Application for writ—Facts in dispute —Effect.

Where in a petition for a writ under Art. 226, the facts themselves are in dispute, the High Court will not issue any writ or order. A I R 1953 Punj 137, Rel. on; (1915) 3 K B 768 and (1925) 2 K B 250, Ref. 56 Punj L R 14 : AIR 1954 Punj 117 (118) (Pr 4) (DB).

——Art. 226—Facts in dispute—Exercise of jurisdiction.

The High Court cannot turn itself into a Court of original jurisdiction and proceed to enquire into the various issues which arise on the pleadings of the parties. Therefore, when the facts are disputed, it would not exercise its jurisdiction. ILR (1953) 3 Punj 472 : AIR 1953 Punj 137 (144) (Pt G) (Pr 29) (DB).

——Art. 226 - Question of fact —Whether firm has dissolved is question of fact and cannot be entertained - Income-tax Act (1922), S. 44.

It is a question of fact, whether the firm has or has not been dissolved and when the fact is disputed by the Income tax department the High Court is not in a position to determine this controversy in exercise of its extraordinary jurisdiction under Art 226 of the Constitution. ILR (1965) 15 Raj 555 : (1965) 2 I T J 682 : 1965 Raj L W 530 : AIR 1965 Raj 205 (206) (Pt A) (Pr 7) (DB).

——Art. 226 - Scope —Controversial questions of fact cannot be gone into in writ jurisdiction. 1965 Raj L W 188 : ILR (1965) 15 Raj 375 : AIR 1965 Raj 162 (166, 167) (Pt B) (Pr 16) (DB).

——Art. 226— Disputed question of fact — Writ to challenge order of deportation —Vital question whether petitioner was Indian citizen or foreigner on 26th January, 1950— Remedy by suit more appropriate than by writ—Foreigners Act (1946) (as amended in 1957), Ss. 9 and 8 —Determination of nationality — Burden of proof — Citizenship Act (1955), S. 9 (2) —Determination of citizenship.

Where in a writ petition under Art. 226, seeking to challenge an order of deportation passed against the petitioners by the Superintendent of Police, directing them to leave India, the most vital question for consideration was whether the petitioners were Indian citizens on 26th January, 1950, when the Constitution came into force, and where there was a dispute on the question of fact, the matter cannot properly be determined in exercise of the extraordinary jurisdiction under Art. 226. The question will be best decided by a suit : AIR 1963 S C 1035 and AIR 1961 SC 1526 and AIR 1962 S C 70 and AIR 1962 SC 1778 and AIR 1963 S C 645, Rel. on. 1964 Raj L W 591.

——Arts. 226 and 227 — High Court will not permit elaborate enquiry into disputed questions of fact and to determine them especially where a party can resort to the remedy by way of a suit. 1964 Raj L W 380.

——Art. 226—Questions of fact.

The High Court will not ordinarily decide disputed questions of fact in its extraordinary jurisdiction. ILR (1959) 9 Raj 1255 : 1960 Raj L W 306 : AIR 1960 Raj 86 (90) (Pt E) (Pr 11).

——Art. 226—Disputed facts — If there is no alternative remedy the Court has to determine even after recording evidence. ('60) ILR (1960) 10 Raj 540.

[Overruled on another point in AIR 1961 Raj 250 (FB)].

——Art. 226— Questions of fact— Disputed question relating to service of notice — Court will not investigate—(Evidence Act (1872), S. 114). 1958 Raj L W 255 : ILR (1958) 8 Raj 364.

——Art. 226—Disputed questions of fact.

The High Court will not grant relief to the petitioner in its extraordinary jurisdiction by going into

disputed questions of fact. 1955 Raj L W 411 : ILR (1955) 5 Raj 950 : AIR 1956 Raj 33 (34) (Pt C) (Pr 9) (DB).

——Art. 226—Finding on question of fact — Industrial Disputes—(Industrial Disputes Act (1947), S. 10 (1)).

Where the question is whether the petitioner had closed down his mills temporarily or whether he had resorted to a lock-out to coerce the labour to come down to their knees, it is difficult to come to correct finding on such a question of fact in proceedings under Art 226. The matter can very well be enquired into by the Industrial Tribunal. I L R (1953) 3 Raj 862 : 1953 Raj L W 569 : AIR 1953 Raj 188 (190) (Pt B) (Pr 6) (DB).

[Impliedly Overruled on another point in AIR 1963 S C 1811].

——Art. 226—Question of fact —Issue of writ.

The High Court, in a proceeding under Article 226, will not embark upon an enquiry into a disputed question of fact. That the remedy of a civil suit is open to the petitioner is an additional reason, why the High Court will not go into that question. AIR 1959 Tripura 27 (29) (Pt A) (Pr 12).

——Art. 226—Disputed questions of fact.

It is well settled that proceedings under Art. 226 are of a summary and discretionary nature and the Court will not enter into those facts which are in dispute. AIR 1957 Tripura 15 (17) (Pt A) (Pr 17).

——Art. 226—Case involving complicated questions of fact — Writ of mandamus may not be issued.

Where the case involves complicated questions of fact and these facts cannot properly be decided without taking evidence such questions should not be tried in mandamus proceedings. Issue of the writs, directions and orders is entirely a matter for the discretion of the Court And one of the grounds against the exercise of that discretion is that the right claimed by the petitioner is not capable of being established in the summary proceedings under Art. 226. Case-law Ref. AIR 1955 Tripura 33 (34) (Pt A) (Prs 4, 5).

Finding based on evidence.

——Art. 226—Question of fact — State Government has to apply its mind to decide such question —High Court has jurisdiction to decide whether State Government has done so.

The question whether or not the premises in dispute were vacant is a question of fact rather than a question of law and a Single Judge of the High Court, upon a writ petition filed by the aggrieved party, has the jurisdiction to decide whether or not the State Government passed the order without applying its mind to such a question. 1965 A L J 740 : 1966 Cri L J 320, Disting. 1965 All W R (HC) 782.

——Art. 226—Question involved pure question of fact —Subordinate authority arriving at finding of fact on evidence produced—High Court will not interfere in writ jurisdiction. A I R 1961 All 299 (300) (Pt D) (Pr 7).

——Art. 226— Question of fact — Disputed facts — Investigation.

As a rule, High Court does not enter into an investigation of disputed facts in the proceedings under Art. 226 which are decided on the basis of affidavits. 1958 All L J 539 : ILR (1959) 1 All 176.

——Art. 226—Finding of fact by Tribunal—Interference —Error of law —(Motor Vehicles Act (1939), S. 60 (c)).

The Regional Transport Authority and the State Transport Tribunal are administrave bodies exercising quasi-judicial functions as regards the issue and cancellation of permits.

The High Court is not, in the exercise of its powers under Art. 226 of the Constitution, entitled to usurp the jurisdiction vested in those bodies or to constitute itself a Court of appeal from their decisions The High Court would have no power, save possibly in very exceptional circumstances, to interfere with the decision of the State Transport Tribunal on a question of fact in any case in which there is conflict of evidence.

But where the Regional Transport Authority and the State Transport Tribunal have arrived at a finding to the effect that the permit was obtained by fraud and misrepresentation which is not only unsupported by any evidence but is contrary to such evidence as there is, it amounts to an error of law if not to a violation of the principles of natural justice. An error of law apparent on the face of the proceedings is recognised as good ground for the issue of an order of certiorari. (1952) 1 All E R 122; A I R 1952 S C 192; Relied on.

Writ of certiorari was issued, quashing the orders cancelling the permits, of the Regional Transport Authority. 1954 All L J 278 : 1954 All W R (H C) 352 : AIR 1953 All 641 (643) (Pt B) (Prs 12, 13, 15 (DB).

——Arts. 226 and 227 — Finding of fact—No interference — (Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (62 of 1948), S. 29).

Where the proceedings under S. 29 read with S. 34 of the Bombay Act (62 of 1948). the question was whether the applicant wanted the lands for his bona fide personal cultivation and the Revenue Tribunal having considered the evidence in the case came to the conclusion that it was not so proved:

Held, that it was a finding of fact and it would not be open to the High Court in proceeding under Arts. 226 and 227 to interfere with that finding. AIR 1956 Bom 128 (129) (Pt A) (Pr 3) (DB).

——Art. 226 — Industrial dispute — Application by workmen to summon a party which was not a party to the reference to appear in the proceedings on the ground that it was the employer—Tribunal on consideration of the evidence holding that the party was not the employer and rejecting the application on the ground that it was not a necessary party—High Court will not interfere with the finding under Art. 226—Industrial Disputes Act.(1947), S. 18(2).(b). (1964) 1 Lab L J 134 : (1963) 7 Fac L R 121 (Cal).

——Art. 226—Appreciation of evidence by disciplinary tribunal — High Court cannot constitute itself into Court of appeal. 1963 Ker L J 463 : (1963) 1 Ker L R 455 : 1963 Ker L T 503 : ILR (1963) 1 Ker 622 : (1963) 2 Lab L J 211 : AIR 1964 Ker 227 (230) (Pt B) (Pr 14).

——Art. 226 — Questions of fact—Kerala Buildings (Lease and Rent Control) Act (16 of 1959), S. 11 (3).

When exercising powers under Art. 226, the High Court does not act as though it were an appellate authority deliberating on the correctness or otherwise of conclusions on facts by the lower tribunals. A writ of certiorari would not be issued unless the decisions sought to be vacated are vitiated by error of jurisdiction, by legal error apparent on the face of the record, or by failure to observe principles of natural justice. The factual sufficiency of the ground, on which the lower tribunals acting under the Kerala Buildings (Lease and Rent Control) Act have directed eviction, would not be scrutinised by the High Court in writ proceeding, the correctness of such findings being justiciable by proper authorities

in exercise of their appellate powers. 1961 Ker L J 425 : (1961) 1 Ker L R 260 : 1961 Ker L T 114.

——Art. 226 — Industrial dispute — Award by Tribunal—Interference—Grounds.

In proceedings under Art. 226 of the Constitution it is not within the province of the High Court to find out whether a particular award given by an Industrial Tribunal works hardship or not, if the award as passed is within the jurisdiction of the Tribunal and is not opposed to any principles of natural justice.

Held, that taking the award as a whole and considering the nature of the dispute referred to the Tribunal and the evidence adduced before the same, it could not be said that the finding was in any way, not supported by the evidence on record. (1959) Ker L R 1219 : (1960) 1 Lab L J 316.

——Art. 226—High Court has no jurisdiction under Art. 226 to interfere with a finding of fact — Order of State Transport Appellate Authority granting stage carriage permit after evaluation of merits of applicants—Motor Vehicles Act (1939), S. 48 (1).

It is not open to the High Court to interfere with the valuation of the merits of the petitioner and the respondent made by the State Transport Appellate Authority for the grant of permit when the decision of the appellate authority does not suffer from any infirmity justifying the issue of a writ of certiorari. It cannot be said of the decision of the appellate authority that it is based on irrelevant considerations or on considerations which are invalid in law. AIR 1964 S C 477 and Civil Appeal No. 1015 of 1963 of High Court of Madhya Pradesh, Rel. on. 1964 Jab L J 491.

——Art. 226 — Jurisdiction to interfere — Claim for retrenchment compensation — Evidence of employer to show that employee himself stayed away — Decision of Labour Court based on appreciation of evidence held could not be interfered in writ petition. See Evidence Act (1872), S. 101. AIR 1964 Mad 255.

——Art. 226 — Finding of fact — Fair rent fixed by authorities — High Court will not interfere unless it is case of no evidence — (House and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cls. (4) and (5)). 1958 Nag L J (Notes) 62.

——Art. 226—Enquiry officer following correct procedure — Civil Court cannot question findings on appraisal of evidence. See Civil Services (Classification, Control and Appeal) Rules, R. 55. AIR 1960 Pat 116 (DB).

——Art. 226—Scope and object.

In dealing with an application for a writ it is usually unnecessary for the High Court to go beyond the findings arrived at by the lower Courts which are based upon evidence. AIR 1953 Pat 235 (235) (Pt A) (Pr 2) (DB).

——Art. 226 - Scope and object.

Whether a person is a resident of India or Pakistan is a pure question of fact, and if after a consideration of the relevant materials, the authorities have come to a definite conclusion that the petitioner was resident of a place now forming part of Pakistan, it is not for the High Court to interfere with that decision which is entirely within the jurisdiction of those authorities, and hold to the contrary. AIR 1953 Pat 235 (235) (Pt B) (Pr 2) (DB).

——Art. 226 — Certiorari — Finding of fact reached on evidence cannot be disturbed—Interference permissible only when error of law is apparent on the face of the record and not when the error is of fact howsoever grave it may be. See Ibid, Art. 227. 67 Pun L R 1143 : AIR 1966 Punj 365.

——Art. 226 — Finding of fact by Tribunal based on legal evidence — High Court has no power to interfere with.

The question as to what was the value of property left in Pakistan by the displaced person is one of fact. Where the finding of the Settlement Commissioner on the valuation of the property is based on legal evidence, the Single Judge, even if he is of the view that the finding was erroneous, has no jurisdiction under Art. 226 to interfere with it. If certain documents had been rejected by the Settlement Commissioner, may be on wrong grounds, the Single Judge cannot go into it, because the matter pertains to the realm of appreciation of evidence. 67 Pun L R 550 : AIR 1965 Punj 307 (309, 310) (Pt A) (Pr 5) (DB).

——Art. 226—Industrial dispute—Finding by Labour Court on considering evidence produced by both parties, that certain so-called piece-rated workers are independent workers is one of fact — Finding cannot be challenged in writ proceeding. 1963 Cur L J 442 (Punj).

Absence and non-consideration of evidence.

● ——Art. 226 — Findings in departmental enquiry under Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1948 — High Court can only enquire whether finding is based on no evidence but cannot re-assess evidence.

A High Court, in the exercise of its jurisdiction under Art. 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge: AIR 1963 S C 404 and AIR 1963 S C 1723 and AIR 1964 S C 364, Foll.; Writ Appeal No. 54 of 1956, dated 28-11-1959 (Madras), Reversed.

Held, that High Court was in error in quashing the order of the State Government retiring the respondent compulsorily on the ground that the evidence during the enquiry proceedings by the Tribunal was not sufficient to establish the charges against him beyond reasonable doubt. State of Madras v. Sundaram, (1965) 2 S C J 662 : (1965) 2 Andh W R (S C) 140 : (1965) 2 Mad L J (S C) 140 : AIR 1965 S C 1103 (1105, 1107) (Pt A) (Prs 7, 8, 20)

● ——Art. 226 — Finding by Labour Court that management's action amounted to victimisation — Interference under Art. 226 of the Constitution.

When the Labour Court came to the conclusion on a consideration of the evidence that the Management's action was not bona fide but amounted to victimisation of the employee it would not have been open to the High Court in a petition under Art. 226 of the Constitution to disturb that finding except on the ground of an error apparent on the face of the record or on the ground that there was no evidence at all to support it. Where the High Court has not only found no such error but has gone further and indicated its support of that finding, it is not open to the Management to challenge the High Court's conclusion on this point. Management of the Express Newspapers (Private) Ltd. Madurai v. Presiding Officer, Labour Court, Madurai, (1964) 1 Lab L J 9 : (1964) 8 Fac L R 289 : (1964-65) 26 FJR 121 : AIR 1964 S C 806 (807) (Pt B) (Pr 12).

——Art. 226 — Certiorari — Finding of fact based on no evidence — Writ in respect of, can be issued. AIR 1964 S C 477 Foll. 1965 (1) Cri L J 547 : AIR 1965 Cal 248 (251, 252) (Pt B) (Pr 10).

——Arts. 226 and 311 (2)—Disciplinary proceedings — Findings of enquiring authority — High Court

has jurisdiction to question whether there is no evidence in support of findings.

The High Court will not, in a writ proceeding go into the question whether the evidence adduced before the enquiring authority in disciplinary proceedings was insufficient or inadequate to sustain the findings of the authority. The Court, however has jurisdiction to go into the question whether there is no evidence at all to support the findings. AIR 1964 S C 364, Foll. **A I R 1966 Him Pra 13 (16) (Pt B) (Pr 16).**

——**Arts. 226, 227—Powers of High Court — Industrial Tribunal's failure to consider piece of evidence — Award will be quashed and direction to reconsider evidence will be issued under Art. 227.**

In a petition under Arts. 226 and 227, against the award of the Industrial Tribunal, the High Court will not scrutinise the appreciation of the evidence by the Tribunal. But where the High Court finds that the Tribunal has committed an error of not taking a certain piece of evidence into account in arriving at its finding, though under Art. 226 it can merely quash the award, it can under Art. 227 besides quashing the award, direct the Tribunal to reconsider the matter by taking into consideration the piece of evidence, which it had omitted to consider. A I R 1955 S C 233, Rel on. **1960 Ker L T 764 : 1960 Ker L J 913 : (1960) 2 Ker L R 507 : AIR 1961 Ker 92 (93) (Pr 3) (DB).**

——**Art. 226** — Finding of fact by labour Court — Court not acting entirely without material — High Court will not assess sufficiency of material in petition under Art. 226. **(1962) 1 Lab L J 493 : 1962 Mad W N 197 : (1963) 2 Mad L J 184 : (1962-63) 23 F J R 242 : A I R 1962 Mad 335 (338) (Pt B) (Pr 6).**

——**Art. 226** — Certiorari — Power of High Court to consider evidence and decide question itself — Labour Court not exercising jurisdiction vested in it — Holding employee not to be 'workman' without considering requisites of statute — High Court refused to consider evidence in case and decide question itself. **(1965) 1 Lab L J 357 : (1965-66) 27 F J R 418 : AIR 1965 Mys 121 (124) (Pt C) (Pr 5) (DB).**

● ——**Art. 226—Questions of fact.**

The High Court will not take upon itself the determination of questions of fact which must depend upon evidence. The contention that any of the candidates for election as councillor for the Janapada Sabha had incurred a disqualification for the reason that he had not paid up all arrears of municipal taxes is a matter of enquiry by the appropriate tribunal created by the statute upon evidence to be adduced 'pro' and 'con', specially when that fact is denied on behalf of the other party. Wamanrao v. Chief Executive Officer, Chandur, **ILR (1954) Nag 915 : 1954 Nag L J 678 : A I R 1955 Nag 110 (111) (Pt A) (Pr 6) (FB).**

——**Art. 226** — Finding based on no evidence — Finding is arbitrary—Order should be quashed. See Houses and Rents— C. P. and Berar Letting of Houses and Rent Control Order, Cl. 13 (3) (vi) (a). **1951 Nag L J (Notes) 114.**

——**Art. 226 — Jurisdiction — Taxation matters — Question of fact—Challenge to—Resort to Art. 226—If open.**

In taxation matters, normally a party should be left to have its grievance redressed in accordance with the machinery provided by the taxing statutes. Normally the High Court is not an appellate authority on facts under the Punjab General Sales Tax Act, and, therefore, challenge to questions of fact before High Court is not to be encouraged by too readily permitting resort to Art. 226 which may have the effect of by-passing the machinery set up by the Legislature in its wisdom for enquiry and scrutiny into and decisions on questions of fact. Jurisdiction conferred by this Article is not intended to supersede the jurisdiction and authority of the assessing hierarchy to deal with the merits of all the contentions that the assessee may raise before them. It would accordingly be inappropriate to permit an assessee to move the High Court under this Article and contend that on appraisal of the evidence on the record, the conclusion of the Assessing Authority is wrong. The assessee must in the first instance be required to proceed in accordance with the statutory machinery provided for relief, and more so when the question raised is one of pure fact to be determined on all the evidence and circumstances of the case. **(1965) 16 S T C 553 : AIR 1965 Punj 391 (394) (Pt B) (Pr 8) (DB).**

——**Art. 226—Question of fact.**

A High Court cannot in a petition under Art. 226 decide a matter where the decision rests upon a question of fact depending upon evidence to be led by the parties for and against their contentions. **(1959) 1 Lab L J 64 : (1958-59) 14 F J R 96 : A I R 1958 Punj 330 (331, 332) (Pt A) (Pr 3).**

——**Art. 226**—Exercise of jurisdiction under—Extent of — Order in conformity with law—Failure to produce material evidence at proper time — High Court will not perform, function of appellate Court by admitting evidence and test validity of order on such evidence. **AIR 1953 Sau 20 (21) (Pt B) (Pr 5) (DB).**

Fact in issue.

—**Art. 226** — **Mandamus** — **(M. B. Police Regulations, Part VI, Chap. VIII, S. 3).**

Allegations that under the pretext of the surveillance order police authorities insist the petitioner's staying at home and also interfere with his customers, being the facts in issue, no mandamus can issue on them. **I L R (1953) M B 162 : A I R 1954 Madh B 63 (64) (Pt B) (Pr 4) (DB).**

Jurisdictional fact.

● ——**Art. 226 — Jurisdiction — High Court can investigate existence of conditions for exercise of jurisdiction under S. 34, Income-tax Act, by Income Tax Officer.**

Per S. K. Das, Das Gupta and N. Rajagopala Ayyangar JJ :

Under S 34, Income-tax Act, both the conditions, (i) the Income tax Officer having reason to believe that there has been under-assessment and (ii) his having reason to believe that such under-assessment has resulted from non-disclosure of material facts, must co-exist before the Income-tax Officer has jurisdiction to start proceedings after the expiry of 4 years. In proceedings under Art. 226 the High Court can investigate the existence of one of these conditions viz., that the Income-tax Officer has reason to believe that under-assessment has resulted from non-disclosure of material facts.

Per J. C. Shah J.—If the conditions precedent do not exist, the jurisdiction of the High Court to issue high prerogative writs under Art. 226 to prohibit action under the notice may be exercised. But if the existence of the conditions is asserted by the authority entrusted with the power and the materials on the record, prima facie support the existence of such conditions, an enquiry whether the authority could not have reasonably held the belief which he says he had reason to hold and he did hold, is barred. Calcutta Discount Co., Ltd. v. Income-tax Officer, Calcutta, **(1961) 2 S C R 241 : (1963) 1 S C J 741 : (1961) 1 S C A 661 : (1961) 41 I T R 191 : A I R 1961 S C 372 (379, 380, 385, 386) (Pt B) (Prs 26, 53).**

——**Art. 226 — Power of High Court — Scope of — (Houses and Rents — U. P. Government Premises**

(Rent Recovery and Eviction) Act (39 of 1952), S. 7).

The condition for the exercise of the power to issue notice under S. 7, U.P. Act 39 of 1952, depends upon the existence of the fact that the subletting had been done without the permission of the State Government or the authority appointed in that behalf by the State Government. The fact whether such a permission was obtained can be examined by the High Court in a writ petition. 1957 All W R (HC) 25.

——Arts. 226 and 227 — Scope—(Civil P. C. (1908), S. 9).

Application under against order of Tribunal reviewing its own decisions, on ground that it had no such jurisdiction — Tribunal found to have such jurisdiction — High Court will not consider whether the facts which have to exist in order to entitle the Tribunal to review its own decision existed or not — That would be a question of merits and not a question of jurisdiction and it would be for the Tribunal itself acting within jurisdiction to decide whether a case has been made out for the exercise of its jurisdiction to review its own decision. 55 Bom L R 298 : ILR (1953) Bom 827 : AIR 1953 Bom 284 (285) (Pt C) (Pr 4) (DB).

——Art. 226—Question of fact — Question whether employee is workman within S. 2 (s) of Industrial Disputes Act (1947) — High Court's power to go into—(Industrial Disputes Act (1947), S. 2 (s))

Under Art. 226 of the Constitution the scrutiny of facts found by the Tribunal should be no more and no less than what the High Court will undertake in the case of an appeal where appeals are competent. All this, of course, is subject to the overriding principle that the issue of writs and directions under the article is in the discretion of the Court, and cannot be claimed as a matter of right. As the question as to whether an employee is a "workman" within the meaning of S. 2 (s) of the Industrial Disputes Act, 1947 is a collateral fact the evidence on which the Industrial Tribunal founded its conclusion should also as a natural corollary, be the subject of scrutiny by the High Court. 1959 Ker L T 470 : 1959 Ker L J 579 : ILR (1959) Ker 974 : A I R 1959 Ker 326 (328, 329) (Pt A) (Prs 12, 16) (DB).

——Art. 226—Certiorari and mandamus, when to be issued — Question under S. 4 (a) of Bihar Land Reforms Act.

The determination of a question arising under S. 4 (a) of the Bihar Land Reforms Act with regard to the character of a building, namely whether it is used primarily as office or cutchery for the collection of rent, is not a question of pure fact but is a question of jurisdictional fact. Where the authorities have decided such question wrongly, the aggrieved party is entitled to a writ of certiorari for quashing the order in question and to a writ of mandamus prohibiting interference with possession. AIR 1956 Pat 104 and AIR 1957 Pat 94, Foll. 1960 B L J R 425 : AIR 1961 Pat 91 (91, 92) (Pr 1) (DB).

—Art. 226 — Question of fact — Power of High Court.

Where the jurisdiction of an administrative authority depends upon a preliminary finding of fact the High Court is entitled in a proceeding for a writ of certiorari to determine upon its independent judgment whether or not that finding of fact is correct. Under S. 4 (g) of the Bihar Land Reforms Act, the collector gets jurisdiction to take possession of a building on existence of the fact that it was primarily used for collection of rent. If it is not used primarily for the purpose, he does not get jurisdiction to take possession of it even though rent may have been casually collected therein.

The determination of such a question is not an issue of pure fact but an issue of jurisdictional fact. The High Court can determine such questions of fact the existence of which could alone give jurisdiction to the collector. AIR 1957 Pat 94 (96) (Pt A) (Pr 7) (DB).

—Art. 226—Certiorari—Question of fact — Conditions laid down in S. 33-A Industrial Disputes Act—Conditions, whether established — High Court's power to determine question — (Industrial Disputes Act (1947), Ss 33 and 33A).

The questions whether a person is a workman and therefore, competent to complain under S. 33-A to the Industrial Tribunal are not questions of pure fact but questions of 'jurisdictional fact'. The conditions laid down by S. 33-A are preliminary or collateral conditions upon which the jurisdiction of the Industrial Tribunal depends and the High Court is entitled in a proceeding for writ of certiorari to determine upon its independent judgment whether or not those conditions have been established. AIR 1955 S C 258, Foll., AIR 1953 All 260, Doubted and not Foll. (1956) 1 Lab L J 278 : (1956-57) 10 F J R 89 : A I R 1956 Pat 518 (520, 521) (P C) (Pr 7) (DB).

——Art 226—Writ of certiorari — Finding of fact—Interference with—Wrong decision regarding jurisdictional fact — Decision of Collector under S. 4 (h) of Bihar Act, (30 of 1950) — (Bihar Land Reforms Act (30 of 1950), S 4 (h)).

It is well established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact the High Court is entitled, in a proceeding for a writ of certiorari, to determine upon its independent judgment whether or not that finding of fact is correct. (1910) 2 K B 859 and (1939) 2 K B 838, Rel. on. The condition imposed by S. 4 (h) of the Bihar Land Reforms Act is a condition upon which the jurisdiction of the Sub divisional Officer depends and by wrongly deciding a question as to the fraudulent intention of the outgoing proprietor the Sub-divisional Officer cannot give himself jurisdiction to cancel or annul the Khorposh grants. 1956 BLJR 24 : AIR 1956 Pat 104 (106, 107, 108) (Pt A) (Prs 5, 8) (DB).

——Art 226 — Objection about jurisdiction of Tribunal—Whether can be allowed in proceedings under Arts. 226 and 227 before High Court. See Industrial Disputes Act (1947), S. 10. ILR (1963) 2 Punj 28.

——Art. 226 — Question of fact—(Tenancy Laws—Rajasthan (Protection of Tenants) Ordinance (9 of 1949), S. 4).

Where a question of fact has to be decided before a provision of law can be applied it is the duty of the party seeking relief by a writ to have the question of fact decided by the Courts having jurisdiction by raising the plea. Section 4 of the Ordinance 9 of 1949 requires a decision of one fact before it can be applied, namely whether the person to be ejected is a tenant. If the applicant failed to raise this plea in the revenue Court and no material was thus placed before the Court on which the application of S. 4 could be decided, High Court will not be prepared to decide the point in extraordinary jurisdiction under Art. 226. 1954 Raj L W 385 : ILR (1959) 4 Raj 1 : A I R 1954 Raj 236 (237, 238) (Pt C) (Pr 10) (DB).

Erroneous finding.

● ——Art. 226—Finding of fact— Writ cannot issue even if finding is erroneous. Pioneer Traders v. Chief Controller of Imports and Exports, Pondicherry, (1964) 1 S C J 595 : (1963) Supp 1 S C R 349 : (1963) 2 S C A 243: AIR 1963 S C 734 (742) (Pt D) (Pr 19).

——**Art. 226—Appraisement of facts.**

It is not possible nor is open to the High Court in writ proceedings to enter upon an appraisement of facts which was really the jurisdiction of the authority which made the orders. The fact whether the authority making the order applied its mind to the matters before it, whether it came to the same conclusion as some other Court or authority will come is not necessary. What is relevant is whether the conclusion reached by it is not an impossible conclusion on the material that was before it. 1958 All L J 915.

——**Art 226**—*Finding of fact by Tribunal*—Interference—Error of law — (Motor Vehicles Act (1939), S. 60 (c).) **AIR 1953 All 641 (643) (Pt B) (Prs 12, 13, 15) (DB).**

——**Art. 226 – Powers of High Court — Question of fact — Industrial dispute — Dispute in respect of matter relating to firm of chartered accountants — Dispute referred to Industrial Tribunal—Jurisdiction of Industrial Tribunal — High Court may go into question of fact giving jurisdiction.**

Where a question is referred to an Industrial Tribunal in respect of the matter relating to a firm of chartered accountants, it is necessary for the Industrial Tribunal to determine first of all the jurisdictional fact as to whether the firm carried on an industry, so as to assume jurisdiction over the issues referred to it. The question, therefore, whether the business of a Chartered Accountant is an industry or not is one of jurisdictional fact and if in deciding such a fact the Tribunal goes wrong the High Court may in exercising the writ jurisdiction, go into the question of fact and correct the wrong decision. A I R 1957 S C 512, Rel. on. **67 Cal W N 232 : (1963) 24 F J R 163 : (1963) 6 Fac L R 45 : (1963) 1 Lab L J 567 : A I R 1963 Cal 310 (313) (Pt B) (Pr 11).**

● ——**Art. 226—Powers of High Court — Finding of fact.**

The High Court in exercising jurisdiction over inferior tribunals under Art. 226 does not function as a Court of appeal but its control extends to seeing that the inferior tribunals keep within their jurisdiction and that they observe the law. The High Court acts in a supervisory capacity and does not substitute its own views for those of the tribunal as a Court of appeal would do.

The High Court will not review findings of fact reached by the inferior Court or tribunal even if they are erroneous. (1922) 2 A C 125 (156) and A I R 1955 S C 233, Rel. on., Nripendra Nath Bagchi v. Chief Secretary, Govt of West-Bengal, **65 Cal W N 361 : (1961) 2 Lab L J 312 : AIR 1961 Cal 1 (15, 19) (Pt I) (Prs 65, 92, 93) (SB).**

——**Arts. 226 and 227**—Errors of fact cannot be considered in writ proceedings. AIR 1961 S C 970, Rel. on. **1963 M P L J (Notes) 254.**

——**Art. 226 — High Court would not interfere with findings of facts in writ proceedings — Question of jurisdiction not raised before the tribunal—Question cannot be permitted to be raised in the High Court.**

On exercise of its jurisdiction under Arts. 226 and 227 of the Constitution, High Court will not interfere with findings of fact even though the tribunal might have proceeded upon erroneous appreciation of oral or documentary evidence or inferences drawn from them or even with mere formal or technical errors of law. AIR 1954 S C 440, AIR 1955 S C 233 and A I R 1958 S C 398, Rel on. In the matter of issue of a writ of certiorari, a question of jurisdiction could not be allowed to be raised in a petition where no objection to the jurisdiction had been taken before the tribunal whose order was challenged. 1961 M P L J 761, Foll. **1962 M P L J (Notes) 300.**

——**Art. 226—Grant of stage carriage permit — Preference amongst several applicants on basis of marks allotted under different heads under Government orders—Viable unit—Misconstruction of Government orders — No reason for issue of writ under Art. 226.** See Motor Vehicles Act (1939), S. 47. **AIR 1964 Mad 401 (DB).**

——**Art. 226—Question of fact—No interference.**

The Court issuing a writ of certiorari acts in the exercise of supervisory and not appellate jurisdiction. Even if the findings of fact by an inferior Court were erroneous, the superior Court will not review the said findings or substitute its own findings in place of the findings of the inferior Court. AIR 1955 S C 233 and AIR 1960 S C 137, Relied on. **AIR 1961 Manipur 28 (30) (Pt A) (Pr 7).**

——**Art. 226—Question of fact — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 18 (3) — Special Tribunal—Jurisdiction of rent controller and Commissioner — Extent — Wrong decision on question of fact—No interference.**

The Bihar Act empowers the Controller alone to decide whether or not there is non-payment of rent, and it expressly makes his order final, subject only to the decision of the Commissioner. Therefore, even if the Commissioner may be assumed to have wrongly decided the question of non-payment of rent, his order cannot be questioned. His decision is final under S. 18 (3) of the Act, and therefore, it cannot be questioned even by a writ of certiorari. AIR 1954 Pat 24, Rel. on. **1956 Pat L R 528 : AIR 1957 Pat 160 (161, 162) (Pt B) (Pr 12) (DB).**

——**Art. 226** — Finding of fact — Court acting under Art. 226 is not Court of appeal and finding though erroneous is not open to review. **1965 Pun L R (Supp) 316.**

——**Art. 226** — Finding of fact — Court in its writ jurisdiction would not interfere with finding of fact, even if it be wrong — AIR 1958 S C 398 and AIR 1961 Punj 386, Foll. **65 Pun L R 746 : ILR (1963) 2 Punj 685 : AIR 1964 Punj 87 (88) (Pt A) (Pr 3) (DB).**

——**Art. 226 — Finding of fact — High Court will generally not interfere.**

The language of Art. 226 does not in terms rule out interference with questions of fact in proceedings thereunder but as a general rule, the High Court does not interfere with finding of fact erroneously arrived at by the subordinate tribunals, for they have jurisdiction and power to decide both right as well as wrong. AIR 1958 S C 398 and AIR 1960 S C 137, Foll.; AIR 1961 Punj 366 and 1962 P L R 155, Rel. on. AIR 1955 S C 65 and AIR 1962 Punj 32, Ref. **66 Pun LR 474.**

——**Art. 226** — Certiorari — Finding of fact — Two views possible — Where either of the two views can be correct — High Court would decline to interfere by certiorari, **66 Pun L R 374 : I L R (1964) 1 Punj 736.**

——**Art. 226—Interference with decision on facts**

High Court will not interfere under its supervisory jurisdiction with the decision of a tribunal on the ground that it has wrongly decided a question of fact. AIR 1952 S C 192, Rel. on. **55 Punj L R 416 : AIR 1954 Punj 4 (5) (Pt B) (Pr 8) (DB).**

When interfered with.

——**Art. 226 — Question of fact — Ordinarily not investigated — Exception.**

Ordinarily in exercise of its writ jurisdiction, the High Court does not investigate questions of fact, but where the point was raised at the very first stage,

in the second appeal and the point was not enquired into resulting in Court's failure to do duty properly then it becomes necessary to examine this question. 1962 All W R (H C) 26 : 1962 All L J 229 : I L R (1962) 1 All 843.

——Art. 226 — Finding of fact — Additional evidence, if can be entertained.

In exercising its jurisdiction under Art. 226 of the Constitution the High Court does not usurp the functions of a Court of appeal. It cannot interfere with an order of a subordinate authority where it rests purely upon facts unless, of course, the order passed is perverse and the error amounts to a defect in the exercise of jurisdiction. So also additional evidence cannot be entertained by High Courts while entertaining petitions under Art. 226. 1960 All L J 682 : 1960 All W R (H C) 519 : AIR 1960 All 399 (402) (Pt D) (Prs 13, 14).

——Art. 226 — Finding of fact — Interference — A finding of fact may be quashed by certiorari if on an examination of all the relevant facts on the record, the superior Court holds that no reasonable person could have arrived at it. (1957) 1 All E R 796 and (1955) 3 All E R 48, Rel. on. AIR 1960 All 304 (320) (Pt K) (Pr 67).

——Art. 226—Finding of facts.

It is not open to a petitioner in a writ petition to challenge findings of fact recorded by a Court or a Tribunal unless it is shown that those findings of fact are not based on any evidence or that in arriving at those findings any of the principles of natural justice have been infringed. On the basis of a ground that the evidence has not been correctly appraised and the inferences drawn by the Court from the evidence on the record are not correct, no notice can be issued. 1959 All W R (H C) 595 : 1959 All Cr R 497 : 1959 All L J 365 : 1959 Cri L J 912 : AIR 1959 All 467 (468) (Pt A) (Pr 3).

——Art. 226 — Finding of fact — Interference — (Madras Sales of Motor Spirit Taxation Act (6 of 1939), S. 4 (4)).

The power of registration under S. 4 (4) of Madras Act 6 of 1939 is entrusted to the departmental authorities and it is for them to consider an application for registration on its merits. If the officer concerned does not bring a mind to determine "what is fair and just in respect of the matter under consideration" it could be treated as exercise of no discretion at all and may be interfered with by the High Court. But, so long as the officer acts fairly and squarely and in a judicial spirit, there will be no ground to go behind the finding of fact arrived at by him. ILR (1960) Andh Pra 232 : AIR 1960 Andh Pra 246 (253) (Pt D) (Pr 36) (DB).

——Art, 226—Dismissal of workman — Enquiry by management — Labour Court, when will interfere—Finding by Labour Court — Interference under Art. 226 of the Constitution,

The High Court under Art. 226 of the Constitution would only interfere with the order of the Labour Court if it is without jurisdiction or if in the exercise of its jurisdiction the tribunal has committed any manifest error of law. If the finding is based on no evidence, it may be said that the Labour Court has committed a manifest error of law, but, where it was only a matter of assessment of the evidence by the Labour Court, the High Court under Art. 226 will not interfere with that finding. If the finding of the Labour Court that there was no enquiry by the management before dismissing its workman on ground of misconduct is correct, the Labour Court has ample jurisdiction on the evidence to determine whether the charges had been prima facie proved or not by the management. If on consideration of the evidence, the Labour Court has come to the conclusion that the charge has not been proved, it is a finding of fact and the High Court cannot under Art. 226 interfere with that finding.

On the finding that no enquiry was held, two courses are open to the Labour Court. Either it can hold that the dismissal order being without enquiry was not justified and set aside the order of dismissal or it can itself, after giving opportunity to the parties to adduce evidence, decide whether a prima facie charge has or has not been established against the workman. (1961) 2 Lab L J 644 (SC) and AIR 1963 S C 295, Disting. ILR (1963) 15 Assam 332 : AIR 1963 Assam 162 (163, 164) (Pt B) (Prs 3, 4) (DB).

——Art. 226 — Jurisdiction of High Court — Question of fact when can be decided — Proceedings under Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act (99 of 1958) — Decision of Revenue Tribunal — Writ petition against — Question of waiver raised for first time in writ petition — Decision on point necessary for disposal of petition — High Court could decide question of waiver though it was a question of fact. 1962 Nag L J 453:64 Bom LR 541;ILR (1963) Bom 629 : AIR 1963 Bom 179 (181, 182) (Pt B) (Pr 9) (DB).

——Art. 226—Question of fact.

On questions of fact in matters under Art. 226 the Court will not investigate into the facts unless compelled to do so for some compelling reasons. (1960) 39 ITR 182 : 62 Bom L R 823 : AIR 1961 Bom 5 (9) (Pt E) (Pr 18).

——Art. 226 — Writ petition — Findings of fact by tribunals — When can be interfered with.

Generally when a fact finding Tribunal arrives at its own conclusions of fact after due consideration of the evidence before it the High Court will not interfere. It is necessary, however, that every fact for and against the person proceeded against must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the person charged, he should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures and surmises and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by the High Court. AIR 1959 S C 1295, Rel. on. (1964) 8 Fac L R 31:(1964) 1 Lab L J 462: 68 Cal W N 215 : AIR 1964 Cal 503 (511) (Pt B) (Pr 24).

——Art, 226 — Procedure — Findings by tribunal—Interference by High Court — When open.

In a proceeding under Art. 226 of the Constitution, a High Court cannot sit in appeal over the findings recorded by a competent Tribunal and revise findings of fact arrived at on evidence. But if it be shown that the impugned findings by a tribunal are not supported by any evidence, the High Court would be justified in setting aside such findings. If the findings are patently wrong, High Court has jurisdiction to interfere with the findings. (1964) 2 Lab L J 172 : (1964) 8 Fac L R 183 (Cal).

[Reversed in AIR 1966 Cal 31.]

——Art. 226—Finding of fact—Interference—Industrial Disputes Act (1947), S. 2 (s).

Under Art. 226, the High Court interferes if there is a plain excess of jurisdiction. Where the question of jurisdiction turns upon the disputed questions of fact, the Court generally declines to interfere. A I R 1961 Cal 315, Foll.

Where, on the question whether car salesmen were workmen, the Industrial Tribunal came to the conclusion that on the evidence the work which the car salesmen had to do was nothing but manual and clerical combined and that they were workmen, the decision could not be interfered with. **(1961) 2 Lab L J 25 : (1961-62) 20 F J R 125 : 65 :Cal W N 495 : AIR 1963 Cal 275 (276) (Pt A) (Pr 4).**

——Art. 226—Finding of fact—Interference—Sales-Tax—Bengal Finance (Sales Tax) Act (6 of 1941), S. 5 (2) (a) (ii)).

In a proceeding under Art. 226, the Court can and should certainly examine and scrutinize the recorded facts and see if the impugned decision is justified by any substantial evidence. It can set aside the decision not supported by any evidence. But that is very far from saying that the writ proceeding must itself become an institution for recording new facts for the first time. The record for facts found by the Sales Tax Authorities with special and express provisions made for finding of facts and investigation and enquiry should not be lightly interfered with by constitutional Writs. The proceedings in Certiorari or Prohibition under Constitutional Writs in their nature are not appellate or fact-finding but only supervisory. **ILR (1959) 1 Cal 106 : 62 Cal W N 123 : (1958) 9 S T C 121 : AIR 1958 Cal 125 (127) (Pt B) (Prs 15, 16).**

——Art. 226 — Decision of question of fact under Motor Vehicles Act has been left to Transport Authorities — Decision should not be interfered with in writ proceedings unless it is based on irrelevant or invalid consideration. **1964 M P L J (Notes) 169.**

——Art. 226 — Interference — Grounds — Landlord and tenant — Finding about sub-letting — Absence of direct evidence — Interference. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3) (iii). **1958 M PL J (Notes) 126.**

——Art. 226 — Power to decide question of fact—Question can be decided in case of undisputed material.

Although where facts are disputed, the High Court would be reluctant in proceedings under Art. 226 to give any decision with regard to them there can be no bar to determining a question of fact for the purpose of granting relief under Art. 226 where it is possible to arrive at a conclusion on documents and other material, the genuineness and authenticity of which cannot be doubted. **63 Punj L R 593 : I L R (1961) 2 Punj 595 : AIR 1962 Punj 32 (36, 37) (Pt C) (Pr 8) (DB).**

Miscellaneous illustrative cases.

● **——Art. 226**—Sea Customs Act (1878), S. 167 (8) — Importation of Components of prohibited articles — Components of no use other than as components of prohibited article—Offence held committed—Court if will interfere under Art. 226 of the Constitution with finding of guilt. See Sea Customs Act (1878), S. 167 (8). **1964 (2) Cr L J 462 : AIR 1964 S C 1519.**

● **— Art. 226** — Order under S. 3 (2) (c), Foreigners Act asking respondent to leave India challenged—Question whether respondent was foreigner or Indian Citizen—Burden of proof—Question disputed—Proper remedy is institution of suit and not proceeding under Art. 226. See Foreigners Act (1946). S. 3 (2) (c). **1961 (2) Cr L J 703 : AIR 1961 S C 1526.**

● **——Art. 226—Question of fact—Finding of Industrial Tribunal that an employee is "workman" — High Court will not interfere — Industrial Disputes Act (1947), S. 2 (s).**

When a labour Court has on a consideration of the evidence come to the conclusion as regards the functions that were actually being performed by an employee that he came within the definition of workman in S. 2(s) of the Industrial Disputes Act the High Court will not interfere under Art. 226 except in cases where there is a clear error on the face of the record. What functions were actully being performed by the employee is a question of fact. The Andhra Scientific Co. Ltd. v. A. Seshagiri Rao, **(1961) 2 Lab L J 117 (S C) : (1961-62) 21 F J R 253 (S C) : A I R 1967 S C 408 (410) (Pt A) (Pr 7).**

——Art. 226—Powers of High Court — The decision of the District Magistrate both about the purpose and the need for which a house is being requisitioned is in the absence of any proof of mala fides on his part a final one. Hence the High Court cannot go behind his finding that the house is required for a public purpose. **A I R 1954 Ajmer 1 (2) (Pr 8).**

——Art. 226—Finding of Civil Court in proceeding under S. 146 (1 A) Criminal P. C cannot be challenged in writ proceedings. **1964 All W R (HC) 550 : 1964 All Cr R 412 : 1965 (2) Cr L J 337 : A I R 1965 All 442 (444) (Pt B) (Pr 10).**

——Art. 226—Question of fact— Administration of Evacuee Property Act (1950), S. 7A (inserted by amending Act of 1954) — Question as to when notice under S. 7A was issued is one of fact — Question cannot be permitted to be raised for first time in writ proceeding —Held that notice was in fact issued on 25-3-1955 and 25-4-1955 was clerical mistake for 25-3-1955. **1965 All L J 1104.**

——Art. 226—Industrial Dispute—Finding of Tribunal that employer had unjustly dealt with a workman and had acted in a manner which was not conducive to industrial peace — Finding is one of fact and not open to challenge in writ petition. A I R 1963 S C 1756 Rel. on. **(1965) 10 Fac L R 199 (All).**

——Art. 226—Houses and Rents—U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 3—2nd proviso — Scope — Decision of Administrative authorities as to sufficiency of accommodation at disposal of occupier — Question of sufficiency of accommodation is question of fact—Interference in writ proceedings—Permissibility. See Houses and Rents—U P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 3. **AIR 1963 All 592 (DB).**

——Art. 226—Writ against an order setting aside an election—Finding about residence of a candidate is a finding of fact —such a finding cannot be challenged in writ proceeding — U. P. Panchayat Raj Act (26 of 1947), Ss. 11-B, 5-A (a). **ILR (1963) 2 All 819.**

——Art. 226—Income-tax Act (1922), S. 18 (3-B) read with S. 18 (7) — Order under S. 18 (3-B) read with S. 18 (7) — Findings of fact recorded by Income-tax Officer cannot be challenged in petition under Art. 226. **(1962) 46 I T R 466 (All).**

——Art. 226 - Finding of fact - Board of High School and Intermediate Education holding petitioner guilty of copying during examination— It is finding of fact —No mala fide alleged — Finding based on facts — High Court will not interfere even if finding is erroneous. **A I R 1961 All 290 (291, 292) (Pt B) (Pr 7).**

——Art. 226—Finding of fact — Interference.

A finding of fact of a tribunal in quasi-judicial proceedings can be quashed by a writ of certiorari if the Court holds that it could not reasonably have been

founded on the material before the enquiry tribunal. Whether the finding of the Commissioner that the charge of accepting illegal gratification was proved against the petitioner is regarded as a pure finding of fact or as a pure question of law or of mixed law and fact the decision will be quashed when there is no evidence to support the Commissioner's conclusion. AIR 1960 All 323 (332) (Pt E) (Prs 41, 42).

——Art. 226 — Finding of fact — Finding that there was no genuine partnership — Finding is one of fact and will not be disturbed in proceedings under Art. 226—Partnership Act (1932), S. 6. AIR 1959 All 440 (447) (Pt D) (Pr 21).

——Art. 226—Question of fact — Scrutiny by High Court — (Motor Vehicles Act (1939), S. 47).

Whether the State buses are or are not more comfortable and roomy is a question of fact and the High Court will not, in proceedings under Art. 226, arrogate to itself the duty to scrutinise the conclusions about facts. AIR 1959 All 197 (203) (Pt F) (Pr 43).

——Art. 226—Election disputes—Panchayat elections — Order by District Magistrate declaring election void after declaration of results under R 19F, U. P. Panchayat Raj Rules — Validity — Power of High Court to interfere with finding — See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 12-C. AIR 1957 All 213.

——Arts. 226, 227—Finding of fact—Objection to.

Where in proof of his age the person himself relies on a copy of the birth register of the village where he was born and the date of birth given in it is accepted, he cannot subsequently challenge the finding based on it. 1957 All L J 325 : 1957 All W R (H C) 388.

——Art. 226—Application for writ of prohibition — Investigation into question of fact as to nature of work done by employee, cannot be made — Question as to employee being a workman cannot be entered into — (U. P. Industrial Disputes Act (28 of 1947), S. 3—(Industrial Disputes Act (1947), S. 2 (5)). AIR 1955 N U C (All) 2664.

——Art. 226—Finding of fact—Observation in Lower Court's judgment that admission by party was or was not correct — High Court will not in writ application go into the question. AIR 1955 N U C All 1690.

——Art. 226—Question of fact — Proper representation of employee before Industrial Dispute Tribunal —Industrial Disputes Act (1947), S. 36).

Whether a person representing the employee in proceeding before Industrial Tribunal was proper person to represent him is a question of fact. Where the point was raised before the Industrial Tribunal and decided by it, it cannot be raised in writ application against the decision of the Tribunal. In any case, where the order of the Industrial Tribunal has merged in the order of the Labour Appellate Tribunal of India and there is no grievance at all that there was any irregularity in the procedure before the Labour Appellate Tribunal of India and it is that order which has now to be given effect to and that order is valid and without any defect, the contention that there was no proper representation, cannot be raised before the High Court hearing the writ application. 1954 All W R (H C) 502: AIR 1954 All 516 (520) (Pt D) (Pr 18).

——Arts. 226, 227 — Scope of proceedings — (Influx from Pakistan (Control) Act (1949), S. 7).

The question whether the petitioner is or is not a citizen of India is a question of fact. Where the criminal Court has already examined the position, evidence cannot be recorded and the question whether or not the petitioner migrated from India cannot be gone into detail in proceedings under Art. 226, especially where there was no assertion that, after migration, the petitioner again acquired Indian citizenship in accordance with the proviso to Art. 7 of the Constitution. 1954 All W R (H C) 312 : 1954 Cr L J 962 : AIR 1954 All 458 (459) (Pr 2).

——Art 226—Andhra Pradesh (Andhra Area) Estates Abolition and Conversion into Ryotwari Act (26 of 1948), S. 11 (a) — Tribunals vested with jurisdiction to deal with grant of Ryotwari Pattas, finding on evidence that lands in dispute are tank-bed lands—Question whether lands are tank-bed lands or not is a question of fact—Finding is not open to challenge under limited jurisdiction vested in High Court under Art 226. (1965) 2 Andh W R 286.

——Art. 226— Finding of fact — At time of termination of services of journalist, Andhra Provincial Working Journalist Association in existence—Association subsequently converted into Andhra Pradesh Union of Working Journalists — Journalist represented by new Union since it was the same union which was in existence at time of termination of his services — Tribunal therefore holding that the dispute was not an individual dispute — Being a finding of fact based on materials could not be interfered with in writ jurisdiction — The sufficiency or otherwise of the evidence in support of a finding could not be considered in writ jurisdiction. See Industrial Disputes Act (1947), S. 2 (k). AIR 1961 Andh Pra 528 (DB).

——Art 226—Nature of survey number—High Court cannot investigate.

It is not for the High Court exercising its jurisdiction under Art. 226 of the Constitution to investigate into the nature of survey numbers and determine whether they are porambokes or communal lands or ryotwari lands validly granted to a cultivator on patta of which he had been in possession for a long time. ILR (1961) 2 Andh Pra 630.

——Art. 226 — Question of fact — Interference — (Industrial Disputes Act (1947), S. 10).

The question as to whether the dismissal of a workman is justified or not is essentially one of fact, and where, on a consideration of the facts, both the Industrial Tribunals have concurrently held that the order of dismissal of the worker is an act of victimisation and that he is entitled to be reinstated in service with back wages and there is no error in this conclusion, the High Court will refuse to interfere under Art. 226. (1957) 2 Andh W R 335 : 1957 Andh L T 921 : (1958) 1 Lab L J 20 : AIR 1958 A P 276 (278) (Pt D) (Pr 12).

——Art. 226—Question of fact.

When the question arises as to whether the petitioner was an Indian citizen at the commencement of the Constitution the only Court which can determine the question is a civil Court inasmuch as the question for determination is one of fact and the High Court in a writ petition will not go into the disputed question of fact, but if the point raised by the opposite party is that the petitioner has lost his Indian citizenship or his Indian citizenship has terminated on account of his acquiring citizenship of some other State, it is a matter which can be decided under S. 9 of the Citizenship Act by the Central Government. ILR (1981) 13 Assam 174 : AIR 1981 Assam 50 (52) (Pt B) (Pr 5) (DB).

——Arts. 226 and 311 — Reasonable opportunity to show cause — Meaning of—Finding of inquiry officer cannot be challenged under Art. 226. See Ibid, Art. 310. AIR 1960 Assam 141 (DB).

——Art. 226 — Scope of inquiry — (Assam Land Requisition and Acquisition Act (25 of 1948), S. 3 (1).)

Where a land is requisitioned for the opening of a market and the requisition order comes within the ambit of S. 3 of Assam Act, 25 of 1948, what should be the extent of the market and whether a particular land is suitable for the purpose or not are not matters which the High Court can examine under Art. 226 of the Constitution. ILR (1959) 11 Assam 287 : AIR 1960 Assam 18 (20) (Pt D) (Pr 5) (DB).

——Art. 226 — Question of fact — Power of High Court to go into.

Whether the petitioner's behaviour was rude or not is a question of fact which was within the exclusive competence of the Enquiry Committee to investigate and find out. The High Court cannot go into that question in a proceeding under Art. 226 of the Constitution. AIR 1959 Assam 112 (116, 117) (Pt D) (Pr 5) (DB).

——Art. 226 — Disputed question of fact — Plea that there was structure on land which brought case under S. 3 (1) of Assam Act 25 of 1948 cannot be entertained — (Assam Land (Requisition and Acquisition) Act (25 of 1948), S. 3 (1)). AIR 1955 N U C (Assam) 3311 (DB).

——Art. 226 — C. P & Berar Industrial Disputes Settlement Act (23 of 1947), S. 2 (10) — Finding that a person is an "employee" within S. 2 (10) — It can be challenged in petition under Art. 226 — When a person is said to be a supervisor or acting in supervisory capacity — Test. See C. P. & Berar Industrial Disputes Settlement Act (23 of 1947), S. 2 (10). AIR 1965 Bom 24 (DB).

——Art. 226—Question of fact — Reasonableness of fees charged for market stalls— Writ proceedings — (Municipalities—City of Nagpur Corporation Act (2 of 1950), S. 70).

The question whether the fees charged by the Corporation for the use and occupation of its stalls in the market are exorbitant or reasonable can only be decided on recording elaborate evidence. It would not therefore be possible to decide the question in the proceedings, under Art. 226 of the Constitution. 61 Bom L R 468 : ILR (1959) Bom 1047 : 1958 Nag L J 625: AIR 1959 Bom 112 (120) (Pt D) (Pr 35) (DB).

——Art. 226 — Finding of fact — Finding as to misconduct —Interference.

While there is no fixed rule of law defining the degree of misconduct, which will justify dismissal from service, the question of misconduct being sufficient or otherwise to justify dismissal is itself one of fact. Where both the tribunals found that a particular act amounted to a misconduct which would justify a dismissal that is a finding of fact and cannot be challenged. 1958 Nag L J 478: 60 Bom L R 1422: I L R (1959) Bom 413 : (1959) 1 Lab L J 365: AIR 1959 Bom 61 (63) (Pt C) (Pr 7) (DB).

[Overruled on another point in AIR 1963 S C 114.]

——Art. 226—Notice of termination of award— Need not be in writing — Finding by Tribunal that award is not terminated— No interference under Art. 226 of the Constitution. See Industrial Disputes Act (1947), S. 19 (6). AIR 1962 Cal 649.

——Art. 226—Question of fact—Interference — Whether authority to act was given to a person as required by S. 15 (2) of the Payment of Wages Act (1936) is question of fact— High Court will not go into such matter. (1961-62) 20 F J R 380 : (1961) 2 Lab L J 297 : (1961) 3 Fac L R 334 : A I R 1960 Cal 603 (605) (Pt A) (Pr 6).

——Art. 226—Question of fact — Industrial Tribunal — Award — Bonus — Available surplus— Interest on working capital — Finding of fact by tribunal that working capital was not utilised throughout the year — High Court will not interfere with such finding in application under Art. 226. 64 Cal W N 979 : (1960) 2 Lab L J 508: (1960) 1 Fac L R 425.

——Art. 226—Scope of inquiry—Damages.

In an application under Art. 226 the High Court is not concerned with any question that may arise in the nature of payment of damages. I L R (1955) 2 Cal 470.

——Art. 226 — Question of fact — Question whether employee is 'workman' — Power of High Court to examine. See Industrial Disputes Act (1947), S. 2 (5). AIR 1958 Ker 202 (DB).

● ——Art. 226—Municipalities— Travancore District Municipalities Act (1116), S. 281 — License fee under —Fee or tax— Question of fact — Question is not one which can properly be considered in proceeding under Art. 226 — See Municipalities — Travancore District Municipalities Act (23 of 1116), S. 281. A I R 1958 Ker 149 (FB).

——Arts. 226 and 227 — Whether assessee had paid sales tax amount in Treasury, is a question of fact which cannot be enquired into in proceedings under Arts. 226 and 227. 1965 Jab L J 744: (1964) 15 S T C 233 : 1964 M P L J 419 : A I R 1964 Madh Pra 214 (218) (Pt B) (Pr 15) (DB).

——Arts. 226, 227—Interference with findings of fact —Workmen's Compensation Act (1923), S. 2 (1) (n) —Question whether casual labourer is employed for purposes of employer's trade or business is one of fact—No interference under Art. 226 or Art. 227.

The question whether a casual labourer is employed for the purposes of the employer's trade or business is a question of fact. There can be no interference in a finding of fact in proceedings under Art. 226 or Art. 227.

When the decision of the Commissioner for workmen's compensation directing payment of compensation based on a finding that the casual labourer is employed for the purposes of the employer's trade or business is not without jurisdiction or is not in excess of jurisdiction and there is no error apparent on the face of the decision the power under Arts. 226 and 227 cannot be invoked on the ground of an error in the said finding. AIR 1954 SC 215 and A I R 1960 S C 137, Ref. 1963 Jab L J 587 : 1963 M P L J 562 : (1963) 7 Fac L R 296 : I L R (1963) Madh Pra 222.

——Art. 226—Refund of Octroi duty — Wrong practice followed by party — Finding of acquiescence on part of Municipality for fairly long time— Finding is one of fact — No interference in the extraordinary jurisdiction under Art. 226 — (Municipalities — C. P. and Berar Municipalities Act (2 of 1922), S. 85—Rules under—Rr. 29 30). 1961 M P L J 1473 : 1962 Jab L J 18: ILR (1960) Madh Pra 425.

——Art. 226—Findings of fact—Status of a person.

Whether certain persons were living in certain premises as tenants or as guests or as licensees is essentially a question of fact, which cannot be agitated in a writ matter. It has been well settled that a finding given even on no evidence is not capable of being interfered with by a certiorari and that a finding of fact must be taken as final however erroneous it may be. 1958 M P C 234 : 1958 Jab L J 285: 1958 M P L J 438 : A I R 1958 Madh Pra 221 (222) (Pt A) (Pr 4) (DB).

——Art. 226—Question of fact—Rent Control Authorities holding that repairs could be carried out without tenant vacating house—No interference— Petition did not involve any question of law or jurisdiction — Houses and Rents—C. P. and Berar Letting of Houses

and Rent Control Order (1949), Cl. 13 (3) (vii)). 1958 M P L J (Notes) 59.

——Art. 226 - Scope—Findings of fact cannot be reviewed in writ proceeding — Question of closure or transfer of business by lease—Finding on — Is one of fact — Industrial dispute — Transfer of business — Closure.

The question whether there was a real closure or not or whether the lease deed was a genuine document or not is a question of fact and a finding thereon cannot be reviewed in certiorari proceedings. It cannot be assumed that merely because the Labour Court failed to specifically refer to evidence adduced for the workmen, the factual finding is vitiated and can be reviewed in certiorari. The jurisdiction of the High Court in certiorari is not appellate in character. 77 Mad L W 393 : (1964) 2 Mad L J 202 : (1964) 2 Lab L J 162.

——Art. 226 — Finding of fact — Determination of need of additional service on route by Mysore Revenue Appellate Tribunal under S. 47 (1) (c) of Motor Vehicles Act (1939)—Question of determination is question of fact and finding of Tribunal thereon is final — Finding not open to review under Art. 226. (1965) 2 Mys L J 187 (DB).

——Art. 226 — Appointment of Chief Engineer and Suprerintending Engineers — Whether Public Works Minister had been consulted in making such appointments is not a matter which the High Court can investigate into. 1963 Mys L J (Sup) 302 : A I R 1963 Mys 219 (232) (Pt I) (Pr 71) (DB).

——Art. 226 — Land Acquisition Act (1894), S. 5A — Acquisition of lands for formation of residential extension for Harijans—Objection of landholders — Decision of Government — If open to be questioned in writ proceedings — Whether there was need for such formation — Question is one of fact. See Land Acquisition Act (1894), S. 5A. (1963) 2 Mys L J 378.

——Arts. 226 and 227 — Motor Vehicles Act (1939), Ss. 47 and 64 — Finding that there exists need for bus service on particular route recorded by Revenue Appellate Tribunal being essentially on question of fact cannot be discussed in writ petition. (1963) 1 Mys L J 93 (DB).

——Art. 226—Question of fact ordinarily not entertained in writ petition.

The question whether a person is an employee or a sub-contractor is one of fact and under its writ jurisdiction, ordinarily, the High Court does not go into questions of fact, unless the question involved is one of jurisdictional fact. 1965 B L J R 702 : AIR 1966 Pat 127 (129) (Pt B) (Pr 5) (DB).

——Art. 226 — Power of High Court—Questions of fact — Whether members nominated to State Legislative Council under Art. 171 (3) (e) possess required qualifications is question of fact — High Court cannot decide it under Art. 226. AIR 1965 Pat 321 (326, 327) (Pt C) (Pr 6) (DB).

——Art. 226—Bihar Sales Tax Act (19 of 1959), S. 2 (f) — Question whether assessee is dealer or not is question of fact — It cannot be agitated in proceedings under Art. 226.

The question whether an assessee is a dealer or not and is liable to be taxed under the Bihar Sales Tax Act is a question of fact which cannot be agitated in proceedings under Art. 226 of the Constitution. It is open to the assessee to move the higher authorities in the Sales Tax department against the order of assessment passed against him. Where he fails to do so, it is not open to him to agitate the question of fact under Art. 226 before the High Court. 1963 B L J R 348.

——Art. 226 — Question of fact.

The question as to the date of communication of an order to the parties is a question of fact, and cannot be agitated by the petitioners in writ applications. 1959 Pat L R 255 : 1959 B L J R 661 : AIR 1960 Pat 212 (212, 213) (Pt B) (Pr 3).

——Art. 226—Question of fact cannot be challenged — (Land Acquisition Act (1894), S. 11).

Question whether the lands sought to be acquired under the Land Acquisition Act contain mosque or grave-yards or not is a pure question of fact and where it has been found against the petitioners by the Land Acquisition Officer, the petitioners are not entitled to challenge the same in a writ application. AIR 1960 Pat 144 (145) (Pt A) (Pr 3) (DB).

——Arts. 226 and 227 — Findings of fact — Interference — (Municipalities — Patna Municipal Corporation Act (13 of 1952), S. 14 (j)).

The finding of the District Judge in an election petition on the question whether any tax was due from the opposite party to place him under the disqualification imposed by S. 14 (j) of the Patna Municipal Corporation Act is purely a question of fact which depends for its determination on the evidence adduced by the parties. As such the finding of fact cannot be interfered with on a writ application. AIR 1957 Pat 241 (245) (Pt C) (Pr 23) (DB).

——Arts. 226 and 227 — Municipal elections — (Municipalities—Patna Municipal Corporation (Preparation of Electoral Rolls and Conduct of Election) Rules (1953), R. 45.)

Where in an election petition the District Judge after considering the entire evidence, documentary and oral, on the point found that the change in one of the booths, announced previously as a polling station for one of the wards of the Municipality, had not affected the polling and rejected the objection of the petitioner and no error of law was shown by the petitioner in that finding.

Held, that the finding could not be called in question in a writ application. AIR 1957 Pat 241 (245) (Pt D) (Pr 25) (DB).

——Arts. 226 and 227—Question of fact—(Tenancy laws — Bihar Privileged Persons Homestead Tenancy Act, 1947 (4 of 1948), S. 2 (d) — Homestead.)

The question whether a particular land is a "homestead", within the meaning of S. 2 (d) of the Act is a question of fact, and the High Court cannot go into such a question of fact in a proceeding under Art. 226 or Art. 227 of the Constitution of India : AIR 1954 Pat 334, Rel. on. 1957 B L J R 445 : I L R 35 Pat 1040 : AIR 1957 Pat 163 (166) (Pt D) (Pr 16) (DB).

——Arts. 226 and 227 — Question of fact — Interference — [Tenancy Laws – Bihar Privileged Persons Homestead Tenancy Act (4 of 1948), S. 6 (1)].

The question whether a particular plot is a homestead within the meaning of Bihar Act 4 of 1948 is a question of fact and the decision of the Collector thereon cannot be gone into in a proceeding under Art. 226 or Art. 227. AIR 1954 Pat 334 (335, 336) (Pt A) (Pr 6) (DB).

——Art. 226—Decision ordering eviction challenged under Art. 226 of the Constitution on grounds of mala fides — Questions of bona fides and mala fides are questions of fact and High Court cannot possibly go into those questions — See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 22. 1953 B L J R 550 : AIR 1954 Pat 97 (DB).

——Art. 226 — Finding of fact — Powers of High Court.

The finding of the canal authorities under Canal Act 8 of 1873 that there was a deliberate cut, and not a breach in the canal bank has to be regarded as final for purposes of the petition under Art. 226 and for appeal against the petition. **AIR 1956 Pepsu 40 (48) (Pt H) (Pr 30) (DB).**

——Art. 226 — Question of fact—If can be raised — Application challenging proceedings under Abducted Persons (Recovery and Restoration) Act — Question as to existence of properly constituted tribunal — If can be raised — See Abducted Persons (Recovery and Restoration) Act, S. 6. **1955 Cri L J 50 : AIR 1955 Pepsu 1 (FB).**

——Art. 226—Mines and Minerals (Regulation and Development) Act (1957), S. 5 — Petitioner obtaining prospecting licence — No prospecting done — Petitioner not financially sound — Mining licence held was rightly refused.

Where the petitioner was refused the mining licence for the reason that after obtaining the prospecting licence no prospecting was done by him and that he was not financially sound enough to run the proposed mine efficiently and scientifically and these conclusions were drawn by competent authorities from the evidence furnished by the petitioner :

Held, that the conclusions could not be agitated in the writ proceedings and that the mining licence was rightly refused to the petitioner. **1965 Pun L R (Supp) 129.**

——Art. 226 — Writ proceedings—Questions of fact cannot normally be gone into — Whether a person was ineligible to stand in an election because he was in arrears of taxes due to the Municipal Committee is a question of fact. **66 Punj L R 541 : AIR 1964 Punj 891 (393) (Pt C) (Pr 6).**

——Art. 226 — Controversial questions of facts — Whether Labour Court decided preliminary issues orally on a certain date is question of fact — Cannot be gone into in a writ petition especially where the records of the Labour Court are clear. **65 Punj L R 901 : (1964) 1 Lab L J 644.**

——Art. 226 — Writ proceedings—Finding of fact by lower Tribunal — Cannot be assailed in a writ petition — Finding about existence of dairy farm is a finding of fact—Pepsu Tenancy and Agricultural Lands Act (13 of 1955), S. 32 — Civil P. C. (1908), S. 100.

The petitioner, a landholder on the coming into force of the Pepsu Tenancy and Agricultural Lands Act, 1955 furnished to the Collector the particulars of his lands for the purposes of preservation and exemption from ceiling under the Act and claimed exemption for an orchard, dairy farm, cattle farm and sheep farm. The matter was referred to the Pepsu Land Commission, for its opinion regarding the exemption claimed by the petitioner.

Held, that the finding of the Commission that there was no dairy farm in existence on the date of enforcement of the Act being based upon the consideration of the evidence produced by the petitioner before it, was a finding of fact and as such it could not be assailed in writ proceedings. **65 Punj L R 559 : 1963 Cur L J 226.**

——Arts. 226 and 227 — Question of fact — Interference.

Whether in an auction sale of the evacuee property a building is fit for horizontal division is a question of fact arising in a particular case and in the exercise of its jurisdiction under Art 226 or 227 of the Constitution the High Court is not competent to review a finding based exclusively on the particular facts of the case **63 Punj L R 183 : AIR 1961 Punj 464 (466) (Pt B) (Pr 8).**

——Art. 226—Powers of High Court.

Under the Rules framed under Displaced Persons (Compensation and Rehabilitation) Act the question whether in fact the house is divisible or not is a matter purely within the jurisdiction of the authorities concerned and their decision on the question whether right or wrong cannot be made the subject-matter of a writ petition under Art. 226 of the Constitution. **62 Pun L R 374 : AIR 1960 Punj 626 (627) (Pt C) (Pr 7).**

——Art 226—Finding of fact—Finding of Industrial Tribunal—Interference. See Industrial Disputes Act (1947), S. 33-A. **AIR 1959 Punj 360.**

——Art. 226 — Scope of inquiry — Question of adoption of foreign nationality, if can be decided in writ petition — Proper forum. See Citizenship Act (1955), S. 10. **AIR 1959 Punj 261.**

——Art. 226—Writ of prohibition — Issue of notice against assessee under S. 34, I. T. Act — Assessee applying for issue of writ of prohibition — High Court if can investigate into allegation as to concealed income—(Income-tax Act (1922), S. 34).

Held on facts that it was not for the High Court under Art. 226 to investigate into the correctness of the allegation by scrutinising the accounts, etc., particularly when the attitude of the assessee before the Commission was not at all helpful in discovering correct state of affairs and his statements on oath before it were not found to be reliable by it. This matter had to be decided by the Income-tax Officer. **(1956) 29 ITR 507 : AIR 1956 Punj 71 (73) (Pt B) (Pr 6).**

——Art. 226—'Ministerial servant"—Meaning—Question whether duties performed by municipal employee are entirely clerical is not pure question of law but mixed question of law and fact. See Ajmer Merwar Government Fundamental Rules, R. 9, Cl. (17). **I L R (1963) 13 Raj 1096.**

——Art. 226 — Motor Vehicles Act (1939), S. 64—Powers of appellate authority—Finding of, on question of interpretation of application for permit — No interference by High Court to examine correctness of finding. **ILR (1960) 10 Raj 1060; 1960 Raj L W 708; AIR 1962 Raj 19 (24) (Pt D) (Pr 10) (DB).**

——Arts. 226, 227—Rajasthan Panchayat and Nyaya Panchayat Election Rules (1960), R. 78 — Decision of Election Tribunal — Finding in respect of age of a candidate — Is a finding of fact—Cannot be disturbed in a writ petition under Arts. 226 and 227 of the Constitution — Panchayat—Rajasthan Panchayat and Nyaya Panchayat Election Rules (1960), R. 78. **1962 Raj LW 577 : ILR (1962) 12 Raj 969.**

——Art. 226—Question of fact — Interference.

The question whether a candidate at an election actually withdrew from the contest or not is purely one of fact and the High Court cannot go into that question in its extraordinary jurisdiction. **1959 Raj L W 587 : I L R (1959) 9 Raj 461.**

——Art. 226—Scope of inquiry—Question of fact.

The question whether the charging of Talwarbandi or ked Nazarana has the force of custom behind it is a question of fact which can be decided only upon evidence to be produced on either side and it is not the province of High Court to go into such a question in the exercise of its extraordinary jurisdiction in the matter of writs. **ILR (1957) 7 Raj 601 : AIR 1957 Raj 151 (154) (Pt B) (Pr 8) (DB).**

——Art. 226—Question of fact.

Where the Election Tribunal has considered the arguments for and against the genuineness of the signatures on the nomination paper and has come to

a certain conclusion such decision cannot be challenged in a petition under Art. 226 of the Constitution on the ground that there was an error committed in the appreciation of the evidence This is a question of fact decided by the Tribunal and the High Court is not sitting in appeal against the judgment of the Election Tribunal AIR 1952 SC 192, Foll. 1955 Raj L W 182 : I L R 1954) 4 Raj 654 : AIR 1954 Raj 204 (207) (Pt E) (Pr 11) (DB).

79(b). Judicial.

——Art 226 -Scope — Nature of jurisdiction.

The exercise of jurisdiction under Art 226 by the High Court is judicial and not administrative. Whatever may be the kind of writ it issues, it does so as a Court of law guided by judicial considerations and reaches its conclusions by shifting the materials on record as it does in any other case. The fact that its jurisdiction under the Article is extraordinary does not deprive that jurisdiction of its fundamental character of being judicial. ILR (1953) Hyd 59 : A I R 1953 Hyd 73 (75) (Pt A) (Pr 5) (DB).

——Art. 226 – Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 3 (3) — Powers of Rent Controller under S. 3 (3) — Order requisitioning building under S 3 (3) — Jurisdiction of High Court under Art. 226 of Constitution to find whether order was justified — (1955) 1 Mad L J 454 : 68 Mad L W 224 Overruled 70 Mad L W 359 Reversed. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 3 (3). AIR 1961 Mad 475 (DB).

——Art. 226 - Land Acquisition Act (1 of 1894), Ss. 3, 9, 10 and 11 Collector - Person appointed as Land Acquisition Officer — Status of — Notifications under Ss. 9 and 10 by him — Validity — Award by him under S. 11 — Validity - Duty of Court in proceedings under Art 226. See Land Acquisition Act (1894), S. 3. AIR 1959 Punj 538.

79(c). Matter not justiciable.

——Art. 32—Public purpose—Justiciability—Finality created by S. 6 (3), Land Acquisition Act even operates to restrict powers of Supreme Court under Art. 32. See Land Acquisition Act (1894), S. 6 (3). AIR 1963 SC 151.

—Arts 226 and 32—Scope—Ss. 5 and 6, Bombay Land Requisition Act, 1948 — If impair or affect Jurisdiction of High Court under Art. 226 or of Supreme Court under Art 32.

The Bombay Land Requisition Act has made a specific provision to the effect that the determination on the question referred to in Ss. 5 and 6 of the Act by the State Government shall be conclusive evidence of the declaration so made. But that does not mean that the jurisdiction of the High Court under Art. 226 or of the Supreme Court under Art. 32 or on appeal has been impaired. But the special powers aforesaid of the Supreme Court or of the High Court cannot extend to reopening a finding by the State Government under Ss. 5 and 6 of the Bombay Land Requisition Act. AIR 1949 P. C. 136, Disting. AIR 1950 Bom 144 held Overruled by AIR 1951 Bom 303. Lilavati Bai v. State of Bombay, 1957 SCR 745 : 59 Bom L R 934 : 1957 S C J 557 : 1957 SCA 465 : AIR 1957 SC 521 (528) (Pt D) (Pr 10).

——Arts. 226 and 311 (2)—Powers of High Court.

The High Court, when exercising powers under Art. 226 of the Constitution cannot go into the question of unfairness or unreasonableness of a Government servant's service rule. All that can be seen is whether a rule is valid and applicable. AIR 1964 All 411 (414) (Pt B) (Pr 10

——Art. 226—Domestic Tribunal—High Court though reluctant to interfere with the autonomy of domestic tribunal and educational institutions which have to maintain standards, held that it could understand the misgivings regarding what the body would do when his case came up before it for consideration and this aspect of the matter could not be ignored by the High Court. AIR 1953 All 580 (Pt A) (Pr 11) (DB).

——Art. 226—Grounds for interference — Co-operative Society — Employee retrenched in interest of society and economy — Violation of by-laws — If ground for moving High Court to quash order — (Madras Co-operative Societies Act (6 of 1932), S. 51).

It is within the competence of the authority which appoints a person to terminate his services. The Board of Directors of a Co-operative Society which appointed the petitioner as the manager has jurisdiction to terminate his services in the interest of the society and in order to effect economy in the running of the concern.

Where the petitioner filed a petition under Art. 226 to quash the order of the Society retrenching his post, the question whether it is the post of the manager or the accountant or anything else that should be abolished is a matter for the department concerned to decide and it is not for the High Court to substitute its judgment in regard to the matter.

The by-laws cannot be said to have the same force as the statutory rules, the violation of which can furnish a ground for moving the High Court under Art. 226 of the Constitution. (1959) 1 Lab L J 550 (Andh. Pra).

——Art. 226—Scope of inquiry—Shifting of factory — Offer of employment at new place — High Court if can consider fairness of offer — (Industrial Disputes (Appellate Tribunals) Act (1950), S. 22).

Where a factory is shifted from one place to another and the employer offers to employ the workers at the new place under certain conditions, it is not for the High Court to consider whether the offer is fair or not; it is for the tribunal unless prima facie on the face of the offer it is clear that the Tribunal had erred and has come to a perverse conclusion. All that the High Court has got to consider is whether the decision is a decision with jurisdiction and whether there is any error apparent on the face of the record. 57 Bom L R 1148 : (1956) 1 Lab L J 246 : ILR (1956) Bom 37 : AIR 1957 Bom 46 (49, 50) (Pt E) (Prs 8, 9) (DB).

——Art. 226 — Scope — Writs to prevent alleged offences of political extinction and racial suicide — Issue of.

Court protects and administers the law. It takes no part in political controversies. Political extinction or racial suicide, if they are offences at all, or offences yet unknown to our law, and the writs of the High Court do not reach there 60 Cal W N 555 : ILR (1957) 3 Cal 390 : AIR 1956 Cal 378 (381) (Pt A) (Pr 10).

——Art. 226 — Scope — Order under Special Act — Revaluation of grounds — (Income-tax Act (1922), S. 34).

The terms of Art. 226 are very wide and the writs which the article contemplates are not limited to writs of the precise scope and character of the English writs But, however wide the language of the article and however various the writs or orders it contemplates the width of language has no effect of releasing the article altogether from the limitations which attach in England to interference by means of high prerogative writs. There are certain obvious directions

in which more extended power can legitimately be exercised under the article, but a revaluation of the grounds on which a particular order was made in a pending income-tax proceeding, governed by its own special law, and provided with its own special remedies, is not one of such directions. **23 ITR 471 : ILR (1955) 1 Cal 216 : AIR 1953 Cal 721 (722, 723) (Pt A) (Pr 9) (DB).**

[Reversed on another point in AIR 1961 SC 372.]

——Art. 226 — Powers of High Court—(M. B. Police Regulations No. 950).

Under the Police Regulation No. 950 if the Superintendent of Police is led to believe, on the information at his disposal, that a particular individual is leading a life of crime he is empowered to order surveillance. Whether the information, which led the Superintendent of Police to believe that the petitioner is leading a life of crime, is adequate or not is not for the High Court to enquire in proceedings under Art. 226. **ILR (1953) M B 162 : AIR 1954 Madh B 63 (64) (Pt C) (Pr 5) (DB).**

——Art. 226 — Prohibition—Satisfaction of Commissioner of Income-tax before sanctioning proceedings under S. 34, Income-tax Act — Justiciability. See Income-tax Act (1922), S. 34. **AIR 1954 Mad 872 (DB).**

——Art. 226—Scope of writ jurisdiction.

If a person alleges that all her applications for registration as foreigner, change of registration, inner line permits, extension of stay etc. were made under a misapprehension and in ignorance of her rights as Indian citizen, it is for her to approach the appropriate authorities and get herself declared as an Indian citizen by satisfying them that her conduct was in ignorance of her rights. It is not for the Judicial Commissioner's Court to interfere in such matters. The writ jurisdiction of the Judicial Commissioner's Court cannot be invoked to get a declaration of her Indian citizenship. **AIR 1961 Manipur 37 (40) (Pt C) (Pr 12).**

——Art. 226 — Special Tribunal — Punishment by—Interference by High Court—Industrial Tribunal can examine findings of management on charge of misconduct and assure itself that there is evidence to support the finding — Management no doubt ought to have the right to decide what appropriate punishment should be — But its decision is liable to be reversed if the Tribunal is of opinion that the punishment is so unjust that remedy is called for in interest of justice—Tribunal has absolute discretion to decide what punishment should be meted out to guilty workman under the circumstances of the case — The discretion should not be interfered with on writ petition, unless it is shown that the order of the Tribunal is perverse or that it exercised its discretion illegally in ordering re-instatement of employee. See Industrial Disputes Act (1947), S. 11 (2). **AIR 1958 Pat 120 (DB).**

——Art. 226 — Interference—Matter within exclusive jurisdiction of lower tribunal under special Act — Not open for examination of High Court. **63 Punj L R 183 : AIR 1961 Punj 464 (466) (Pt C) (Pr 8).**

——Art. 226 — Question regarding urgency — Not open for judicial review. See Rajasthan Land Acquisition Act (24 of 1953), S. 17. **AIR 1964 Raj 270 (DB).**

——Art. 226 — Industrial Disputes Act (1947), Ss. 2 (k), 10—Constitution of India, Art. 226 — Support to cause or grievence by other employees who are not aggrieved is not essential — Test is whether a substantial number of a particular establishment have taken up the cause of the aggrieved person or persons — Espousal of the cause of each other by the aggrieved persons themselves may be sufficient to convert their individual grievances into an industrial dispute — Whether the aggrieved persons by themselves constituted an appreciable number of workmen in a case is a question of fact — If the Government which is the statutory authority to be satisfied whether an industrial dispute exists or not was so satisfied, it will not be proper for the High Court exercising its extraordinary jurisdiction under Art. 226 of the Constitution to hold that substantial number of employees are not raising an industrial dispute. **1962 R L W 417.**

79 (d). Original proceedings.

——Art. 226 — Nature of proceedings — Allegation about corrupt practices made in election petition — Proceeding under Art. 226 for striking out these allegations — Proceedings.

The jurisdiction which the High Court exercises under Art. 226 is original in character, as contrasted with its appellate or revisional jurisdiction, and the proceedings under Art. 226 are not proceedings in continuation of the proceedings before any inferior tribunal under any Act or status. In determining the nature of proceedings under Art. 226, the test is not to whom a writ or direction is issued or whose order is quashed, but it is 'what is the nature of the right sought to be adjudicated upon and enforced by proceedings under Art. 226.' If the right is any of the rights conferred by Part III of the Constitution or a civil right, or a statutory right of civil nature, then clearly proceedings under Art. 226 for the enforcement of that right would be 'civil proceedings.' Hence where a party sought to enforce his 'statutory civil right' of having the allegations about corrupt practices made by the petitioner in his election petition struck out because of his (petitioner's) failure to file an affidavit as required by the imperative terms of the proviso to S. 83 (1) of the Act and R. 94-A of the Rules, the proceedings under Art. 226, in which the order sought to be appealed from was passed by the High Court are 'civil proceedings'. AIR 1952 S C 64 and AIR 1963 S C 946, Ref. to. AIR 1957 Pat 103, Dissented from. **1964 Jab L J 549 : 1964 M P L J 893 : AIR 1965 Madh Pra 15 (18, 19) (Pt D) (Prs 8, 9) (DB).**

79 (e). Presidency High Courts, powers of, before Constitution.

——Art. 226 — History of writ jurisdiction of High Courts — The Calcutta High Court had jurisdiction to issue prerogative writs even before commencement of the Constitution. The Lloyds Bank Ltd. v. Lloyds and Indian Staff Association, **AIR 1956 S C 746 (747) (Pt A) (Pr 2).**

——Art. 226 — Jurisdiction of High Courts before Constitution.

The Calcutta High Court had jurisdiction to issue prerogative writs even before the commencement of the Constitution. The Lloyds Bank Ltd. v. The Lloyds Bank's India Staff Association, **AIR 1956 S C 746 (747) (Pt A) (Pr 2).**

79 (f). Special jurisdiction.

——Art. 226 — Conferment of additional power on existing Courts or creation of new Court does not mean creation of new jurisdiction.

The conferment of an additional power on existing Courts or even the creation of a new Court by the Constitution does not of itself create a new jurisdiction to be called constitutional jurisdiction. Our Supreme Court was created by Art. 124 of the Constitution and its appellate powers were conferred by Arts. 132 to 136. But it cannot be argued that when the Supreme Court hears an appeal from a decree of a High Court in a civil suit, the proceedings are converted into constitutional proceedings. If new courts are created or additional powers are conferred

on the existing Courts by the Constitution it does not mean that a new kind of jurisdiction is created but merely that the Courts cannot be abolished nor the power restricted without amending the Constitution. AIR 1965 All 106 (115) (Pt C) (Pr 41) (DB).

——Art. 226 — Scope of High Court's power under Art. 226—Extent of power determined by Art. 226—Existence of right is foundation of High Court's jurisdiction — Distinction between jurisdiction of Court and its exercise — Origin and history of prerogative writs in England — Value of English authorities in determining extent of power under Art. 226. I L R (1961) 1 All 52 : AIR 1962 All 551 (557, 558, 560) (Pt D) (Prs 32, 35, 36, 38, 53, 55, 56) (DB).

■ ——Art. 226 — Scope — High Court acting under Art. 226 exercises 'jurisdiction' within meaning of S. 4, Court-fees Act as amended by the U. P. Act (10 of 1959), and not 'power.' Khacheru Singh v. S. D. O. Khurja, ILR (1960) 1 All 429 : 1960 All W R (HC) 137 : 1960 All L J 170 : A I R 1960 All 462 (463) (Pt A) (Prs 2, 3) (FB).

——Art. 226—Jurisdiction of High Court.

The discretion of the High Court under Art. 226 of the Constitution should not ordinarily be exercised simply to enable a petitioner to make a claim for money in other proceedings. AIR 1960 All 209 (210, 211) (Pt C) (Pr 8).

——Art. 226—Jurisdiction of High Court.

The jurisdiction given under Art. 226 of the Constitution is a special and peculiar right. It is for the enforcement of fundamental rights conferred by Part III of the Constitution or for any other purpose. So far as the enforcement of the fundamental rights is concerned, it may be that the petitioner might insist, as of right, on their enforcement but so far as other matters are concerned, it is purely in the discretionary jurisdiction of the High Court, whether it would grant it or refuse it. A I R 1955 S C 425, Rel. on. ILR (1959) 2 All 267 : AIR 1960 All 205 (209) (Pt D) (Pr 18) (DB).

■ ——Arts. 226, 245 and 254—U. P. Sales Tax (Validation) Act (15 of 1958), S. 4 — Validity—Powers of High Court—If affected.

The Legislature derives its power to legislate from Art. 245 of the Constitution subject to the provisions of the Constitution which include Art. 226. As S. 4 of the Validation Act leaves no discretion with the High Court in the matter of agreeing or refusing to review its previous order and, after a review is granted, makes it obligatory on the High Court to pass a particular order, it is obvious that it seriously affects those powers. In enacting this provision the legislature clearly exceeded its authority and contravened Art. 245 of the Constitution. While legislating on the subject of sales-tax, therefore, it cannot be open to the State legislature to pass a law on the subject of sales tax affecting in any way the powers of the High Court to review an order passed by it under Art. 226 or under the Civil Procedure Code. Section 4 of the U. P. Sales-tax (Validation) Act (1958) is, in its application to the High Court in exercise of its jurisdiction under Art. 226 of the Constitution, invalid. Adarsh Bhandar Aligarh v Sales Tax Officer Aligarh, 1959 All L J 356 : 1959 All W R (HC) 274 : (1959) 10 S T C 364 : ILR (1959) 1 All 662 : AIR 1959 All 557 (558) (Prs 7, 9, 10, 11) (FB).

——Art. 226—Powers of High Court—Exercise of.

High Courts should in the discharge of their sacred duty of administering law and justice exercise the powers specially conferred under Art. 226 in accordance with the principles laid down by the Supreme Court instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment (1957) 2 Lab L J 238 : AIR 1956 Andhra 203 (208) (Pt D) (Pr 19).

——Art. 226—Powers of High Court—Constitutional limitations.

The Constitution has undoubtedly placed an obligation on the High Court to protect the rights and liberties of the people; but, while it is the duty of the High Court to enforce the mandates of the Constitution and to see that persons in authority, public bodies or institutions within its jurisdiction howsoever high and exalted they may be, keep within the bounds of the Constitution, it is equally the duty and the responsibility of the High Court to realise the constitutional limitations within which it has to function. I L R (1958) 10 Assam 461 : AIR 1958 Assam 160 (163, 164) (Pt B) (Pr 5) (DB).

■ ——Art. 226—Remedy under for pre-Constitution cause of action.

Where the petitioner was discharged from service before the Constitution, and the order of discharge was void under the then existing law, the petitioner should be deemed to be in service and the wrongful act of the respondent in not employing him and compelling him to retire on pension is a sort of continuing wrong, for which he is entitled to seek his remedy under the Constitution, which had in the meanwhile come into force. High prerogative writs are issued for the protection of the rights of individuals and to check excess or abuse of powers, and where the foundation of the writ prayed for is a complaint against an ultra vires order, it is difficult to say that the cause of action does not survive when the Constitution came into force. The mischievous effect of the illegal order gives a sort of a continuing cause of action. AIR 1950 Madh B 46, Ref. Hiranmoy v. State of Assam. AIR 1954 Assam 224 (235) (Pt D) (Pr 11) (FB).

——Art. 226—Jurisdiction under — Nature.

The jurisdiction which the High Court exercises in issuing writs is a limited jurisdiction. The Court is not a Court of appeal, nor is it a court of revision. It has no power to correct either findings of fact or even errors of law. Its sole function is to correct persons or tribunals exercising judicial or quasi-judicial functions when they assume jurisdiction which they do not possess or when they refuse to exercise jurisdiction which is vested in them by law, or when in the exercise of their jurisdiction they violate the principles of natural justice. I L R (1952) Hyd 791 : A I R 1953 Hyd 79 (88) (Pt J) (Pr 50) (DB).

[Reversed on another point in AIR 1956 S C 319.]

——Art. 226 — Central Excises and Salt Act (1 of 1944), S. 35—Scope—Powers of appellate authority under the section are much wider—Finality of order—Order by appellate authority vacating the original order — Absence of specific direction in the order—De novo proceedings cannot be started by Collector after the order — Analogy between powers under the section and under Art. 226 of the Constitution cannot be drawn — Central Excise Rules (1944), R. 223-A. See Central Excises and Salt Act (1944), S. 35. A I R 1964 Mad 111.

——Art. 226—Scope.

Art. 226 does not confer a new remedy where there was no remedy before the Constitution. 64 M L W 665 : 1951-2 : M L J 171 : AIR 1952 Mad 112 (112) (Pt B) (Pr 1) (DB).

——Art. 226—Scope of High Court's power.

If authorities act wholly without jurisdiction or in excess of jurisdiction the High Court may, in appro-

priate cases, exercise its special jurisdiction under Art. 226. But in exercising its powers under Art. 226 the High Court should not constitute itself into an appellate authority and substitute its own judgment for the judgment of the authority whose order is under challenge before it. A I R 1952 S C 192 and AIR 1954 S C 27, Foll **ILR (1954) Cut 644 : AIR 1955 Orissa 151 (153) (Pt A) (Pr 5) (DB).**

——**Art. 226 — Proceedings within special jurisdiction—Issue of writ of certiorari.**

A writ of certiorari can be issued only in respect of matters which are within the jurisdiction of the High Court. Where an inferior Court is one of civil jurisdiction, but by statute or custom it administers a law peculiar to its own forum, in respect of some particular matter and so possesses to this limited extent jurisdiction which the superior Court does not possess certiorari will not issue to remove proceedings which come within that special jurisdiction. **ILR (1953) Cut 682 : AIR 1954 Orissa 67 (70) (Pt E) (Pr 11) (DB).**

79 (g). Summary.

——**Art. 226—Procedure — Recording of evidence—Practice.**

In the summary proceedings of a writ, where under the normal practice, a petition has to be decided on the basis of affidavits alone, it is not possible to record detailed evidence, including statements of expert witnesses, which appears to be necessary considering the nature of the allegations made and the reliefs claimed. Such a case is eminently fit for being decided by a civil Court of original jurisdiction in an original trial AIR 1957 S C 882, Rel. on. **AIR 1960 All 72 (77) (Pt A) (Pr 10).**

——Art. 226 — Extent of powers — Licence fee imposed under S. 174, U. P. District Boards Act, 1922, to regulate an offensive dangerous or obnoxious trade —In the summary proceedings under Art. 226 it was not possible to hold that the licence fee fixed by District Board was excessive. See U P. District Boards Act (10 of 1922), S. 174. **A I R 1955 All 184 (DB).**

——**Art. 226—Powers under—Exercise of—Another remedy available.**

The proceedings under Art. 226 of the Constitution being of a summary and coercive nature the powers under the article should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him. AIR 1951 All 1 (FB) and AIR 1950 Pat 887 (FB), Rel. on. **I L R (1952) 1 Cal 282 : 55 C W N 326 : AIR 1951 Cal 420 (422) (Pt B) (Prs 22, 25, 26).**

——Art. 226 — In proceedings under Art. 226, High Court cannot start an enquiry as in regular suit. **1965 Cur L J 350 (Punj).**

79 (h). Decision on merits.

● ——**Art. 226—Motor Vehicles Act (1939), Ss. 47 (1) (a), 48 — Application for stage carriage permit — Rejection of application by Appellate Tribunal — Decision by Appellate Tribunal result of proper assessment of all relevant factors—That all relevant reasons are not set out in judgment held not proper ground for issue of writ.** See Motor Vehicles Act (1939), S. 47 (10) (c) **A I R 1965 S C 107.**

● ——**Art. 226 — Error apparent on face of record—Proper procedure to be followed by High Court in writ jurisdiction.**

In writ proceedings if an error of law apparent on the face of the record is disclosed and a writ is issued the usual course to adopt is to correct the error and send the case back to the special Tribunal for its decision in accordance with law. It would be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in matters which have been left by the legislature to the decisions of specially constituted tribunals. T. Prem Sagar v M/s. Standard Vacuum Oil Co., Madras, **(1964) 5 S C R 1030 : (1964) 1 Lab L J 47 : (1964-65) 26 F J R 1 : (1964) 8 Fac L R 247 : A I R 1965 S C 111 (118) (Pt C) (Pr 22)**

● ——**Art 226—Certiorari—Inquiry into merits — In a petition for a writ of certiorari it would normally not be open to the employer petitioner to challenge the merits of the findings made by the authorities under the Industrial Employment (Standing Orders) Act (1946).** Associated Cement Co., Ltd. v. P. D. Vyas, **(1960) 1 Lab L J 563 : (1961) 62 20 F J R 59 : (1961) 2 Fac L R 569 : 1960 Nag L J 473 : 1960 Mad L J (Cr) 204 : 1960 S C J 1269 : (1960) 2 Mad L J (SC) 107 : 62 Bom L R 563 : (1960) 2 Andh W R (SC) 107 : (1960) 2 S C R 974 : A I R 1960 S C 665 (668, 669) (Pt B) (Pr 9)**

■ ——**Art. 226 — Compulsory retirement of petitioner—First counter affidavit stating that order of retirement is under Art. 465, Civil Service Regulations (as adapted in U. P.)—Supplementary counter-affidavit stating that order is also under Rules framed under S. 2, Police Act (1861) — Opposite party held could not be estopped from relying on rules.**

When an authority passes an order which is within its competence it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its powers under any other rule and the validity of an order should be judged on a consideration of its substance and not its form : **A I R 1958 S C 232** Foll.

Where in a writ petition by appellant who was made to retire compulsorily the first counter-affidavit filed by State asserted that the petitioner's compulsory retirement was ordered under Art. 465, Civil Service Regulations and in the supplementary counter-affidavit reliance was placed also upon the Rules made under the Police Act:

Held, that the opposite parties' reliance upon Art. 465 in the first instance did not estop them from relying upon the Rules made under the Police Act (1861). Where Art. 465 itself reproduced the Rules made under the Police Act reliance upon it amounted to reliance upon the Rules : A I R 1954 S C 369, Foll. Abdul Ahad v. Inspector-General of Police, U P. **(1965) 1 Lab L J 110 : ILR (1964) 2 All 959 1964 All L J 791 : 1964 All W R (HC) 467 : (1964) 9 Fac L R 197 : A I R 1965 All 142 (146, 147) (Pt C) (Pr 6) (FB).**

——**Art. 226 - Industrial dispute - Decision of labour Court as to salary—High Court's power to interfere.**

Where the petitioner-company's argument in writ petition under Art. 226 was that in the absence of any time scale or grade provided in the factory to apply to stillman it was not open to the Industrial Court to hold that the employees in question were entitled to a salary of Rs. 80-2-0 per month :

Held that this was a matter which was within the jurisdiction of the labour Court to decide and if it had come to a conclusion, even though the petitioner may consider it to be unfair or incorrect, High Court could not alter it under Art 226. **1958 All L J 863 : (1959) 1 Lab L J 227 : A I R 1959 All 369 (372) (Pt D) (Pr 13).**

——**Art. 226 — Power of High Court — Committee having jurisdiction to inquire—High Court's power to take away jurisdiction — (Railway Establishment Code, Vol. 1, R. 1707 (c)).**

The High Court cannot, at any rate, it should not, in the exercise of its discretion, take away jurisdiction which a committee has, to conduct an inquiry, under its extraordinary powers on a presumption that there may be certain circumstances on which the results of the inquiry may not be quite fair to the petitioner. **AIR 1957 All 671 (677, 678) (Pt H) (Pr 36) (DB).**

——Art. 226 — Order allowing amendment of election petition—Amendment of clerical nature—Interference—(Civil P. C. (1908), S. 151).

It is always inherent in a Court or Tribunal which has the power to decide a case, to order rectification of clerical or accidental errors and omissions. If a Court or Tribunal has the right to amend such mistakes, the merits of the application for amendment cannot be gone into in a petition for writ. A Court or Tribunal which is entitled to pass a correct order may also pass an incorrect order but that would not be a ground for invoking the jurisdiction of the High Court by a petition for writ. Hence, where an Election Tribunal allows an amendment of an election petition on the ground that the amendment is of a clerical nature, the High Court will not interfere with the exercise of discretion. 1955 All L J 425 : A I R 1955 All 251 (251, 252) (Pt A) (Pr 4) (DB).

——Art. 226—Scope.

In the exercise of the jurisdiction conferred by Art. 226 of the Constitution the High Court is not to be guided by extreme technicalities or even irregularities which do not affect the merits or justice of the case. ILR (1955) 2 All 37 : A I R 1955 All 82 (85) (Pt C) (Pr 5).

——Art. 226 — Reference of industrial dispute to Industrial Tribunal and Industrial Appellate Tribunal of India on its own motion and not on report of Conciliation Board — Invalidity of report and of proceedings before Board are not material for consideration of writ application — (U. P Industrial Disputes Act (1947), Ss 3, 4 and 8).

Where the reference to the U. P. Industrial Tribunal was made by the State Government by Notification in exercise of the powers conferred by Ss. 3, 4 and 8 of the U P. Industrial Disputes Act, 1947 and in pursuance of the provisions of cl (10) of the Notification under S 3, U. P. Industrial Disputes Act, 1947 and the notification referring a dispute to the Industrial Tribunal clearly mentioned that the State Government was satisfied that the industrial dispute existed, in applications for writs against order of the U. P Industrial Tribunal and the Labour Appellate Tribunal of India, while examining the proceedings in connection with the exercise of powers of the High Court under Art. 226 of the Constitution, the High Court cannot go into the question whether that satisfaction was right or wrong.

The State Government is competent to make a reference to the Industrial Tribunal of its own motion, and, where nothing was said in the notification referring the dispute to the Industrial Tribunal, that it was referred in pursuance of the report of the Conciliation Board, it must be held that the reference is made by the State Government of its own motion, and the invalidity of the report of the Board or proceedings before the Board are not material in considering the writ application. **1954 All W R (HC) 502 : A I R 1954 All 516 (520) (Pt C) (Pr 17).**

——Art. 226 — Finding of Tribunal on preliminary issue only—No investigation into merits—Time enough for agitating question when matter is fully gone into before Tribunal — Case held not fit for exercise of jurisdiction under Art. 226. (1961-62) 22 F J R 85 : (1962) 2 Lab L J 207 : A I R 1962 Andh Pra 160 (162) (Pt C) (Pr 14) (DB).

——Art. 226 — Scope of inquiry — Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 52—Consent under — Correctness cannot be investigated in Court of Law: A I R 1954 T C 331, Dissented from. A I R 1955 All 372. Rel. on. (1957) 1 Andh W R 350 : 1957 Andh L T 34 : A I R 1957 Andh Pra 283 (285) (Pt B) (Pr 20).

——Art. 226—Scope of inquiry.

All that a High Court exercising its jurisdiction under Art 226 of the Constitution is entitled to look into is whether the public authority, whose order is the subject of a writ petition acted within the ambit of its powers or transgressed those limits It is not for the High Court to say whether it has taken a correct view of the facts or an erroneous view of the facts or whether it has interpreted a document rightly or wrongly. Where a public authority has jurisdiction to decide a point, it can decide it rightly or wrongly. **63 Bom L R 1 : A I R 1961 Bom 244 (249) (Pt E) (Pr 15) (DB).**

[Overruled on another point in AIR 1966 S C 478.]

——Art. 226—Powers of High Court.

In an application under Art 226 the High Court would not enter into the details of the petitioner's claim as that would be determined by the Courts in exercise of their ordinary jurisdiction. **ILR (1955) Hyd 283 : A I R 1955 Hyd 109 (109) (Pt B) (Pr 3) (DB).**

——Art. 226—Jurisdiction of High Court.

The jurisdiction to issue writs is not wide enough or large enough to enable High Courts to convert themselves into Courts of appeal and examine for themselves the correctness of the decisions impugned or decide what is the view to be taken of the points at issue between the parties including the issue of jurisdiction, if any. A I R 1952 S C 192, Rel. on **ILR (1953) Hyd 374 : A I R 1953 Hyd 228 (229) (Pt C) (Pr 5) (DB).**

——Art. 226 — Constitution of Jammu and Kashmir, Art. 103 — Jurisdiction under — Nature and scope — High Court cannot adjudicate on merits of impugned order. See Constitution of Jammu and Kashmir, Art. 103. A I R 964 J & K 7.

——Art. 226—Applicability — Inquiry under Madras Hereditary Village Offices Act — Collector revoking order of suspension — Application under Article — Complaint that order of revocation is bad on merits and that petitioner was not heard before order — Article held was not intended for purposes like this —(Madras Hereditary Village Offices Act (3 of 1895), S. 7). 1957 Ker L T 401.

——Art. 226—Decision on merits.

The Court is not entitled to consider the merits of the order made, in application under Art. 226 of the Constitution. **1954 Cri L J 770 : A I R 1954 Kutch 15 (18) (Pt D) (Pr 11).**

——Art. 226 — Jurisdiction — C. P. Forest Contract Rules — Conservator of Forests — Order of - Interference—(C P. and Berar Forest Contract Rules).

In cases of cutting of trees from specified camps comprising the lease area, the Conservator of Forests and the Divisional Forest Officer is the competent authority whose decision is final. Conservator of Forests acts as an arbitrator in such a matter and not as an appellate authority. L. P A. No 55/56, dated 30th September 1957. Foll. **1958 M P L J (Notes) 111.**

——Art. 226—Jurisdiction under—Nature and scope of—Madras Cinemas (Regulation) Act (9 of 1955), S. 5—Scope of.

Section 5 of the Madras Cinemas (Regulation) Act, 1955, no doubt, enumerates certain considerations which the licensing authority is bound to take into account. The mere fact that the licensing authority took into account circumstances not covered by the categories enumerated in S. 5, will not, by itself, vitiate the order of the licensing authority. It is of course to be borne in mind that when once the authority takes into consideration matters not expressly enumerated in the statute, it enters into a territory where controversy may become inevitable.

Where between two rival applicants for license to run a touring cinema the Collector chose one on the ground that the other had already a chance and that everybody should have a chance, when all other considerations are equal, it cannot be said that the consideration taken into account is an unreasonable one. Where it is clear that the authority whose order is sought to be impeached has applied its mind fairly, honestly and impartially, the High Court will be slow to interfere with such an order. (1958) 1 M L J 352 : (1958) M L J (Cr) 397 : 71 Mad L W 424 : 1958 Mad WN 282.

——Art. 226—Writ of certiorari—Powers of High Court.

In an application for a writ of certiorari it is not open to the High Court to go into the merits of the conclusion. (1950) 2 Mad L J 479 : (1950-51) 2 F J R 102 : AIR 1950 Mad 839 (840) (Pt C) (Pr 5) (DB).

[Held in AIR 1966 Cal 504 no longer good law on another point in view of AIR 1950 S C 188 – Ed.]

——Art. 226—Jurisdiction under—When exercised.

Whether or not the High Court may agree with the decision of the lower tribunal on the reason if it cannot be said that there was any excessive exercise or non-exercise of jurisdiction or any apparent error on record which has resulted in manifest injustice, the High Court would not scrutinise the matter for itself even if a different view may be taken of it. 1957 M P C 344 : 1957 M P L J 488 (Nag) : AIR 1957 Nag 102 (104) (Pt D) (Pr 9).

■ **——Art. 226**—Petitioner granted petition-writer's licence under R. 5 (ii) of Punjab High Court Rules and Orders on personal ground under order of Chief Justice—Grant is contrary to R. 5 of the Punjab High Court Rules and Orders—Resolution by Full Court at its administrative meeting held subsequently not to renew licence—Resolution not open to question under Art. 226 of the Constitution, as resolution only rectified an obvious case of mistake. There is no justification for exercising discretion in favour of petitioner. See Punjab Courts Act (6 of 1918), S. 46-A. AIR 1963 Punj 46 (FB).

——Art. 226—High Court will not examine correctness of decision.

However extensive the jurisdiction of the High Court under Art. 226 may be it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made. This is an extraordinary remedy which is to be used very sparingly and in grave cases only. 65 Punj L R 152 : 1963 (1) Cri L J 709.

——Art. 226—Jurisdiction of High Court—Order of appellate authority under Motor Vehicles Act—High Court's power to examine correctness—(Motor Vehicles Act (1939), S. 64).

It is not open to the High Court in proceedings under Art. 226 of the Constitution to convert itself into a Court of appeal and then to examine the correctness of the order made by the appellate authority under Motor Vehicles Act by going into the evidence before the State Transport Authority. AIR 1952 S C 192 Foll. 61 Punj L R 647 : ILR (1959) Punj 1644 : AIR 1959 Punj 473 (474) (Pt A) (Pr 6).

——Art. 226 — Scope of inquiry on the question of jurisdiction — Plea relating to merits of case — Not considered.

In a petition under Art. 226, if the plea relates to the merits of the case and not to the question of jurisdiction on which ground alone the lower Tribunal rejected the petitioner's claim, it is not the function of the High Court to make any pronouncement upon that contention in the exercise of its extraordinary jurisdiction. ILR (1959) 9 Raj 1043.

——Art. 226—Art. 226 cannot be used to sue irregular orders. AIR 1955 N U C (T C) 5999 (DB).

——Art. 226 — Certiorari — Facts not dealt with in proceedings sought to be quashed—Power of Court to give finding. 1952 Ker L T 355 : ILR (1953) T C 284 : AIR 1953 T C 70 (72) (Pt B) (Pr 7).

——Art. 226 — Award by Industrial Tribunal — Remedy available to challenge award petition under Art. 226 — High Court will not express opinion on award—(Industrial Disputes Act (1947), S. 7).

When a remedy is available to the petitioner to challenge the sustainability of award given by an Industrial Tribunal, it will not be proper for the High Court to usurp the jurisdiction of the appellate Tribunal while dealing with the petition presented under Art. 226 of the Constitution and to express any opinion on the merits of the award. (1952) 2 Lab L J 9 : AIR 1952 Trav. Co 371 (376, 377) (Pt F) (Pr 12).

——Art. 226 — Application for writ of certiorari or mandamus — Power of High Court to enter into merits of the case.

When an application for the issue of a writ of certiorari or mandamus is presented to the High Court for quashing the proceedings of the Government under R. 16 of the Paddy Acquisition and Movement Control Order (1950), it is not competent for the High Court, after quashing the proceedings, to go into the merits of the case and decide questions involved in the case as if it were disposing of an appeal from the decision of the Government. ILR (1951) T C 691 : 1951 Ker L T 268 : AIR 1951 Trav. Co 241 (243, 244) (Pt B) (Pr 6) (DB).

——Arts. 226 and 227—Powers of High Court under—Labour Court acting within jurisdiction—Decision—Interference on merits.

Where the points raised in a writ petition are on the basis that the lower Court acted against the evidence and erroneously and not in accordance with law, they cannot be gone into in proceedings under Art. 226 or under Art. 227. The High Court cannot sit in appeal over the lower Court in proceedings under Art. 226 or Art. 227.

The Tribunals appointed under the Industrial Disputes Act have got the jurisdiction to go into the question whether the dismissal or discharge or retrenchment of a workman was wrongful and whether he was entitled to re-instatement. Hence, in deciding the question whether the discharge was right or wrong the High Court will not interfere with its award unless it is pointed out that there was an error apparent on the face of the record or that the Labour Court has come to a decision without any kind of evidence before it or it has totally failed to consider any evidence adduced before it in coming to its conclusion or that it has acted in violation of all principles of natural justice. AIR 1960 Tripura 35 (38) (Pt A) (Prs 18, 20, 21).

——**Art. 226—Removal of person from office—Interference—(Vindhya Pradesh Gram Panchayat Ordinance (1949), Ss. 48, 5 and 110 (2), Rules under, Rule 61).**

Where the District Magistrate removes a person from the office of pradhan of the Gram Panchayat on one of the grounds mentioned in S. 5 and under powers given to him by S. 48, and he expressly set out his reasons for removal, the removal cannot be questioned even though he wrongly refers to Ss. 48 and 5, because he is competent to act under R. 61 framed under S. 110 (2) (vi).

In considering whether the Magistrate has acted ultra vires the High Court should look into the substance of the order and the competency of the authority and not into the false demonstration in the numbers of the rules and sections. Normally the High Court will not interfere with such discretion. Cases might arise where in arriving at this conclusion the prescribed authority is acting mala fide, or in a biased manner.

Again, as the taking of explanation is provided in the rules, and is in any case a requirement of natural justice, the reason should be either a non controvertible fact, or one which is precise enough to enable a confronting, failure in this will call for interference. If the reason given is bona fide and unbiased, the Court will assume a proper exercise of discretion, even though it may consider the reason insufficient. The tests are : firstly, has the prescribed authority confronted the office-bearer with a clear and unambiguous ground for holding that his continuance in office is undesirable in the interest of the public ? Secondly, is it mere bias, or a ground which a reasonable and fair-minded person will act upon ? Thirdly, is the prescribed authority acting mala fide (i. e.) giving a ground knowing it to be inapplicable and intending all the time somehow to remove the office-bearer ?

Where the reason for the removal from office was that the person was bound down under S. 109, Criminal P. C., it is not for the High Court to substitute its judgment whatever it may be, for that of the prescribed authority, who has full discretion to decide, on the effect on a person's antecedents or his fitness to hold an office in the Panchayat. **A I R 1953 Vindh Pra 47 (48, 49) (Prs 4, 5, 6).**

79 (i). Appreciation of evidence.

■ ——**Art. 32 — Evidence — Law framed in general terms—Evidence to show that law was meant to hit him alone—Admissibility.**

Per Wanchoo, J. — Where the law is general in terms and there is no question of its direct enforcement by the State in the form, for example, of grant of licences, issue of notices, submission of returns, and so on actually resulting in wholesale abuse of its provisions the High Court will not permit an applicant under Art. 32 to lead evidence to show that the law was meant to hit him alone. Kochunni Nayar v. State of Madras, **1959 Ker L J 464 : (1959) 2 S C A 248 : 1959 S C J 858 : (1959) 2 Andh W R (S C) 70 : (1959) 2 Mad L J (S C) 70 : (1959) Supp (2) S C R 316 : A I R 1959 S C 725 (735) (Pt F) (Pr 14).**

——**Art. 226** — Mandamus — Jurisdiction of High Court—Notification under S. 3 (4), Essential Supplies (Temporary Powers) Act, 1946, challenged as illegal and ultra vires — Notification superseded by another —Amendment of writ petition—Grievance that petitioner incurred financial loss under previous notification cannot be gone into—This can be done in appropriate civil proceeding. **A I R 1955 N U C (All) 3594 (DB).**

——**Art. 226**—Onus of proof—Evidence in writ proceedings if can be considered. See Ibid, Art. 5. **(1958) 62 Cal W N 589.**

——**Art. 226** — Enquiry against public servant — Appraisement of evidence by Enquiry Officer—High Court cannot substitute it by its own appraisement in writ proceedings. **A I R 1964 Cal 415 (417, 418) (Pt B) (Pr 13).**

——**Art. 226—Scope of inquiry.**

Where an order suspending a civil servant for a period of one year passed by way of punishment is challenged under Art. 226, the question of sufficiency or otherwise of the evidence on the strength of which the said order was passed, is a matter beyond the scope of a petition under Art. 226. Such a petition cannot be deemed to be an appeal against the impugned order. If there is nothing on record to show that over and above the opportunities which were made available to the petitioner to show that he was innocent of the charge against him, he wanted further opportunities and that any such request was turned down he is not entitled to complain that sufficient opportunities were not given to him or that there has been a violation of the rules of natural justice in the conduct of the inquiry into the charge against him. **1957 Ker L J 988 : 1957 Ker L T 1070 : I L R (1958) Ker 131 : (1958) 2 Lab L J 399 : A I R 1958 Ker 72 (74) (Pt D) (Pr 7) (DB).**

——**Art. 226 — Writ of certiorari — Appreciation of evidence — Outside purview of an enquiry for writ under Art. 226.**

The argument that some evidence was not duly considered by the tribunal would normally pertain to the realm of the appreciation of evidence and would as such be outside the purview of an enquiry in proceedings for a writ of certiorari under Art. 226. **A I R 1964 S C 477, Foll. (1964) 2 Mys L J 373 : (1965) 1 Law Rep 219 (DB).**

——**Art. 226—Scope of inquiry.**

It is not the function of the High Court, while exercising its jurisdiction under Art. 226 to examine the weight to be given to a particular piece of evidence. **(1959) 1 O J D 157 : A I R 1960 Orissa 68 (71, 72) (Pt F) (Pr 10) (DB).**

[**Reversed** on another point in A I R 1963 S C 779.]

——**Art. 226—Scope and applicability.**

Where the question as to the character of the property, whether it was trust property or personal property, depended upon the custom and usage of the Math, upon the interpretation of the documents of title and also upon the source from which the Mahanths acquired the lands, and it was further necessary to examine in each case whether the Mahanths dealt with the property as trust property or as personal property :

Held, that the question could not be determined solely on the affidavits, it depended upon investigation of facts and involved recording of evidence. A proceeding under Art. 226 was not a proper machinery for investigating such questions of fact. **1953 B L J R 658 : A I R 1954 Pat 278 (278) (Pt B) (Pr 5) (DB).**

——**Art. 226—Powers of High Court in proceedings under—Scope of — Cannot decide questions of fact on going through the record.**

In proceedings under Art. 226 of the Constitution, if a finding is given by a tribunal which is not supported by any evidence, the High Court will not sustain the finding. However, if the Tribunal has not given any finding at all on a vital matter in the case, the High Court would not go through the record of the case in order to arrive at that finding. **1965 Cur L J 772 : 67 Pun L R 1211.**

——**Art. 226—Nature of High Court's power.**

The scope of a petition under Art. 226 of the Constitution is very limited. It cannot review, reweigh

or re-assess the finding of fact given by the departmental Tribunals. **A I R 1960 Punj 58 (61) (Pt A) (Pr 3).**

——Art. 226 — Punjab Court of Wards Act (1903), S. 12 - Superintendence of property assumed under S. 5 (2) (d) — Evidence — Sufficiency of. See Punjab Court of Wards Act (2 of 1903), s. 12. **A I R 1954 Punj 247.**

——**Art 226—Powers of High Court — Appreciation of evidence by Labour Court—Interference by High Court.**

The Labour Court has every jurisdiction to rely or not to rely on the evidence placed before it. High Court will not interfere with such appreciation of evidence by the Labour Court in writ proceedings, unless it is pointed out that such appreciation has been utterly perverse or that the Labour Court has failed to consider oral evidence placed before it or that it has based its order on no evidence whatsoever. **A I R 1964 Tripura 32 (34) (Pt D) (Pr 10).**

79 (j) Discretionary orders.

● ——Art 226 — Industrial Disputes Act (1947), Ss. 10, 12—Discretion of Government to refer dispute under S. 12 (5)—Section 12 (5) does not confer power on Government to make reference independently of S. 10 (1) — Under S 12 (5) Government can consider other relevant facts besides the report of Conciliation Officer—Government in considering question of reference taking into consideration extraneous matters—Writ of mandamus can issue requiring Government to reconsider its decision State of Bombay v. K P. Krishnan, (1960) 1 F L R 392 : (1960) 2 Lab L J 592 : (1960-61) 19 F J R 61 : (1960) 2 S C A 527 : 63 B m L R 127 : 1961 Nag L J 205 : (1961) 1 S C R 227 : (1961) 2 S C J 360 : A I R 1960 S C 1223 (1225, 1226, 1227, 1228, 1230, 1231, 1232) **(Prs 5, 8, 9, 10, 11, 12, 16, 17, 18).**

——**Art. 226—Discretion of Police—High Court can go into the matter.** See Criminal P. C. (1898), S. 151. **1965 (1) Cri L J 413 : A I R 1965 All 161.**

——**Art. 226—Certiorari—When will issue — Matter falling within discretion of assessing authority — Certiorari will not issue - U. P. Agricultural Income-tax Act 1948 (3 of 1949), S. 31.**

It is well settled that certiorari will issue only where there is an error of jurisdiction or a manifest error of law or a breach of the principles of natural justice. Whether or not an assessee should be penalised, when he is in default and the facts and circumstances clothe the authority with jurisdiction to impose a penalty, is a matter falling within the discretion of that authority. That the assessing authority should have awaited the decision of the assessee's appeals and revision applications and the outcome of his stay applications before the Board is a matter falling within the discretion of the authority and not a consideration warranting the grant of certiorari. **1965 All L J 1102.**

——**Art. 226 — Discretionary orders—Interference in writ proceedings - Competency — (Motor Vehicles Act (1939), S. 60)—(Criminal P C. (1898), S. 35).**

If a Tribunal has exercised the discretion entrusted to it bona fide, not influenced by extraneous or irrelevant considerations and not arbitrarily or illegally, the courts cannot interfere; but they have power to prevent the intentional usurpation or mistaken assumption of a jurisdiction beyond that given to the Tribunal by law.

Where the Regional Transport Authority had imposed a penalty of suspension of permit on the ground that he contravened two of the terms of the permit, but it was found that the authority's view in respect of one of them was legally untenable :

Held, that when the permit-holder could not have been held guilty of one of the charges the considerations in respect of that charge became extraneous considerations and, therefore, the order of suspension passed was liable to be quashed:

Held, further, that in the writ proceedings the High Court, is not sitting in appeal against the decision of the transport authorities and cannot substitute its own view about the punishment for that taken by them. (1910) 2 K B 165, Relied on. **1958 All W R (H C) 97 : 1958 All L J 37 : 1958 Cr L J 984 : 1958 All Cr R 79 : AIR 1958 All 575 (577, 578) (Pt D) (Prs 7, 8, 9) (DB).**

——**Art. 226** — Discretionary orders—Motor Vehicles Act - Refusal to renew permit — Discretion of Transport Authority — Interference. See Motor Vehicles Act (1939), S. 58. **AIR 1958 All 30.**

——**Art. 226—Discretionary orders—Order granting pension — Whether amenable to certiorari — (Pensions Act (1871), S. 5).**

Where an order granting pension is passed by the Government pursuant to the discretion reserved to themselves and not in exercise of any of the powers conferred by S. 5, Pensions Act the order cannot be regarded as a judicial determination made after hearing both the parties and is not, therefore, amenable to certiorari. **AIR 1959 Andh Pra 487 (490, 491) (Pt D) (Pr 16) (DB).**

——**Art. 226** — Scope — Leasehold right to collect tolls — No obligation on Government to auction — No injury to possible participant in auction — Writ petition does no lie. See Madras Canals and Ferries Act (2 of 1890), S. 12. **AIR 1958 Andh Pra 331.**

——**Art. 226—Discretionary orders—Interference.**

If Government had complete discretion in making the settlement with X or Y the High Court would be powerless to interfere with the exercise of their discretion, even if there appear to be reasons that the discretion has not been properly used. **AIR 1958 Assam 9 (10, 11) (Pt A) (Pr 4) (DB).**

——**Arts. 226, 227—Tribunal not allowing new ground to be raised - No remedy under Art. 226 or 227. AIR 1955 NUC (Assam) 1301.**

——**Art. 226** — Issue of permit — Scope of S. 48 — Motor Vehicles — High Court when will not interfere. See Motor Vehicles Act (1939), S. 42. **AIR 1954 Assam 219 (DB).**

——**Art. 226—Interference in discretionary matters—Exercise of discretion under S. 33, Industrial Disputes Act (1947) - Interference by Appellate Tribunal.** See Industrial Disputes (Appellate Tribunal) Act (1950), S. 7. **AIR 1954 Bom 342 (DB).**

——**Art. 226—Discretionary orders—Interference.**

The question whether an application for revision is to be treated and dealt with as a memorandum of appeal or vice versa is a matter which is entirely in the discretion of the Court before which such appeal is preferred or the application for revision is made. The High Court cannot in exercise of its powers under Art 226 of the Constitution interfere with the exercise of such discretion unless it can be established that the discretion has been exercised arbitrarily or mala fide. **61 Cal W N 612 : AIR 1958 Cal 14 (18, 19) (Pt F) (Pr 7).**

——**Art. 226 — Foundation for jurisdiction under — Existence of right.**

Foundation for jurisdiction under Art. 226 is the existence of a right in petition — Granting of import licence depending on discretion of authority and not as of right—Refusal to grant licence—Petition under

Art. 226 for writ is not maintainable. AIR 1952 S C 12; AIR 1954 Cal 159 : AIR 1952 S C 192, Rel. on. AIR 1953 Cal 591 (592, 593) (Pt A) (Prs 4, 5).

——Art. 226—Certiorari — Grounds for issuing it — Interference in discretionary matters.

Under para. 12 of Cabinet Order No. 578-C the authorities are given power to cancel both the allotments in case a double allotment obtained by a displaced person is suppressed by him. But this paragraph does not make it obligatory upon the authorities to cancel both the allotments. It is a matter resting with their discretion. Hence the mere circumstance that those authorities exercised their discretion in one way and not in another way or that they reached one conclusion and not the other on their own appreciation of the facts of the case is surely not a ground for interfering on certiorari. AIR 1959 J & K 98 (102) (Pt B) (Pr 12) (DB).

——Arts. 226 and 311—Powers of High Court.

The High Court cannot substitute its own opinion for the opinion of an appointing authority as regards the merit and suitability of a candidate. If a candidate appointed possesses minimum qualifications, the appointment cannot be challenged merely on the ground that in the opinion of the High Court there may be others with better merit. The opinion of the appointing authority must prevail, if it is not otherwise contrary to the letter and the spirit of the rules. The Court cannot substitute its opinion for that of the appointing authority. AIR 1958 J & K 40 (41) (Pr 5) (DB).

——Art. 226—Powers of High Court—Appointment to official position cannot be directed.

The appointment to an official position in the Government, even if it be simply a clerical position is not a mere ministerial act, but one involving the exercise of judgment. Therefore, it is one of those acts over which the Courts have no general supervising power.

The Court, therefore, cannot substitute its own judgment for that of the appointing authority and the direction that the persons before the Court be appointed to the posts to which others had been appointed cannot be sustained. AIR 1951 S C 229, Foll. AIR 1958 J & K 14 (16, 17) (Pt C) (Prs 16, 17) (DB).

——Art. 226 — Discretion of the High Court - Grant of permit - Motor Vehicles Act (1939), Ss. 48 and 64 —Order of State Transport Appellate Tribunal granting permit to one of applicants for the reasons mentioned therein—Not a case for interference. 1962 Ker L J 1419.

——Art. 226 — Exercise of discretion by Court — Discretion properly exercised—No interference.

Where the Court had a discretion to examine or not to examine any witness suo motu and the discretion was not improperly exercised mere failure to pass order on an application made for the purpose cannot be questioned by means of a writ petition. 1959 M P C 621 : 1959 M P L J 1086 : 1959 Jab L J 754 : 1959 M P L J (Notes) 115 : I L R (1959) Madh Pra 196.

——Arts. 226 and 227—Appealable orders — Writs against — (Elections—Representation of the People Act (1951), Ss. 90 (5) and 83).

A tribunal may be right or wrong in allowing or disallowing an amendment but if it acts with jurisdiction the discretion prima facie exercised by it will not be interfered with by way of writ petition. It is a matter which may be properly taken in an appeal that may be filed against the final decision. AIR 1958 Andh Pra 175, Disting. 1958 M P L J 655 : 1958 M P C 194 : 1958 Jab L J 200 : AIR 1958 Madh Pra 236 (236, 237) (Pt A) (Pr 4) (DB).

——Art 226 — Extreme penalty of dismissal effected —Rule laying down punishment of dismissal optional —Employer would be well advised to give opportunity to employee to prove past good conduct. But in such matter it is doubtful whether jurisdiction of High Court could be invoked under Art. 226 of Constitution of India. (1964) 2 Mad L J 349.

——Art. 226 — Preference between universities — Discretionary—High Court cannot interfere with such discretion. See Ibid, Art. 14. AIR 1958 Mad 494.

——Art. 226—Discretionary order - Issue of writ.

The Maharaja of Manipur acting as the head of all the religious institutions in his State is an independent tribunal to which a writ cannot be issued under Art. 226.

In any case the question of appointment or dismissal of a Sebaiyet and other allied matters or matters purely within his discretion and he need not proceed in a quasi-judicial way when deciding them. AIR 1917 P C 71, Distinguished. The decision of the Maharaja to remove the Sebaiyet will be of purely administrative nature and it is not fettered by any rules, such as bind a judicial tribunal. AIR 1959 Manipur 10 (11) (Prs 9, 10, 11)

——Art. 226—Discretionary orders—Interference — Promotion of teacher of private school Art. 311.

The question of promotion of a teacher of a private school receiving grant-in-aid from Government is within the power and discretion of the superior authority and is not justiciable, unless the question is decided in contravention of the provisions of some specific rules. Where there are no such rules, promotion cannot automatically go by seniority. The High Court will not go into the question of punishment, as an appellate Court might do in a proceeding under Art. 226, when the matter is a matter purely within the discretion of the Managing Committee. AIR 1959 Manipur 1 (7, 8) (Pt B) (Prs 35, 38).

——Arts. 226, 311 — Promotion is in discretion of authority —Legal action to enforce promotion does not lie. See Ibid, Art. 311. A I R 1958 Manipur 35.

——Art. 226—Industrial Disputes Act (1947), S. 25F— Termination of services — Compensation instead of reinstatement ordered by Tribunal High Court will not interfere with discretion under Art. 226 of the Constitution. (1963) 1 Mys L J 547 (DB).

——Art. 226—Discretionary orders - Industrial Tribunal —Refusal to grant adjournment - Interference by High Court —(Industrial Disputes).

There can be no doubt that granting of adjournments is a matter of discretion with the Court or Tribunal concerned and the High Court acting under Art 226 of the Constitution will not interfere with the exercise of such discretion unless it can be shown that the discretion had been exercised capriciously or arbitrarily so as virtually to amount to a negation of the principles of natural justice or to occasion failure of justice. 37 Mys L J 344 : (1959 60) 17 F J R 445: I L R (1958) Mys 914 : (1959) 2 Lab L J 196 : A I R 1959 Mys 180 (181) (Pt A) (Pr 5) (DB).

——Arts. 226 and 227—Discretionary orders— Interference.

When the jurisdiction of the High Court under Art. 226 of the Constitution has been invoked, and a writ of certiorari has been prayed for, it cannot sit as a Court of Appeal. AIR 1955 S C 233, Rel. on. Where the discretion exercised by the Tribunal cannot be said to have been exercised either arbitrarily or capriciously, even if it were to be assumed that the Tribu-

nal came to an erroneous conclusion, it is not a matter in regard to which the High Court ought to interfere. (1958) 1 Lab L J 79 : 35 Mys L J 359 : I L R (1957) Mys 266 : AIR 1958 Mys 26 (28) (Pt B) (Pr 3) (DB).

——Art. 226—Opening slaughter-house is discretionary — Municipal committee closing down slaughter house for beef and cancelling license for same — No interference. See Municipalities—C. P. Municipalities Act, S. 140. 1951 Nag L J (Notes) 112.

——Art. 226—Discretionary orders — Interference with—Order condoning delay in filing appeal passed ex parte — No error of law — (Limitation Act (1908), S. 5 - Sufficient cause) — (Administration of Evacuee Property (Central) Rules (1950), R. 31 (7)).

At the time of the admission of the appeal, the admission matter was heard ex parte and, therefore it was not necessary for the Custodian to give any reason, if he did not like to do so. But he had to be satisfied and he was satisfied, and, therefore, he condoned the delay and admitted the appeal, but at the final hearing of the appeal, when an objection on this account was taken before him by the petitioner, he dealt with the matter in detail. Hence, there is no error of law in the order of the Custodian condoning the delay in filing the appeal under S. 5 of the Limitation Act read with R. 31 (7) of the Rules, which can entitle the High Couri to interfere on a writ application. ILR 35 Pat 920 : AIR 1957 Pat 235 (239) (Pt B) (Pr 20) (DB).

[Reversed on another point in AIR 1961 S C 1312.]

——Art. 226—Exercise of discretion by lower tribunal —Interference in writ proceedings — Services of employee illegally terminated on 1-12-1958 while the employer closed his activities on 1-10-1959—Tribunal granting six months' remuneration to employee—Contention that he should have been granted remuneration for ten months for which the employer continued his activities after illegal termination of service—Held the grant of relief in this respect could not be said to be an error liable to correction in writ proceedings — Whether the Tribunal thought it fit to grant compensation for six months or ten was a matter of discretion and it would be wrong for the High Court to interfere on this score. ILR (1962) 1 Punj 795 : 1962 Cur L J 129 : (1962-63) 23 FJR 209 : AIR 1962 Punj 354 (354, 355) (Pt A) (Pr 3).

——Art. 226—Powers of High Court — Error of law —Discretionary orders.

Although the High Court has power to compel a judicial or a quasi-judicial tribunal to perform a function imposed upon it by law, it has no power to correct the decision of a tribunal which is erroneous in point of law or to control the discretion and judgment of such tribunal acting within the scope of its judicial or quasi-judicial power.

A writ of certiorari is not a writ of course but it can be justified only in cases of excess of authority or flagrant and palpable violation of law which have in addition caused grave and manifest miscarriage of justice. Mere mistakes of fact, or even of law, within the power and competence of the administrative tribunals, even in the determination of rival claims, are by themselves not subject to scrutiny under Art. 226 of the Constitution. AIR 1957 Punj 206, Rel. on. ILR (1959) Punj 2121 : AIR 1959 Punj 638 (641, 642, 643) (Pt D) (Prs 6, 8).

——Art. 226—Discretionary orders—Interference. See Industrial Disputes Act (1947), S. 11 (3) (b). AIR 1959 Punj 189.

——Art. 226—Criminal P. C. (1898), S. 523—"Make order as he thinks fit respecting the disposal of such property"—Property seized delivered to Collector for disposal —Petitioner from whose possession property is seized applying High Court under Art. 226, Constitution of India—S. 523, Cr. P. C., vests discretion in Magistrate —Order made in exercise of such discretion will not be interfered with by High Court.

Bags of skimmed milk powder, in respect of which an offence is suspected to have been committed and in respect of which offence a prosecution is pending, when seized by the police from the possession of the petitioner and delivered by the Magistrate to the Collector along with an order that money recovered by sale is to be deposited in Government treasury, instead of delivering the bags to the petitioner, under S. 523, Criminal P. C., the disposal of the bags having thus been made by the Magistrate in exercise of his discretion under S. 523, his order cannot be interfered with by the High Court in exercise of its jurisdiction under Art. 226 of the Constitution. The clause "who shall make such order as he thinks fit respecting the disposal of such property" is wide in its amplitude and confers adequate power on the Magistrate to act as he deems fit having regard to the circumstances of the case. The word disposal here appears to connote the exercise of one's power of control. It is to determine the fate of the property as the exigencies of the case suggest. A I R 1952 All 470, Rel. on. 1963 Raj L W 30.

——Art. 226—Discretionary orders —Citizenship Act —Collector granting certificate of citizenship by registration or cancelling same — Interference by High Court. See Citizenship Act (1955), S. 5 (1) (a). A I R 1958 Raj 172 (DB).

——Arts. 226, 227—Power of High Court to grant sanction under S. 92, Civil P. C.—(Civil P. C. (1908), S. 92) —AIR 1953 Nag 89, dissented from.

Art. 226 cannot be read and construed as conferring an appellate jurisdiction on the High Court. Even though Art. 226 is couched in very comprehensive terms, there is a clear indication in the Constitution itself that an overriding appellate jurisdiction is not intended to be conferred on the High Court by this Article. The High Court cannot consider the petitioners' claim that they are entitled to get the sanction under S. 92, C. P. Code, for the institution of the contemplated suit, on its merits and directly issue the sanction, or command the Advocate General to give such sanction or consent. The decision in that matter should essentially be that of the Advocate-General and the same rests on a proper discretion to be exercised by him in the light of the relevant facts and circumstances. The High Court cannot usurp his jurisdiction in that matter and substitute its own discretion for his discretion and impose its independent decision on him.

Art. 227 also cannot be invoked for the grant of such relief. The power conferred on the High Court by this Article is undoubtedly very much limited in its scope than the power under Art. 226. The High Court cannot by exercising the power conferred on it under Art. 227, form a decision of its own as to whether the sanction applied for by the petitioners should be given or not, or issue a direction to the Advocate-General that he should decide the matter in any particular manner. Case law discussed. I L R (1954) T C 369 : A I R 1954 Trav-Co 331 (344, 345) (Pt D) (Prs 26, 27).

[Overruled on another point in AIR 1962 Ker 90 (FB).]

——Art. 226 — Exercise of discretion by Advocate-General under S. 92, Civil P. C.—[Civil P. C. (1908) S. 92].

Where the discretion has been properly exercised as contemplated by law, the decision reached by the authority concerned cannot be interfered with by a Court. No doubt there is nothing in S. 92 to compel

the Advocate-General to give his sanction or consent to institute a suit in respect of a public trust whenever two or more persons having an interest in such trust come forward with a request in that direction on the allegation that the trustees are guilty of breach of trust. On the other hand, the duty is cast on him to consider the allegations on the merits and to decide for himself whether the paramount interests of the trust require the institution of the contemplated suit. He has to exercise his own discretion in the matter and come to a definite conclusion one way or the other. It is a judicial discretion which has to be properly and reasonably exercised in accordance with certain well recognised principles of law.

Held, that a perusal of the order of the Advocate-General showed that the several points raised by the contesting parties had been duly considered by the Advocate-General in coming to the conclusion that it will not be in the paramount interest of the trust to drag it into a litigation as desired by the petitioners. He had approached the question before him in a real and proper perspective. He had also weighed the several aspects placed before him for reaching his ultimate conclusion. The enquiry which the Advocate-General could undertake under S. 92 of the Code of Civil Procedure was limited in its scope and character and it was not open to him to embark on any detailed investigation into all minor allegations made by the parties and to call witnesses and administer oath to them and to permit their examination and cross-examination as if he was functioning as a regular Court.

Even if the Advocate-General had formed the impression that there was a temporary diversion of trust funds and a consequent breach of trust committed by the managing trustee, it was still open to him to consider whether that reason alone would justify the institution of a suit in respect of the public trust. In view of the several circumstances the conclusion reached by the Advocate-General could not be characterised as unreasonable and unjustified. Case-law discussed. **ILR (1954) T C 369 : AIR 1954 Trav.Co 331 (338 to 342) (Pt C) (Prs 14, 15, 16, 17, 18, 19, 21) (DB).**

——Art. 226—Discretionary orders—Issue of writ. See Industrial Disputes Act (1947), S. 10. **AIR 1959 Tripura 8.**

79 (k). Proceedings, whether suit.

——Art. 226 —Proceedings under if in nature of suit —See High Court Rules and Orders—Allahabad High Court Rules, Chap. 7, R. 6. AIR 1956 All 535.

——Art. 226 —Extent of powers.

A petitioner cannot turn the High Court acting under the extraordinary jurisdiction conferred by Art. 226 of the Constitution into an ordinary Court of the land to determine civil disputes. **ILR (1955) Nag 459: AIR 1955 Nag 177 (179) (Pt E) (Pr 13) (DB).**

79 (l). Conversion of proceedings.

——Arts. 226 and 227—Application under S. 115, Civil Procedure Code — Order sought to be revised amenable to remedy by way of certiorari — Conversion of application to one under Art. 227 — Practice.

In proceedings under S. 48, U. P. Zamindari Abolition and Land Reforms Act, the Compensation Officer ordered the addition of a party without jurisdiction. The objector at whose instance the proceedings commenced applied to the High Court in revision under S. 115, Civil Procedure Code. At a late stage, the objector applied for the conversion of the revision proceedings to one under Art. 227 of the Constitution.

Held, that the order of the Compensation Officer being without jurisdiction might have been quashed on certiorari and that what could be done under a writ, order or direction under Art. 226 could no longer be done under the supervisory jurisdiction. It was also not possible to treat the application as an application for a writ of cetiorari, because it did not comply with the formalities required under the rules of the High Court for such an application. **1958 All W R (H C) 330 : (1957) 2 Lab L J 225 : A I R 1957 All 495 (505) (Pt J) (Pr 16).**

[**Overruled on another point in** A I R 1962 All 315 (FB).]

——Art. 226—Revision petition against order of Debt Conciliation Board — No application for writs under Art. 226—Remedy under Art. 226 is not open to applicant. AIR 1955 N U C (Hyd) 2963.

79 (m). Whether civil proceedings.

See also Note 10.

——Art. 226—Nature of writ proceeding — High Court is Civil Court within meaning of S. 479-A, Criminal Procedure Code and Court within S. 195, Criminal Procedure Code — (Criminal Procedure Code (1898), Ss. 195 (2) and 479-A).

For the purpose of deciding the dispute raised by the petitioner in a petition under Art. 226 of the Constitution praying for the issue of a writ of mandamus against his superior Government Officer, the High Court is a Civil Court within the meaning of S. 479-A of the Code of Criminal Procedure and a Court within the meaning of S. 195 of that Code.

Held, that for the eradication of the evils of perjury and fabriction of false evidence and in the interest of justice, it was expedient that the petitioner in the writ petition should be prosecuted under S. 193 of the Penal Code for having made false statements in his affidavit supporting this petition. **1960 Cri L J 26 : A I R 1960 All 55 (62) (Pt C) (Prs 36, 37).**

——Arts. 226, 227 and 133 — Notices under S. 34 (1) (a), Income-tax Act (1922) — Writ petition under Art. 226 of the Constitution for quashing notices —Proceedings are revenue in nature and not civil—As to whether the proceedings initiated by a writ application under Art. 226 or 227 are civil proceedings or not would depend on the nature of those proceedings and the relief sought in those proceedings. See Ibid, Art. 133. AIR 1964 Bom 116 (DB).

——Art. 226—Sea Customs Act (1878), S. 198—Application for prerogative writs is a "proceeding" within the meaning of S. 198. 55 Cal W N 528 : 87 Cal L J 201 : A I R 1952 Cal 103 (108) (Pt B) (Para 36).

——Arts. 226 and 133—Civil proceeding—(Hyderabad (Abolition of Jagirs) Regulation (69 of 1358F), S. 21 (2))—Passing of order by High Court in writ jurisdiction under Art. 226 whether civil proceeding. See Ibid, Art. 133. AIR 1953 Hyd 131.

——Art. 226—Writ proceedings—Nature of — Civil, Criminal or other proceedings—Depends upon and takes colour from proceedings in inferior tribunals—Judgment in with proceedings relating to assessment to income-tax—Not civil proceedings—Leave to appeal to Supreme Court—Not sustainable—Constitution—Substantial question of law as to interpretation of—Supreme Court, final authority—Final order extended meaning of—Right of appeal of widest amplitude—Equality clause—Question if provision of Income-tax Act violates—Not a question of law as to interpretation of Constitution—Interpretation — Constitution—Interpretation of and application of—Distinction — Income-tax Act (1922) S. 3. See Ibid, Art. 132. (1964) 54 I T R 293 (Mad).

——Art. 226—"Civil proceeding"—Judgment in writ petition to quash assessment of income-tax or to prohibit authorities from proceeding to make assessment—Not a "civil proceeding". See Ibid, Art. 133. AIR 1963 Mad 190 (DB).

—Art. 226—Proceedings under—Nature of—If civil proceedings. See Ibid, Art 133. (1957) 2 Mad L J 567 : AIR 1958 Mad 151 (DB).

—Art. 226—Nature of proceedings.

It is no doubt true that every application under Art. 226 of the Constitution cannot be deemed to be civil proceedings. But where the proceedings instituted by the petitioners are admittedly for issue of a writ for quashing the judgment and decrees passed by a Court in Civil proceedings purporting to decide the civil rights of the petitioners and the other parties thereto, such application should be considered to be civil proceedings. 38 Mys L J 332 : I L R (1959) Mys 1003 : AIR 1960 Mys 261 (262) (Pt A) (Pr 4) (DB).

—Art. 226 - Proceedings under—Whether civil proceedings. (Quaere).

Quaere : — Whether the proceedings before the High Court on an application under Art. 226 of the Constitution for a direction to admit an appeal are of civil nature. 17 W R 364, Ref. Hossen Kasam Dada (India) Ltd. Calcutta v. State Government of M. P., (1952) 3 S T C 289: I L R (1952) Nag 204 : AIR 1952 Nag 305 (306) (Pt B) (Pr 6) (FB).

—Art. 226 — Power of High Court—Board of Revenue having discretionary power passing technically correct order — There is no power to correct under Art. 226 — Municipalities — C. P. and Berar Municipalities Act, S. 83.

A triennial assessment by a Municipal Committee was upheld in appeal by the D. C. The assessee moved the Board of Revenue in revision and filed the order but through mistake the revision was directed against the next triennial assessment. The Board of Revenue did not allow the revision petition to be amended and rejected it.

Held, that the order of the Board was technically correct and could not be treated as a wrong speaking order, that revision being discretionary the Board was not bound to revise the matter and that in the circumstances the High Court had no power to order the Board to allow correction of the revision and re-hear it. 1952 Nag L J (Notes) 63 (DB).

—Arts. 226 and 133 (1) — Final order in a civil proceeding — Proceeding under Art. 226 — Nature of — (Civil P. C. (1908), S. 109). See Ibid, Art. 133 (1). AIR 1958 Pat 26 (DB).

—Art. 226 — Proceeding under — Nature of — Writ proceeding under Art. 226 being not civil proceeding. See Ibid, Art. 133 (1) (c). A I R 1957 Pat 102 (FB).

—Art. 226 — Civil P. C. (1908), S. 141 — Proceeding under Art. 226 — Nature of — Whether can be civil proceedings—Civil rights involved—Civil P. C. applies.

Any proceedings in a Court of law brought to vindicate or enforce a civil right would fall within the word 'sue' In a suit civil rights are involved and, therefore, the proceedings therein are of a civil nature. In other words, they can be termed as 'civil proceedings'. If in a petition under Art. 226, civil rights are involved, then the proceedings would be civil proceedings, but, on the other hand, if the proceedings do not involve such rights, then they cannot be termed as such; it follows therefore, that in writ petitions, where civil rights are involved, the proceedings are in the nature of a suit and by virtue of the provisions of S. 141, the procedure provided in the Code in regard to suits shall apply, as far as it can be made applicable. A I R 1950 S C 222 and AIR 1958 Andh Pra 16 and A I R 1957 Punj 173 (FB) and A I R 1959 Punj 58 and A I R 1958 Mad 151 and A I R 1962 Ker 1 (FB), Rel. on; AIR 1957 Pat 102 (FB), Dissented from; A I R 1955 Nag 257, Disting.

The fact that certain rules have been framed by the High Court for issue of writs would not change the position because they are in addition to but not in substitution of, the provisions of the Code. I L R (1963) 2 Punj 341 : 65 Pun L R 599 : A I R 1963 Punj 510 (513) (Pr 15) (DB).

—Art. 226—Criminal or civil jurisdiction, exercise of—Tests.

Whether a particular proceeding is in nature, criminal or civil, depends on the procedure adopted for dealing with it. In connection with such writs, the procedure adopted in the Punjab High Court is that for civil proceedings and there is no reason, therefore, for saying that just because the grievance was against the imposition of penalty the proceedings became criminal in nature. Union of India v. Jagdish Ishwar Singh, 1962 Cur L J 147 : I L R (1962) 1 Punj 369 : 64 Pun L R 821 : 1962 (2) Cri L J 630 : AIR 1962 Punj 484 (487) (Pt B) (Pr 4) (FB).

—Art. 226 — Proceedings under — Nature of — If civil proceeding. See Ibid, Art. 133 (1). A I R 1959 Punj 58.

—Arts. 226 and 133 (1) — Civil proceeding—Meaning of—The question in controversy pertaining to the private rights of the contestants relating to the allotment of agricultural land in a proceeding under the Evacuee Property Act is eminently of a civil nature and an order of the Letters Patent Bench in an appeal from an order of a single Judge passed in relation to such question under Art. 226 is made in a civil proceeding — (Words and Phrases) — (Administration of Evacuee Property Act (1950), S. 10 (27)). See Ibid, Art. 133 (1). AIR 1959 Punj 58.

—Art. 226— Writ petition—Nature of proceedings —Proceedings if civil within the meaning of Art. 133. See Ibid, Art. 133. AIR 1957 Punj 173 (FB).

—Art. 226 — Any Civil, Revenue or Criminal Court — Civil Court — Meaning — High Court in writ proceedings deciding civil rights of parties is Civil Court. See Criminal P. C. (1898), S. 476. 1961 (2) Cri L J 796 : AIR 1961 Raj 268 (DB).

79 (n). Error of law.

—Art. 226 — Wrong order — Jurisdiction in writ petition. See Tenancy Laws — U. P. Agricultural Tenants (Acquisition of Privileges) Act (10 of 1949), S. 12 (1) (a) (c). AIR 1955 N U C (All) 176.

—Art. 226 — Nature and scope of power of High Court — It does not interfere in every case of error of law.

It is not every case of error of law or mis-application of the principles of law that would induce the High Court to exercise its jurisdiction under Art. 226 of the Constitution. The High Court will not exercise this jurisdiction in this class of cases unless substantial injustice has ensured, or is likely to ensure. 1959-2 Lab L J 569 (Andh Pra).

—Art. 226—Error of law — Award under Hyderabad Co-operative Societies Act passed against dismissed servant of society is no ground for issue of writ — (Hyderabad Co-operative Societies Act, S. 48).

A wrong interpretation of a statutory provision or an error of law or fact is not sufficient for issue of a writ. Thus where an award under the Hyderabad Co-operative Societies Act is passed against a dismissed servant of a Co operative society holding him liable for certain amount not accounted for this is not sufficient for the issue of a writ. A I R 1955 Hyd 33, Rel. on. I L R (1955) Hyd 701 : A I R 1955 Hyd 238 (240) (Pt B) (Pr 5) (DB).

——Art. 226 — Labour Court under S. 15, Industrial Disputes Act (1947) framing issue, hearing evidence but merely passing short order of payment without deciding issue judicially and without giving evidence for and against — High Court cannot speculate whether Labour Court had applied its mind to case or was under misapprehension regarding scope of its jurisdiction — Order quashed and case remanded for disposal according to law. See Industrial Disputes Act (1947), S. 15. **(1963) 1 Lab L J 97 (Mad) : (1965) 2 Mad L J 367.**

——Art. 226 — Scope of jurisdiction of High Court — (Municipalities — C P. and Berar Municipalities Act (II of 1922), Ss. 53-A and 57 — Action against Municipality under S. 53-A — Opportunity of explanation not given—Interference under Art. 226.)

Where the State Government passes an order under S. 53-A, C. P. and Berar Municipalitie Act holding a certain Municipality to be incompetent to perform its duties, the mere fact that the order mentions certain charges against the Municipality on which it has not been given any opportunity for explanation is not sufficient to give the High Court jurisdiction under Art. 226 to interfere with that order.

Since the Act itself does not contemplate an opportunity being given to the municipal committee to furnish an explanation before the action under S. 53-A is taken, and particularly because the action itself is of a limited duration the rights of the committee cannot be deemed to be so far affected as to call for the exercise of the extraordinary powers of the High Court under the Constitution.

It is only in cases of grave and patent errors which seriously impair the legal or natural rights of an individual or an association, and no suitable remedy is available to rectify the mistake that the jurisdiction of the Court may rightly be invoked. In the case of action under S. 53-A it cannot be held that it is not liable to review by Government if it is appealed to in the matter and is unlike a case where an order is passed under S. 57 which permanently affects the status and the powers of the committee. **1955 Nag L J 780 : A I R 1956 Nag 56 (57) (Pr 6) (DB).**

——Art. 226—Error of law — (C. P. and Berar Panchayat Rules (1948), Cl. 25, R. 5).

The extraordinary powers under Art. 226 of the Constitution are intended to be exercised in grave cases of manifest injustice. It is not obligatory on a High Court to act under the Constitution in every case where there has been an error of law. Even if an order may be erroneous, if it has set right a grave miscarriage of justice, it would not be proper to interfere under the special powers under the Constitution. It is true that so far as R. 5 of Cl 25 of the C. P. and Berar Panchayat Rules is concerned, no procedure has been prescribed. Nevertheless that rule is of a punitive nature and before any action could be taken under it, it is incumbent on the Gram Panchayat to specify the charge and serve a notice on the society to show cause against the action that is proposed to be taken. If due opportunity is not given to the Society to state its case, the order of the Gram Panchayat imposing fine offends against the canons of natural justice and even though the order of the Sub-Divisional Officer is void to the extent that it reduced the amount of the fine in revision which is incompetent, interference with it under the Constitution would not be justified as it has rectified, even if partially the manifest injustice that the Gram Panchayat has done to the Society. AIR 1952 S C 192, Foll. **1954 Cr L J 407 : I L R (1954) Nag 111 : 1954 Nag L J 336: AIR 1954 Nag 82 (84) (Pt B) (Prs 9, 10) (DB).**

——Art 226 — C. P. and Berar House Rent Control Order, Cl. 13 (3) (vi) — Remedy Landlord applying for permission to eject—Tenant raising objection as to maintainability— Rent Controllor holding application maintainable—A D. C holding appeal against order not maintainable — It cannot be said he had no jurisdiction — High Court would not exercise its power under Art. 226 **1951 Nag L J (Notes) 107 (DB).**

——Art. 226 — Proceedings under E. P. Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948), S 42 — Director, Consolidation of Holdings condoning delay in making application — Question of limitation even if wrongly decided cannot in any event be questioned in writ proceedings. AIR 1952 S C 319, Foll **('65) 67 Pun L R 176**

——Art 226 — Scope and object—(Sea Customs Act (1879), Ss 33 (a) and 33 (b)) — (Revenue Recovery Act (1890), S 4).

There is a distinction between the right to relief and the right to a remedy by mandamus or prohibition to grant such relief Under section 4 of the Revenue Recovery Act, 1890, it is open to a person who feels that the tax has been improperly levied on him to deposit the tax and then to bring a suit against Government for the recovery of tax In that suit all questions of fact relating to evidence which have not been properly considered by the assessing tribunal or questions of law as to the applicability of one or other of the sections of the Sea Customs Act can be adequately gone into. The remedy is an adequate remedy.

Where therefore, the contention of the petitioner was that the Customs authorities should have applied the provisions of section 30 (b), Sea Customs Act, instead of S. 30 (a) and the petitioner had not alleged that there was no jurisdiction in the assessing authority but that in the exercise of its jurisdiction it came to a wrong decision in point of law, not appreciating the facts properly:

Held that the remedy by means of a writ whether of mandamus or prohibition was misconceived. AIR 1938 P C 5, Ref. 55 Pun L R 304 : I L R (1953) Punj 225 : AIR 1953 Punj 225 (226) (Pt C) (Prs 4, 5) (D B).

——Art. 226 – Revision of assessment order – Limitation Order revised after three years of its passing – Violation of statutory provision High Court would interfere in exercise of extraordinary jurisdiction— Interpretation of Statutes See Sales Tax—Rajasthan Sales Tax Act (29 of 1954), S. 14. **1962 Raj L W 402; I L R (1962) 12 Raj 467.**

79 (o) Constitutional issue.

● ——Arts. 32, 226 – Vires of Act challenged— Court is not restricted to pleadings of State — Court will consider whether validity can be sustained under any provisions of Constitution. Burrakur Coal Co. v. Union of India, **1961 S C D 432 : 1961 2 S C A 523 : (1962) 1 S C R 44 : 1962-2 S C J 216 : AIR 1961 S C 954 (963) (Pt F) (Pr 25).**

—Arts. 226 and 228 On the question of the legality of an Act ordinarily the High Court will wait for the various other issues to be decided first before it gives its own decision on it. AIR 1950 M B 81; AIR 1952 Mad 21, Foll. **AIR 1952 Ajmer 31 (2) (32) (Pt B) (Pr 2).**

——Art. 226—Scope of inquiry.

In writ petitions High Court will not adjudicate on constitutional issues unless essential for decision of the case in which they are raised **(1961 1 Ker L R 260 : 1961 Ker L J 425 : 1961 Ker L T 114.**

—Art 226 Practice – Validity of statute will not be gone into when no relief can be granted **(1955) 1 Mad L J 538 (1955) 2 Lab L J 473 : 1955 Mad W N 1037 : AIR 1955 Mad 468 (470) (Pt D) (Pr 6)**

79 (p). Question of title.

——Art. 226—Scope of enquiry—Question of fact or title—If can be agitated—Other remedy open—Issue of writ.

Proceedings in writ petitions are not appropriate for the determination of complicated questions of fact, nor does the High Court ordinarily exercise its powers of extraordinary jurisdiction under Art. 226 to determine questions of title or make any enquiry relating thereto. Although very large powers are conferred on the High Courts under Art. 226, the exercise of those powers is not without limitations. The High Court will not convert itself into a Court of appeal on merits, unless the decision is erroneous on the face of the record, and in matters involving the use of discretion and judgment entrusted to an authority by law, it will not direct that authority to pass orders or itself pass orders on merits, or where complicated questions of fact have to be determined, it will not turn itself into a trial Court and determine those question of fact or investigate title, nor will it issue ineffective writs. Where there is an alternative and effective remedy also the Court may not ordinarily exercise its extraordinary jurisdiction. It can only be said that where there is an alternative and effective remedy, the High Court will not in exercise of its discretion grant an application; but this is only a rule of discretion and expediency and does not arise due to any want of jurisdiction or limitation on the power of the High Court. AIR 1958 Andh Pra 222 (226) (Prs 14, 15) (DB).

——Art. 226—Proceedings under C. P. Land Revenue Act, S. 202—Interference.

The petitioner claiming to be the lessee of the ex-malguzari forest for the collection of lac and Tendu leaves prayed under Art. 226, Constitution of India, for quashing the order of the Deputy Commissioner who ordered that respondent No. 3 should be allowed to work the lease for 1955-56 and for a writ of mandamus restraining respondent No. 3 from interfering with the rights of petitioner of collecting lac and Tendu leaves.

Held, that the first prayer had become infructuous since the order was operative till 1st December, 1956, and that as regards the second prayer the dispute related to title and it should be decided by a civil Court and that the matter could not be decided in a summary way. **1958 Nag L J (Notes) 98.**

——Art. 226—Another remedy open.

Questions of title have to be decided in appropriate proceedings taken for the purpose and not in the proceedings under Art. 226. **AIR 1953 Cal 257 (258) (Pt A) (Pr 4).**

——Art. 226—Other remedy—Issue of writ — Order under S. 144, Cr. P. Code—Quashing of.

A writ of certiorari for quashing the order passed under S. 144, Cr. P. Code, by a Magistrate cannot be issued if alternative appropriate remedies are available and if the order itself gives a right to the aggrieved person to move the Magistrate for its amendment or rescission. Declaration of title or right of possession are totally foreign to the scope of proceedings under Art. 226 of the Constitution. Therefore, if the reliefs claimed by way of writs of prohibition and mandamus involve the granting of such delaration they cannot be issued. Claims based on title or possession can only be more appropriately investigated in a proper civil suit. Delay in obtaining suitable orders or directions from civil Court is no ground for granting relief under Art. 226 by the High Court. AIR 1952 S C 12, Rel. on. **1961 Ker L T 20 : 1960 Mad L J (Cr) 326 : AIR 1961 Ker 259 (260) (Prs 2, 4, 5, 6).**

——Art. 226—Scope of inquiry — Matter of disputed right.

When the matter is one of disputed right it cannot be agitated under Art. 226 of the Constitution. The proper forum is civil Court. **1958 M P L J (Notes) 48.**

——Art. 226 — Applicability — Question of title—Writ proceedings—Propriety.

Held, that on the materials placed before the High Court including the affidavits of the parties and copies of certain correspondence that passed between the then Agent to the Governor of Ganjam and the Government of Madras it was obviously impossible for the High Court to decide the important question of title as to whether maliahs of the applicants were resumable or not. It could be decided only in a properly constituted title suit where both parties would get ample opportunities to adduce all available evidence. **[L R (1956) Cut 556 : 23 Cut L T 324 : AIR 1957 Orissa 80 (83) (Pt A) (Pr 6) (DB).**

[Reversed on another point in AIR 1964 S C 685.]

——Art. 226—Dispute relating to title to land.

A dispute relating to title to land cannot be allowed to be raised in a writ petition under Art. 226. It is a matter which will have to be agitated in a civil Court. **AIR 1964 Tripura 9 (10) (Pt A) (Pr 2).**

80. New point at hearing.

See Note 98.

81. Non-fundamental rights.

See also Notes 8 and 71.

——Art. 226 — Infringement of Art. 286.

Even where there is no infringement of fundamental rights if the contention of the party is that the Act which authorises the assessment, levying and collection of sales tax on inter-State trade contravenes and constitutes an infringent of Art. 286 and is therefore, ultra vires, void and unenforceable and if this contention is well founded the remedy by way of a writ must, on principle and authority, be available to the party aggrieved. AIR 1953 Pat 87, **Reversed**; Bengal Immunity Co. Ltd. v. State of Bihar, **I L R 34 Pat 905 : (1955) 6 S T C 446 : (1955) 2 S C R 603 : (1955) S C J 672 : 1955 S C A 1140 : (1955) 2 M L J (S C) 168 : 1955 Andra W R (S C) 422 : AIR 1955 S C 661 (669) (Pt B) (Pr 6).**

——Art. 226 — 'Any other purpose'—Power to issue writ for—AIR 1952 Bhopal 16, Diss. from.

When an executive officer acts against the provisions of law, the Judicial Commissioner's Court is entitled in a fit case to issue a writ under Art. 226 for any other purpose even though fundamental rights under the Constitution are not violated. A I R 1650 Bom 363 (FB); A I R 1953 All 623, Rel. on; AIR 1952 Bhopal 16, Diss. from. **AIR 1954 Kutch 11 (14) (Pt C) (Pr 7).**

——Art. 226—Fundamental rights—Infringement — Cancellation of license.

Where the railway authorities cancel the license issued to the petitioner for vending articles on the platform of a railway station, there is nothing illegal in such a course. No fundamental right of the petitioner has been in any manner infringed by the action of the railway authorities and no relief under Art. 226 can be given. **('51) 65 Mad L W 336 (1) : 1952-2 Mad L J 28 : A I R 1952 Mad 834 (835) (Pr 2) (DB).**

——Art. 226 (1) — Extent of powers of High Court.

Art. 226 (1) read as a whole means that the High Court can issue orders and writs not only for the enforcement of the fundamental rights but also for other purposes. **('50) 2 Pepsu L R 443.**

——Art. 226 — Scope —Power to issue writ for purpose other than enforcement of fundamental rights.

Under Art. 226. Const. of Ind., power is conferred upon the H. C to issue not only writs 'in the nature of' various categories specified in that article but those writs themselves are also 'directions' and 'orders' and they may be issued not only for the enforcement of fundamental rights but for any other purpose. **1951 Raj L W 56 : 20 I T R 214 : I L R (1951) 1 Raj 96 : AIR 1951 Raj 94 (2) (105) (Pt I) (Pr 27a) (DB).**

——Arts. 226 and 32 — Powers of High Court — Scope — If restricted to enforcement of fundamental rights — Issue of writs in matters relating to fundamental rights — Permissibility.

Although under Art. 32 of the Constitution the Supreme Court is given power to issue writs in a restricted sphere namely, in enforcement of the fundamental rights recognised by the Constitution, in the case of the High Courts wider powers are conferred by the Constitution under Art. 226; the High Courts are empowered to issue writs not only for the enforcement of fundamental rights but also for any other purpose. It cannot therefore be said that because the right to stand as a candidate for an election is not recognised as a fundamental right under the Constitution, therefore no writ under Art. 226 can issue in cases where citizens are aggrieved by orders passed by a Returning Officer. **1951 K L T 714 : I L R (1951) T C 808 : A I R 1952 T C 1 (1) (Pt B) (Pr 12) (DB).**

82. Notice of proceeding.

See Note 98.

83. Notice under S. 80, Civil P. C.

See Note 98 and Civil P. C. (1908), S. 80.

84. Official body.

See Note 5.

85. Orders that can be passed.

See also Notes 34 and 158.

——Art. 226 — Writs of mandamus or prohibition in pending appeal — Writ of mandamus cannot be issued to subordinate tribunals to decide question in particular manner — It can only be directed to exercise jurisdiction vested in it — Similarly writ of prohibition cannot issue to interfere in matter pending before inferior tribunal and to direct it to decide appeal in particular manner. **1955 All L J 211 : AIR 1955 All 422 (423) (Pt A) (Pr. 6, (DB).**

——Arts. 226 and 227 — Interference — Powers of High Court — Violation of — Mandatory provisions of law — Effect — Hyderabad Land Revenue Act (8 of 1317-F), S. 130 — Scope — Non compliance — Effect — It renders the sale void.

The failure to issue the notification or to publish it as required by S. 130 of the Hyderabad Land Revenue Act, renders the sale wholly void and not merely voidable. Therefore, it was not necessary for the defaulter in such a case to prove that he sustained loss by reason of the failure to issue and publish the notification. The jurisdiction of the Taluqdar to sell the property by auction is derived by S. 130. As such in the absence of such notification and its publication, the Taluqdar would have no jurisdiction at all to sell the property. AIR 1954 Mad 1024, Applied. It is open to the High Court in the exercise of its jurisdiction under Arts. 226 and 227 of the Constitution to set aside the sale when it is brought to its notice that the sale was held in violation of the mandatory provisions of the Act. **(1961) 1 Andh W R 160 : (1961) 1 Andh L T 187.**

——Art. 226 — Person acting under authority of statute — High Court has power to prevent such person from exceeding bounds set by statute.

The powers of the High Court under Art. 226 are wide enough to enable it to prevent any person acting or purporting to act under the authority of a statute from exceeding the bounds set by that statute. That the act that he does is of an executive or administrative character is irrelevant. It is the duty of the High Court to see that statutory authorities respect the terms of the statute by which they are created and under which they function. **(1960) 1 Andh W R 113 : AIR 1960 Andh Pra 603 (604) (Pt B) (Pr 3).**

——Art. 226 — Order of Election Commissioner — Writ admitted — Proper order to pass — (Municipalities — Madras District Municipalities Act (5 of 1920), S. 49 (2) (g)).

Where the Election Commissioner having by order set aside the election of a Municipal Councillor on the ground that he was disqualified to stand as a candidate under S. 49 (2) (g), a writ of certiorari is admitted by the High Court against the order, the order is no longer final and conclusive and the proper order to pass when a writ has been admitted is to preserve 'status quo ante' and to permit the petitioner to function as a Municipal Councillor until the writ is disposed of. **AIR 1955 Andhra 17 (18) (Pr 3).**

——Art. 226 — Northern India Ferries Rules, Rr. 19 and 19 (b) — Compliance with — State public ferry — Public auction — Acceptance of highest bid by officer conducting sale — Chief Engineer disapproving highest bid and accepting next lower bid — Reasons not recorded — Order is arbitrary and contrary to Rr. 19 and 19 (b) — Order quashed — Chief Engineer directed to settle ferry with highest bidder. See Northern India Ferries Rules, R. 19. **AIR 1961 Assam 158 (SB).**

——Art. 226 — Industrial disputes — Wrongful dismissal of servant — Proper relief — Reinstatement is usual remedy — Retrenchment compensation may be granted in proper cases — High Court can interfere if there is illegality on face of record in granting compensation — Labour Court not correct in granting retrenchment compensation — But could grant same amount under different heads, i.e., as compensation for unjustified and premature termination of employment — Hence no interference with quantum of compensation was called for. (1961) 2 Lab L J 625 (S C). Relied on. **ILR (1962) 14 Assam 57 : AIR 1962 Assam 83 (85) (Pt B) (Pr 9) (DB).**

——Art. 226 — Preventive relief — Grant of.

The High Court can grant relief not only after damage has been done, but even when there is reasonable likelihood of damage being done. **61 Bom L R 1129 : I L R (1960) Bom 202 : AIR 1960 Bom 58 (61) (Pt G) (Pr 14) (DB).**

——Arts. 226 and 227 — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. (13) — Order refusing permission to landlord to terminate tenancy — Appellate authority allowing landlord's appeal but not making operative order, or considering the question of suitability of premises in occupation of landlord — Order was quashed and case sent back for fresh decision. **1960 Nag L J 130 : 62 Bom L R 490 : I L R (1960) Bom 795.**

——Art. 226 — Certiorari — Order quashed — Substantive order by High Court.

No substantive order can be made by the High Court when it quashes the order of a judicial tribunal on a writ of certiorari. **57 Bom L R 1148 : (1956) 1 Lab L J 240 : I L R (1956) Bom 37 : AIR 1957 Bom 46 (47, 48, 49) (Pt A) (Prs 2, 5).**

——Art. 226—Power of Court—Application for writ of certiorari — Challenged order affecting several persons—Court, to do proper justice, has power and jurisdiction to set aside entire order although application is by one only of persons affected by order—Industrial dispute — Award by Industrial Tribunal affecting all workers of establishment modified in appeal by Appellate Tribunal — When order of Appellate Tribunal is found unsustainable Court should set it aside in its entirety—Order should not be set aside in respect of that portion alone which affects the interest of applicant for writ, for that would bring into existence two awards concerning same dispute, first one being award of Industrial Tribunal revived by such order governing rights of the applicant and the other the modified award of Appellate Tribunal governing rights of other workers in respect of whom it is not set aside and create a situation contrary to scheme and policy of the Industrial Disputes Act — (Industrial Disputes Act (1947), S. 18) — (Industrial Dispute — Award-Binding nature of.) (Industrial Disputes (Appellate Tribunal) Act (1950), S. 16). ('52) 54 Bom L R 513 : 1952-2 Lab L J 175 : (1952-53) 4 F J R 209 : ILR (1953) Bom 177 : AIR 1952 Bom 443 (444) (Pt A) (Prs 5, 6, 7) (DB).

——Art. 226 — Power of Court issuing writ of certiorari—Nature of—Power to remand.

When the Court issues the high prerogative writ of certiorari it directs the judicial tribunal, against which it is acting, to transmit the record to the Court, and if necessary to quash the order which the tribunal has passed. In issuing the writ the Court does not act as a Court of appeal and therefore cannot exercise the power of remanding the matter to the lower Court, which power is exercisable only by a Court acting as an appellate Court. ('52) 54 Bom L R 513 : 1952-2 Lab L J 175 : (1952-53) 4 F J R 209 : ILR (1953) Bom 177 : AIR 1952 Bom 443 (444, 445) (Pt B) (Pr 8) (DB).

——Art. 226—Power of Court—Relief to person not party—Order affecting several parties—Application challenging order by only one — Relief — If to be confined to applicant alone or whole order to be set aside as against all — Practice — Power of Court — Principles.

The ordinary principle is that relief must be granted by Courts to the party challenging an order to the extent that it is necessary to safeguard the rights of that party. But it cannot be said that the Court cannot and has not the power or jurisdiction to set aside in proper cases an order which is ultra vires or in excess of jurisdiction as a whole although it is challenged by only one party affected by it and the others affected thereby choose to be content with and do not take any steps to challenge it. But when full justice can be done to the petitioner if it be set aside to the extent that it affects his rights, it is not at all necessary, nor desirable that the order as a whole should be set aside or declared bad and in excess of jurisdiction. I L R (1952) Bom 378 : 53 Bom L R 621 : AIR 1951 Bom 440 (458, 459) (Pt B) (Pr 33).

——Art. 226 — Sea Customs Act (1878), S. 182 — Confiscation of goods made or penalty imposed by Customs Officer — Order of confiscation or penalty found illegal—Penalty paid—High Court has power to refund penalty.

Where the High Court finds an order of confiscation of imported goods and penalty to be illegal, the High Court has power to refund of such penalty or increased duty levied and paid by the importer. AIR 1961 S C 41 Foll. (1963) 1 Cri L J 749 : AIR 1963 Cal 331 (356) (Pt E) (Pr 20).

——Art. 226—Writ of certiorari—Decision by Court to quash executive order — Writ of mandamus and prohibition.

Where in a writ proceeding under Art. 226 of the Constitution started against the Income-tax Department, the Court decides to quash the notice of demand issued under S. 18 (7), Income-tax Act, against the assessee, then a writ of mandamus and prohibition need not be issued against the Department. For nobody can give effect or further effect to a notice or order which has been quashed by the Court. In such a case, it is logical, correct and sufficient if only a writ of mandamus is issued limiting it to restraining the Department from realising the sums mentioned in the notices or any part thereof. (1957-58) 12 F J R 324 : (1958) 33 ITR 866 : AIR 1957 Cal 514 (517) (Pt G) (Pr 12) (DB).

——Art. 226—Powers of High Court—Bad or invalid order must be quashed—Modification or substitution of order not permissible. ('57) 61 Cal W N 880.

——Art. 226 — High Court cannot direct authority to exercise its jurisdiction in particular way.

In exercise of their powers under Art. 226, the High Court cannot direct the authorities vested with the jurisdiction as to how they should exercise it. 1961 Ker L J 1165.

——Art. 226—Income-tax Act (1922), S. 45—Assessee filing appeal—Discretion under S. 45—Exercise of—Discretion coupled with duty — Non-exercise of — Order to compel discharge of duty in writ proceedings. See Income-tax Act (1922), S. 45. AIR 1960 Ker 349.

——Arts. 226 and 227 — High Court remitting the case to Regional Transport Authority with specific directions—Regional Transport Authority is bound to carry out. 1963 M P L J (Notes) 178.

——Arts. 226 and 227 — Industrial dispute relating to fixation of fair wages and provision for gratuity scheme — Employees objecting to admission of evidence of paying capacity on unit basis—Held, it was too late for them to ask for a remand of the case in the writ proceedings for a fresh decision by tribunal after receiving evidence of paying capacity on unit basis. AIR 1962 S C 673, Rel. on. (1963) 1 Lab L J 606 : ILR (1963) Madh Pra 56 : (1962-63) 22 F J R 339 : 1962 M P L J 132 : 1962 Jab L J 240 : 1962 M P C 165 : AIR 1962 Madh Pra 172 (175) (Pt D) (Pr 11) (DB).

——Art. 226—Jurisdiction of High Court.

The High Court while exercising its jurisdiction under Art. 226 of the Constitution acts in supervisory capacity. All that it can do is to demolish the order which, according to its view, is without jurisdiction or palpably erroneous. It cannot substitute its own view for those of the inferior tribunal. The patent error must be an error of law revealed on the face of the order. AIR 1954 S C 440, Rel. on. 1958 M P C 855 : 1960 M P L J 559 : AIR 1958 Madh Pra 397 (403) (Pt B) (Pr 38) (DB).

——Art. 226—Order of inferior tribunal quashed on grounds not dealing with merits — It is incumbent on tribunal to take up and rehear the application — Advocate-General undertaking that application would be re-heard—No necessity of mandamus.

When an order of an inferior tribunal on an application properly made to them is quashed by the High Court by a writ of certiorari on any ground which does not deal with the merits of the case, it is not only permissible, but it is also incumbent on the inferior tribunal to take up the application and re-hear the same. Where the Advocate-General ap-

pearing for the State whose order is quashed states that the Government was prepared to deal with the application before them in the light of the judgment of this Court it is not necessary to grant a mandamus directing the Tribunal to re-hear the petition. (1951) 1 K B 711 (724) Ref. 1951-2 Mad L J 656 : 1952 Mad W N 89 : 65 Mad L W 414 : ILR (1952) Mad 351 : AIR 1952 Mad 605 (605, 606) (Prs 1, 2) (DB).

——Art. 226 — Revenue Appellate Tribunal not recording its findings on all questions except one — High Court remanded the case to Tribunal for findings. (1963) 2 Mys L J 241: AIR 1963 Mys 329 (332) (Pt C) (Prs 20, 22) (DB).

——Art. 226 — Applications for renewal of permits under Motor Vehicles Act, 1939 — Hearing of applications delayed and scheme for nationalisation of routes got approved by State Government before disposal of renewal application—Although the postponement of consideration of the applications till after the approved Scheme was published had resulted in the petitioners losing their possible right to compensation, delay by itself was not a matter which affected the jurisdiction of the Regional Transport Authority — Applications subsequently heard but orders reserved — The High Court under Art. 226 held could not make a positive direction that the renewal applications should be considered in the light of the circumstances existing on the date of applications without reference to the approved Scheme—The primary duty of examining the relevant circumstances and material and passing an order appropriate to the case rested on the Regional Transport Authority, and if, for the purpose of effectively discharging that duty and doing complete justice between the parties, it thought fit to do so it had the undoubted jurisdiction of giving a further hearing to the parties and objectors including the Mysore Government Road Transport Department, before making up its mind as to the nature of the orders to be passed. 39 Mys L J 644 : ILR (1961) Mys 560 : AIR 1962 Mys 27 (30) (Pt C) (Pr 19) (DB).

——Art. 226 — Writ of certiorari—Nature of order which can be passed.

When exercising its extraordinary powers under a writ of certiorari the proper order for the High Court to pass is to quash the orders, and to leave the authorities to pass the right orders and not for the High Court to substitute its own orders because the High Court does not exercise the jurisdiction of an appellate Court which has always the authority of substituting its own operative orders for those of the lower Court. The function of the High Court in its extraordinarily jurisdiction under Art. 226 of the Constitution must be confined to pointing out the true legal position and either quashing the orders or letting these orders stand, as the case may be. 1951 Nag L J 566 : ILR (1951) Nag 769 : AIR 1952 Nag 4 (6) (Pt B) (Pr 12) (DB).

——Art. 226—Jurisdiction—Fair rent fixed by R. C. —Both parties appealing—Tenant asking for refund of excess paid—A. D. C. dismissing appeal not considering point and dismissing review—Order should be quashed—High Court can direct A. D. C. to order refund — Houses & Rents—C. P. and Berar House Rent Control Order, Cls. 8 (c) and 1 (2).

On the fixation of fair rent by the Rent Controller both parties appealed but the A. D. C. raised the rent and dismissed the tenant's appeal in which he asked for refund of rent paid in excess of fair rent for 12 months previously to date of order. A review application by the tenant was also dismissed as not maintainable but the A. D. C. observed that he had omitted to consider the point about refund through oversight.

Held, that it was a case in which the A. D. C. had failed to exercise jurisdiction and the order should be quashed, that it was futile to send the case back to the A. D. C. as the only grievance was about refund and that the High Court had ample powers under Art. 226 and could direct the A. D. C. to order refund for period of twelve months prior to date of his order. ('52) 1952 Nag L J (Notes) 58 (DB).

——Art. 226—Mandamus writ—When may be issued—Directions that may be given to inferior Court.

A writ of mandamus would not issue when another and equally efficacious remedy is available to the applicant or such remedy was available to the applicant but he allowed that remedy to be barred by time. Even when the Court thinks it appropriate to issue a writ of mandamus, what it can require the inferior Court to do is to decide the matter according to law and it cannot direct that Court to decide a particular question, whether of fact or of law, in a particular way. ILR (1951) Nag 94 : 1951 N L J 57 : AIR 1951 Nag 6 (7) (Pr 7) (DB).

——Arts. 226 and 227 — Industrial Dispute — Application of management and of employees respectively under Ss. 33 (2) and 33-A, Industrial Disputes Act, disposed of by single order—Employees alone challenging order passed on their application — No such application filed by management — Court cannot examine the order passed on the application of management—Industrial Disputes Act (1947), Ss. 33 (2) and 33-A. 1964 B L J R 655 : (1964) 9 Fac L R 181 : AIR 1965 Pat 297 (298, 299) (Pt A) (Pr 3) (DB).

——Art. 226—Land Acquisition Act (1 of 1894), Ss. 4 and 17 (4) — Notification under S. 4 published in Gazette and in locality—Latter containing declaration under S. 17 (4) and also mentioning that objections under S. 5-A would be considered—Notification is misleading and illegal and must be quashed along with the subsequent proceedings. See Land Acquisition Act (1894), S. 4. AIR 1960 Pat 413.

——Arts. 226, 16 (1) — Rule regarding promotion of Income-tax Officers found ultra vires under Art. 16 (1)—Striking down the rules leading to practical difficulties in administration—Proper relief to be granted under Art. 226.

Where it was argued that if the Court struck down R. 1 (f) (iii) relating to the promotions of Income-tax Officers in Class I as ultra vires under Art. 16 (1), people who had been promoted in accordance with rule will have to be put down and the process might lead to great repercussions in the Department, and therefore, the High Court should not strike down the rule even if it offended Art. 16 of the Constitution,

Held (Per Mahajan, J.) : — That this was an argument of desperation and that so far as the High Court was concerned, it had the sacred duty of upholding the Constitution and strike down whatever offended its provisions. (1858) E B and E 1024 Rel. on.

Per Shamsher Bahadur, J. : - In passing appropriate orders, the Court cannot be insensible to the effects or steps which may have to be taken to implement a decision. Keeping this perspective in view, it might well be urged that the Court should refrain from striking down the rules and leave it to the Government to redress a wrong which it should be its pleasure and responsibility to bring about. AIR 1964 Punj 155 (161, 170) (Pt D) (Prs 26, 57) (DB).

——Art. 226—Power of High Court — Power to correct decision of judicial or quasi-judicial tribunal.

Although the Court has power to compel a judicial or a quasi-judicial tribunal to perform a function

imposed upon it by law, it has no power to correct the decision of a tribunal which is erroneous in point of law or to control the discretion and judgment of such tribunal acting within the scope of its judicial or quasi-judicial power. It can require the tribunal to act but not how to act. 59 Punj L R 257 : ILR (1957) Punj 1347 : AIR 1957 Punj 206 (207) (Pt A) (Pr 4) (DB).

——Art. 226—Certiorari — Writ of, issued — Order quashed – Direction to re examine matter cannot be issued—(Displaced Persons (Claims) Supplementary Ordinance (1954). S. 5 (1) (b)).

Where an order of the Additional Settlement Commissioner is quashed, it does not debar him from examining the matter afresh although upon a petition made to the High Court for a writ of certiorari no specific direction to re-examine the matter can be issued by the High Court. 59 Pun L R 143 : AIR 1957 Punj 24 (26) (Pt E) (Pr 9).

——Art. 226 — Writ of certiorari — High Court's power to issue directions — Order of R T A refusing to renew permit of operators — High Court while quashing order can direct issue of permit.

Under Art. 226 of the Constitution it is open to the High Court in a writ petition to issue appropriate directions.

In the circumstances of this case, the High Court while quashing on a writ of certiorari the order of the Regional Transport Authority refusing to renew the permits of certain operators felt itself justified in issuing a direction forthwith to the Regional Transport Authority to renew the permits of the operators under the Motor Vehicles Act for the requisite period under the law, subject to the permits being terminated in case the Rajasthan State Roadways undertaking comes to operate on the line and subject to the conditions mentioned in Chapter 4-A of the Act. AIR 1956 All 594, Foll. 1961 Raj L W 435 : ILR (1961) 11 Raj 333.

——Art. 226 — Scope of — Power of High Court to issue directions against administrative order.

After the coming into force of the Constitution of India, the jurisdiction of the High Court is now not confined to issue of the writs only or to writs in the nature of those writs mentioned in Art. 226 but extends to the issue of other writs which it may be necessary to issue for the purpose of enforcement of the rights conferred by Part III or for other purposes. The High Court is constituted, under the provisions of Art. 226, a custodian of the fundamental rights which have been guaranteed to the citizens of the State, and for the purpose of protecting those rights and for enforcement of the obligations arising therefrom, it is open to the High Court to issue writs, though they may not be writs which have been recognised heretofore.

Hence, the High Court is now competent to test or examine the validity of an administrative or executive order. No doubt a writ of certiorari may not lie, but it is open to the High Court to issue necessary directions or orders or other writs and thus afford relief to the petitioner who is affected by such order. AIR 1950 S C 163 ; AIR 1950 Bom 383 (FB), Foll. I L R (1951) T C 496 : AIR 1951 Trav-Co 197 (199, 200) (Pt A) (Pr 6).

86. Other remedy.

See Note 7.

87. Parties to proceedings.

(a) Inferior tribunal or authority.

(b) Joint application.

(c) Necessary and proper parties.

(d) Misdescription.

(e) State and Government of India.

(f) Non-joinder and mis-joinder.

(g) Amendment.

87. Parties to proceedings.

——Art. 226—Against whom writ can issue.

No writ or direction can be issued under Art. 226 to persons who are not impleaded as opposite parties to the petition. AIR 1955 All 106 (108) (Pt A) (Pr 3).

——Art. 226—Parties—Procedure.

So far as the procedure to be adopted for amendment of the pleadings or addition of parties, no specific rules have been framed by Calcutta High Court under Art. 226. In fact no rules have been framed for regulating the nature of the pleadings. But following the usual procedure applicable to motions the position is as follows: (1) In an application under Art. 226 all persons must be made parties who are or are likely to be affected by the issue of a writ or order. In the case of mandamus or prohibition all parties must necessarily be before the Court who are required to obey the directions of the writ, or whose presence is necessary to make such directions effective. (2) The artificial rules under the English practice where in certain cases such writs can be made ex parte in the first instance, do not prevail in Courts of India. (3) Any party likely to be affected by a writ or order, may appear at the hearing (or make a prior application) and ask for leave to join the proceedings. or to have the rule served upon it. (4) The Court may order that a petition used as grounds for the issue of a rule nisi be amended by the addition of parties (5) If a necessary party or a party likely to be affected by the writ or order or a party whose presence may be necessary to make the writ effective is not before the Court, the Court may either upon an application made for that purpose, or of its own motion direct that such a party be added and the rule nisi served upon him, or simply that rule nisi be served upon him, or even that he may be allowed to be present at the hearing without being served with a rule nisi. In such a case the person served with the rule nisi or permitted to attend the hearing would be deemed to be a party and be entitled to show cause or support or oppose a cause already shown. (6) Such amendments should ordinarily be done upon notice to the party proposed to be added or served. There is however no rule of law which prevents an ex parte order being made in a suitable case. (7) Upon such an amendment being effected, directions should be given for the use of affidavits and/or additional affidavits. I L R (1956) 1 Cal 235 : AIR 1954 Cal 208 (210) (Pt A) (Prs 6, 10).

——Art. 226—Parties to proceedings.

An application under Art. 226 is not a regular suit and merely because certain questions will have to be determined incidentally in giving or not giving the reliefs asked for in the application does not make each and every person interested in such questions as necessary parties to those proceedings. 55 Cal W N 443 : AIR 1953 Cal 172 (176) (Pt D) (Pr 21).

——Art. 226 — Writ of mandamus will not issue in the absence of parties who are likely to be affected by the decision of the Court — Election petition — Petition which has not impleaded the successful candidates whose interests would be vitally affected and has left that matter to the Court's desire is not maintainable — It is the duty of petitioner seeking relief to implead all necessary parties and there cannot be any question of Courts' desire— Prayer for impleading such parties at a belated stage was also rejected as no satisfactory reasons were given by the

petitioner for his failure to implead them when petition was filed : AIR 1960 Andh Pra 431, Rel. on. ILR (1964) Cut 433.

87 (a). Inferior tribunal or authority.

——Art. 226—Parties.

Where a writ petition is directed against the proceedings pending before the Sessions Judge he ought to be impleaded in the petition. 1959 Cr L J 6 : 1959 All W R (HC) 47 : 1959 A Cr R 395 : A I R 1959 All 21 (21) (Pt A) (Pr 3).

——Arts. 226 and 227— Parties— Necessary parties— Petition under Arts. 226 and 227 against orders of Excise Minister of Government of Assam against State of Assam — Minister acting as Appellate authority under Bengal and Assam Excise Act — Appellate authority, held on consideration of various Acts and Government of India Act, 1935, S. 296 and relevant Notifications, to be a creature of Provincial Government and could not be identified with Provincial Government—The Minister who passed the order and his successor-in-office, i.e., the then existing authority both held necessary parties — (Such authorities were directed to be made parties under R. 4 of Chap. V-A (Part II) Appellate Side Rules Assam). Case law Ref. AIR 1953 Assam 129 (131) (Prs 12, 13, 14) (DB).

——Art. 226 — Representation of workers through union before Tribunal — Petition under Art. 226 of Constitution against decision of Tribunal—Individual workers benefited by award not impleaded as opposite parties — Petition is not liable to be dismissed. See Industrial Disputes Act (1947), S. 36. AIR 1965 Cal 229 (DB).

——Art. 226 — Application challenging tribunal's decision—Tribunal, if and when necessary party. See Ibid, Art. 227. AIR 1955 NUC (Madh B) 3370 (DB).

——Art. 226 — Writ for quashing orders of Revenue Tribunal confirming order of Deputy Commissioner —Parties — Revenue Tribunal and Deputy Commissioner both to be impleaded — Omission to implead either of them fatal to petition —Mere fact of presence of complete record before High Court cannot cure omission. A.I R 1956 Nag 65 Rel. on. 1961 Jab L J 1344 : 1961 M P C 755 : 1961 M P L J 1403 : I L R (1961) Madh Pra 821.

——Art. 226—Parties—Proceedings under Administration of Evacuee Property Act —Revision dismissed by Deputy Custodian General —Writ petition without impleading him—Maintainability —(Administration of Evacuee Property Act (1950), S. 27.

Held, that the order of the Custodian Madhya Bharat was merged in and superseded by the order of the Deputy Custodian-General, India which was final and it was really the latter order which was in dispute. The effect of leaving the order of the Deputy Custodian-General, India untouched would be anomalous. The Custodian of Evacuee Property, Madhya Bharat who was subordinate to the Deputy Custodian-General, India and bound to obey his orders would be confronted with serious problem; he could not refuse to obey the order of the Deputy Custodian-General nor could he refuse to give effect to the decision of the High Court. Such a situation should be avoided by the Court exercising powers under Art. 226 of the Constitution. 1957 Jab L J 210 : 1957 M P C 102 : 1957 M P L J 156 : A I R 1957 Madh Pra 32 (36) (Pt A) (Pr 26) (DB).

——Art. 226—Certiorari—Presence of offending officer before Court is not necessary—Scope of certiorari is merely to demolish the offending order. (1959) M L J (Cr) 433 : (1959) 2 M L J 15.

——Art. 226—Parties — Writ to quash proceedings of Election Tribunal — Election Commission is not a necessary party. AIR 1953 S C 210 : 1953 S C J 293 : (1953) 1 M L J 702, Disting ; AIR 1953 Mys 59, Foll. ILR (1954) Mys 47 : AIR 1954 Mys 102 (107) (Pt B) (Pr 11) (DB).

——Art. 226 — Parties — Quashing proceedings of Election Tribunal.

Petition under Art. 226 to quash proceedings of Election Tribunal — Election Tribunal made party —The fact that Election Tribunal has become functus officio held did not prevent issue of writ, since the record of the proceedings of the Election Tribunal were lodged before the District Judge of the Division in which the election had taken place and were at the time before the High Court.

Moreover there is no specific provision in the Representation of the People Act to support the view that the Election Tribunal becomes functus officio after the pronouncement of the order. I L R (1954) Mys 47 : A I R 1954 Mys 102 (107) (Pt C) (Pr 11) (DB).

——Arts. 226 and 227—Parties to proceedings.

If a petitioner under Arts. 226 and 227 wishes a certain order to be quashed it is necessary to implead not only the appellate authority but the primary authority also even though it may be a judgment of affirmance. ILR (1955) Nag 741 : 1955 Nag L J 732 : AIR 1956 Nag 65 (66) (Pt B) (Pr 4) (DB).

● ——Art. 226—Parties—Election dispute.

To a petition under Art. 226 concerning a Janapada Sabha Election dispute, the Deputy Commissioner and supervising officers are not necessary parties when no relief is claimed against them. Kanglu Baula v. Chief Executive Officer, ILR (1954) Nag 875 : AIR 1955 Nag 49 (59) (Pt D) (Pr 26) (FB).

● ——Arts. 226, 227 — Parties to petition — (Representation of the People Act (1951), Ss. 105, 106, 107) —AIR 1953 Nag 357, Dissented from.

(Per Mudholkar and Bhutt, JJ.): — The Election Tribunal is not an 'amanuensis' of the Election Commission. On the other hand, it is the Commission which has to give effect to the decision of the Tribunal. The Commission has to register the decision of the Tribunal and have it published in the manner set out in S. 106 of the Representation of the People Act and in that sense it may perhaps be permissible to regard it as the amanuensis of the Tribunal but not vice versa. There is nothing in the Representation of the People Act nor in the Constitution which enables the Election Commission to adopt the order of the Tribunal and thus make it its own. On the other hand, Ss. 106 and 107 both make it clear that the function of the Election Commission in regard to the matter, after the decision of the Tribunal is ministerial. The Election Commission is not a necessary party to the petition under Art. 226, challenging the decision of the Election Tribunal because no relief is sought against it, and indeed, no relief need have been sought against it. Though under S. 106 of the Representation of the People Act, the Election Commission is required to transmit copies of the order of the Tribunal to the Speaker of the House of the People and to cause it to be published in the Gazette of India and the Gazette of India is published under the authority of the Government of India and therefore the actual publication has to be ordered by the Government of India these facts are not sufficient to warrant or necessitate even the joinder of the Government of India as a party to the petition. (1916) 1 K B 595, Rel. on.

(Per Bhutt, J.)—It should not be understood that in no case would it be necessary to join the Election Commission. In a case where an Election Commission proceeds to take steps to hold a fresh election, it may

perhaps be necessary to implead the Commission in the proceedings in order to give relief to the petitioner In such an event, it would be a question if the petition can be entertained, as an authority which is beyond the territorial limits of the High Court's jurisdiction would be involved. Hari Vishnu v. Ahmad Syed Isak. ILR (1954) Nag 209 : AIR 1954 Nag 166 (182, 183, 189) (Pt C) (Prs 78, 79, 80, 83, 116, 117) (FB).

[Reversed on another point in AIR 1955 S C 233.]

——Art. 226—Writ of mandamus will not issue in the absence of parties who are likely to be affected by the decision of the Court — Election petition — Petition which has not impleaded the successful candidates whose interests would be vitally affected and has left that matter to the Court's desire is not maintainable—It is the duty of petitioner seeking relief to implead all necessary parties and there cannot be any question of Court's desire — Prayer for impleading such parties at a belated stage was also rejected as no satisfactory reasons were given by the petitioner for his failure to implead them when petition was filed. AIR 1965 Orissa 125 (125) (Prs 1, 2) (DB).

——Art. 226 — Parties' petition under, challenging order of Competent Officer granting injunction under Evacuee Interest (Separation) Act, as being without jurisdiction - Appellate Officer who had upheld order of Competent Officer in appeal not impleaded — Petition cannot be dismissed in limine without reference to merits of case—Evacuee Interest (Separation) Act (1951), Ss. 5 14. ILR (1964) Punj 473 : AIR 1964 Punj 110 (111, 112) (Pt A) (Pr 5).

——Art. 226—Parties' petition under Art. 227 - Grant of relief in the nature of writ of certiorari - Permissibility—Omission to implead authority whose orders sought to be assailed — Not fatal. AIR 1962 Punj 117 (119, 120) (Pt A) (Pr 7).

——Art. 226 — Parties — Authority whose order is challenged not made party to petition—Matter cannot be decided finally behind its back. 62 Punj L R 409 : AIR 1961 Punj 374 (375) (Pr 5).

——Arts. 226 and 227—Parties.

It is absolutely necessary that the tribunal to quash whose order the application for the issue of a writ of certiorari is taken should be a party because without issuing notice to him, the records of the proceedings cannot be brought up to the High Court. The omission to make him a party to the petition goes to the very root of the relief sought: AIR 1959 Punj 189 and AIR 1949 Mad 53, Rel. on.

In this respect, there is no difference in principle or analogy to the case of a writ under Art. 227 which partakes of the essential characteristics of a writ of certiorari which is the subject-matter of Art. 226. 62 Punj L R 302 : AIR 1960 Punj 432 (433) (Pt A) (Pr 4).

[Overruled in AIR 1963 Punj 156].

——Art. 226—Parties.

Those parties whose action is to be reviewed and who are interested therein and affected thereby and in whose possession the record of such action remains are not only proper but necessary parties. It is to such parties that the notice to show cause against the issuance of the Writ must be given. The omission to make parties those officers whose proceedings it is sought to direct and control goes to the very root of the relief sought:

Held that as the validity of the reference of industrial dispute made under Notification issued by the Delhi State Government was being challenged it was not possible to issue any orders under Art. 226 of the Constitution to that Authority which was not impleaded as a party to the writ petition. 61 Punj L R 118 : AIR 1959 Punj 189 (191) (Pt A) (Pr 7).

87 (b). Joint application.

——Art. 32—Parties to petition — Omission to implead a person jointly interested in relief — Effect—Principle applicable to suits for possession not applicable to petitions under Art. 32.

If a person has a right to maintain a petition under Art. 32, the fact that he has not made another person who would have equal right with him to maintain the petition, even a party to the petition, would not result in his petition being thrown out on that ground alone. This cannot be a ground to deny him relief in the matter of enforcing his fundamental right.

The principle applicable to suits for possession, namely that all co-owners must join in a suit to recover property unless the law otherwise provides, and if some co-owners refuse to sue the proper course to adopt as to the rest is to make them defendants in the suit, can have no application by way of analogy to a petition under Art. 32 which is not a suit for possession. Mahendra Lal Jaini v. State of U. P., (1963) Supp (1) S C R 912 : (1963) 2 S C A 163: AIR 1963 S C 1019 (1025) (Pt C) (Pr 12).

——Art. 228—Parties — Applicability of O. 1, R. 8, Civil P C. — Joint application — Application by Association as such on behalf of members signed by Secretary and President - Registered Association — Application, whether maintainable — (Civil P. C. (1908). O. 1, R. 8).

The remedy by way of writ arises where a person is affected by any order the legality of which is challenged and such person is entitled to apply for an appropriate writ. The fact that similar orders are passed in the case of other individuals by the same officer or authority does not entitle all of them to join together in seeking an appropriate writ. The provisions of O. 1, R. 8 do not apply to the petitions. An association which has been registered but not affected by the orders, cannot in a representative capacity on behalf of its members apply for writ. In the case of unregistered Association also its secretary and president not being authorised, cannot apply in a representative capacity. AIR 1958 Mad 626, Disting. (1957) 2 Andhra W R 250.

——Art 226 — Several petitioners joining to make the same claim — Petition by only one sufficient — Joining of more than one petitioners may be regarded as surplusage — Irregularity can be cured by striking names of other petitioners. (1694) 87 E R 487, Disting. ('53) 55 Bom L R 246 : 1953-1 S T C 10 (DB).

[Reversed in AIR 1953 S C 252].

——Art 226—Certiorari — All persons affected not joining in petition

Where there are more than one person affected by an order which is quasi-judicial the fact that others besides the petitioner did not join in the petition cannot prevent the Court from issuing a writ of certiorari. AIR 1950 S C 222, Foll. Madh B L J 1954 H C R 1 : AIR 1954 M B 161 (172) (Pt G) (Pr 88) (DB).

——Art. 226 — Joinder of parties — One application against several parties.

Where matter out of which the various appeals arise, is only one and relates to the grant of the permit for a stage carriage asked for by the petitioner by his application under the Motor Vehicles Act and when the orders in the various appeals are inter-connected, the petitioner is entitled to challenge them by one writ petition. 1957 Jab L J 724 : 1957 M P C 344 : AIR 1958 Madh Pra 9 (10) (Pt A) (Pr 6).

——Art. 226—Parties—Election dispute.

An application under Art. 226 for quashing an election to a Janapada Sabha on the ground that the election was held on the basis of obsolete electoral rolls would be dismissed where the persons who were declared have not been joined as parties and have not been given an opportunity to be heard before an order adverse to them was passed. Kanglu Baula v. Chief Executive Officer I L R (1954) Nag 875 : AIR 1955 Nag 49 (65) (Pt H) (Pr 55) (FB).

——Art. 226– Parties — Petition by member of unregistered syndicate –Members of syndicate retaining their right of individual trade—Other members need not be impleaded.

All the retail dealers possessing individual licence to trade in sugar had been directed, for the sake of convenience, to form themselves into a syndicate, the object being that instead of dealing with each individual dealer the Government would deal with a body. The right to trade in sugar of an individual was not taken away. Therefore in the writ petition filed by an individual member, other members of the syndicate need not be impleaded. 1964 Cur L J 517 : AIR 1965 Punj 410 (411) (Pt C) (Pr 7)

87 (c). Necessary and proper parties.

——Art. 226 — Petition for writ of certiorari — Necessary and proper parties—Distinction between —Who are necessary and proper parties to the petition—Persons in whose favour impugned order is passed not joined as parties — Petition is not competent.

The law as to who are necessary or proper parties to a proceeding is well settled. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

In a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. But it is in the discretion of the Court to add or implead proper parties for completly settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party. AIR 1954 Bom 33 and AIR 1955 Nag 49 (FB), Approved.

Thus where in a petition for a writ of certiorari made to the High Court, only the Tribunal whose order was sought to be quashed was made a party but the persons who were parties before the lower Tribunal and in whose favour the impugned order was passed were not joined as parties;

Held that the petition was incompetent and had been rightly rejected by the High Court. **Held**, further that the request that the Supreme Court may, at this stage of appeal direct them to be made parties and remand the matter to the High Court for disposal was belated and could not therefore, be granted. Udit Narain Singh Malpahonia v. Additional Member, Board of Revenue, Bihar. (1963) 1 S C W R 147 : (1964) 1 S C J 151 : (1963) Supp 1 S C R 676 : ILR 43 Pat 13 : 1963 B L J R 512 : AIR 1963 S C 786 (788, 790) (Prs 7, 12, 13, 14).

——Art. 226 — Parties — Constitution of Municipal Committee questioned—Joinder of members.

Where in a writ petition for prohibition or certiorari against a Municipal Committee wherein the constitution of the said Committee is questioned, the petitioner cannot be said to challenge the election of the different members of the Municipal Committee and therefore, it is not necessary to join all the members as parties to the writ petition. **AIR 1956** Ajmer 73 (76) (Pt E) (Pr 18).

——Art. 226— Certiorari — Procedure — Necessary parties—All persons likely to be affected by orders ought to be impleaded—Failure to implead necessary parties fatal.

All those parties who would be affected by the orders passed in the writ proceedings must be impleaded so as to afford them a hearing. Failure to implead a party who is not necessary is not fatal to the maintainability of the writ petition. **1965 All W R (H C) 765 : 1965 All L J 1211.**

——Art. 226—Writ petition — Necessary parties not impleaded — **Held** failure to implead them was fatal to the petition. (1965) 11 Fac L R 388 (All).

——Art. 226 — Bar Councils Act (38 of 1926), S. 8— Preparation of list for amalgamated High Court—Procedure — Application for writ or order by Advocate for inclusion without payment of fees — Judges of High Court need not be impleaded as opposite parties—It is enough if Joint Registrar is impleaded. See Bar Councils Act (1926), S. 8. **AIR 1953 All 348.**

——Art. 226 -Parties —Amendment —Application for writ directing State Government not to enforce award of Industrial Tribunal alleged to be null and void— Petitioner under criminal prosecution for non-implementation of award — State Government made party to petition under Art. 226 — Industrial Tribunal not made party - Though Industrial Tribunal need not be impleaded, still if its non-impleading is considered fatal, High Court can permit amendment of petition by adding Industrial Tribunal as party. ILR (1954) 6 Assam 161 : AIR 1954 Assam 161 (163, 164) (Pt A) (Pr 6) (DB).

——Art. 226—Parties—Necessary party.

One A held a permit to ply a stage-carriage on certain route according to the timing fixed by the State Transport Authority. Subsequently certain Bus Service Co-operative Society was also permitted to ply one bus on the same route. The original timings were changed and both A and the Society were directed to ply their buses according to the order of rotation. A filed a petition under Art 226 against the State Transport Authority for a writ of mandamus or prohibition directing the State Transport Authority not to compel A to ply his bus on rotation.

Held, that the petition should not be allowed unless the Bus Service Society was also impleaded as a respondent in the proceeding. 1956 Madh B L J (Bh.) 79 : **AIR 1956 Bhopal 55** (56, 57) (Pt A) (Pr 7).

——Arts. 226 and 227 – Parties – Petition challenging order of termination passed by Health Officer— Latter if necessary party.

In a petition challenging the order of termination of his service by the Health Officer, the petitioner only joined the Corporation of the City of Nagpur as party. Neither the Health Officer nor the Chief Executive Officer were joined as a party.

Held, that merely making the Corporation as a party would not avail the petitioner because the orders of dismissal were not those of the Corporation. The orders were of the Health Officer or if there was a delegation it may be imputed to the Chief Executive Officer. As neither of those two Officers were on record the petitioner could not be granted relief. **1959 Nag L J (Notes) 106** (Bom).

——Art. 226—Parties — Life Insurance Corporation Act, 1956, S 22 (1).

The petitioner claimed relief under Art. 226 against the zonal Manager, Eastern Zone, Life Insurance Corporation of India, Calcutta, to whom no powers were shown to have been delegated under S. 22 (1) of the Life Insurance Corporation Act. The Life Insurance Corporation of India who could grant the

reliefs prayed for was not made a party respondent to the application.

Held, that it was for the petitioner to establish that justice had been demanded of a person competent to grant it and merely because the delegation in writing had not been disclosed by the respondent Zonal Manager an adverse inference that the Zonal Manager was authorised to deal with the matter cannot be drawn. In the absence of proper party the application was not maintainable. (1961) 2 Fac L R 170 : (1962-63) 23 F J R 456 ; (1961) 1 Lab L J 59 ; 65 Cal W N 23 ; A I R 1962 Cal 45 (47, 48) (Pt B) (Pr 17).

——**Art. 226 – Parties — Application to compel Corporation of Calcutta and Commissioner of Police to maintain public streets and foot-paths for unobstructed user by public and for declaration that the latter has no right to permit hawkers' corners there —Hawers not necessary parties.** 65 Cal W N 339 : AIR 1961 Cal 389 (391, 392) (Pt A) (Pr 1).

——**Art. 226 – Parties.**

Certificate proceedings started to recover loan taken from Rehabilitation Finance Administration — Writ petition making Chief Administrator a respondent instead of the administration itself which was a statutory Corporation—Main relief being against the Corporation, petition held was defective – But the defect being technical application not dismissed on that ground. 64 Cal W N 126 : AIR 1960 Cal 416 (417) (Pt A) (Pr 4).

——**Art. 226 - Parties—Reference of industrial dispute between number of banks and their employees —Writ application to quash — Non-joinder of banks interested—Effect.**

Where the Central Government has referred an industrial dispute between 31 banking companies of West Bengal and their workmen for adjudication to an industrial tribunal, and an application is filed under Art. 226 challenging the order of reference, the non-joinder of all the thirty-one banks is fatal to the maintainbiliry of the application. The application cannot proceed and the order cannot be quashed, if some of the banks interested in the reference are left out and not joined as parties. AIR 1958 Cal 297 (300) (Pt B) (Pr 12).

——**Art. 226– Parties to application.**

An application for mandamus against a school committee of management was filed against the secretary and the president of the committee alone. There were no regulations issued by the Government authorising the president or the secretary to effectively represent all the members of the committee in a legal proceeding against the committee for any relief.

Held, that in these circumstances the application was defectively constituted and therefore no relief could be granted thereon. ('53) 62 Cal W N 384.

——**Art. 226 — Parties — Municipalities — Bengal Municipal Act (15 of 1932), S 21.**

The committee consisting of the Chairman and two Commissioners appointed under S. 21, Bengal Municipal Act (15 of 1932), by the Commissioners of the Municipality, at a meeting held for that purpose and known as the "registering authority" prepares the preliminary and final Electoral Rolls in accordance with the provision of the Act. The relevant rules with regard to the preparation and publication of the Electoral Roll are Rr. 3 to 16 and it will appear therefrom that the duties in connection therewith devolve not upon the chairman alone but upon the registering authority. It is the duty of the registering authority to amend the Final Electoral Roll and publish the same in the same manner as the final Roll that had been published when the District Magistrate in an appeal under S. 529-A orders the same. R. 15 however clearly shows that the amendment has to be carried out by the registering authority, although the District Magistrate communicates his order to the Chairman. That being so, in an application under Art. 226 for directing the amendment and republication of the Roll according to the District Magistrate's order all the members of the committee, which is registering authority, and the proper body to carry it out, should be made parties and it would not be possible to order the chairman alone to amend and republish the roll. Such an order would not be binding on the other members of the committee when they are not made parties to the application and the application would suffer from defect of parties. The fact, that the District Magistrate is a party to the application cannot obviate the defect. AIR 1954 Cal 285 (286, 287) (Pt A) (Prs 2, 6, 7, 8, 9).

——**Art. 226—Proper parties—(Constitution of India, Art. 367 (1))—(General Clauses Act, 1897, S. 3 (39)) —(Civil P. C., O. 1, R. 8).**

In view of the provisions of Art. 367 (1), the word 'person' in Art. 226 should be interpreted in the sense in which it has been used in S. 3 (39) of the General Clauses Act of 1897. Therefore, although the State Medical Faculty is an unincorporated body of individuals a writ can be properly issued against such a body in its official title and designation. Further, since the petitioner can have recourse to O. 1 R. 8, Civil P. C, and proceed against only some of the members representing themselves and all other members of the State Medical Faculty, it is not necessary to implead all the members of the faculty. AIR 1918 Mad 763, Rel. on ; 40 Cal 588, Ref. AIR 1953 Cal 289 (291) (Pt A) (Prs 6, 7, 8, 10, 11).

——**Art. 226—Parties.**

The Governing Body is a part of the State Medical Faculty. When the State Medical Faculty has been made a party, is is neither necessary nor proper that any part of it should be separately made a party, the Feliows, the Members and the Licentiates. Omission to make the Governing Body a distinct party is no obstacle to the success of the application. ILR (1953) 2 Cal 107 : 56 C W N 861 : AIR 1953 Cal 212 (213) (Pt A) (Pr 10) (DB).

——**Art. 226 – Petition under—Action of Corporation challenged—Corporators not necessary parties.**

Where the validity of a resolution of a Corporation sanctioning allowance to Mayor, Corporators, etc., was challenged in a petition under Art. 226 what was challenged in the petition was the action of the Corporation as such. It was the Corporation which was sought to be ordered not to appropriate the municipal funds in making payments by virtue of its impugned resolution. Merely because the corporators were, or were to be, the recipients of those allowances it was not necessary to make them parties. 1962 M P C 115 : 1961 Jab L J 282 : 1961 M P L J 1215.

——**Art. 226—Parties—Party affected by Government order is entitled to be heard — High Court Rules (Madras) Rule 3.** (1953) 1 Mad L J 49 : 66 Mad L W 157 : AIR 1953 Mad 351 (352) (Pt A) (Pr 1).

——**Art. 226—Parties — Some of Municipal Councillors challenging order superseding Municipal Borough—Others made co-respondents—Deletion of such respondents—Normal rule — Parties interested but not necessary may be deleted - Test with regard to necessity and propriety for impleading person as party—Mysore High Court Rules (1959) Chap. VIII, R 14 — Bombay Municipal Boroughs Act (18 of 1925), S. 219 (1), Civil P. C. (1908), O. 1, R. 10.**

The normal rule regarding the addition or deletion of parties is that it is open to the plaintiff or the petitioner to array in the proceeding such persons as he wishes to join as parties and it is equally open to him to give up parties. This right, however, is not absolute and if the Court finds it necessary in the interests of giving a proper decision in the case it may direct parties to be added and refuse permission for the deletion of the names of parties when such permission is sought. The real test in regard to the necessity for impleading a person, as distinguished from propriety, is whether in the event of the petitioner succeeding, the result will be to compel the person to do something or desist from doing something.

In a writ petition made by some of the Municipal Councillors challenging the validity of the Government order under S. 219 (1), Bombay Municipal Boroughs Act by which the Municipal Borough was superseded, although all the members of the Municipal Committee are interested in and affected by the order, they are not necessary parties. The petitioners who have grievance against the order of the Government can themselves approach the High Court and they should not be compelled to array other members, if even otherwise the petitioners themselves were entitled to seek relief. AIR 1959 S C 107, Rel. on. AIR 1954 Cal 208, Ref. (1964) 1 Mys L J 147 (DB).

——Art. 226 — Parties—Necessary parties—Petition by owner of Inam lands for quashing of order of Government under S. 3, Orissa Estates Abolition Act (1 of 1952) — Absence of raiyats does not make the petition defective.

Where the Government issued notification under S. 3 of the Orissa Estates Abolition Act vesting the village of the owners of Inam lands in the State, the owners are vitally affected by the notification and have every right to file a petition under Art. 226 for quashing the order on the allegation that the notification is illegal.

The absence of the raiyats, who are indirectly affected by the decision does not make the petitions defective in any manner whatsoever and it cannot be accepted that in all such cases the petitioners will be required to bring in all the raiyats of the village as parties to these proceedings. ILR (1956) Cut 335 : 22 Cut L T 444 : AIR 1956 Orissa 214 (218) (Pt D) (Pr 8) (DB).

——Art. 226 – Parties—(High Court Rules and Orders (Pepsu) — Rules relating to application under Art. 226 of the Constitution—R. 7).

A person interested in or affected by the question in dispute in a writ application should also be made a party to such an application along with the tribunal, Court, or other authority, whose order or act is questioned, and, in any case, the Court should invariably, as a matter of practice, in the interests of justice, serve rule nisi upon such a party. The applicant must disclose particulars of such a party in his affidavit to enable the Court to do so. AIR 1954 Bom 33, Rel. on; AIR 1946 Bom 407, Dist. ILR (1955) Patiala 622 : AIR 1955 Pepsu 159 (161) (Pt A) (Pr 14) (DB).

——Art. 226—Parties to — Appropriate party—Petition by employees against order of State Government refusing reference to Tribunal under S. 10 (1) of Industrial Disputes Act — Employer is certainly a proper party, if not a necessary party—Non-impleading of employer, however, condoned in view of order proposed to be passed, whereby employer was afforded an opportunity to intervene — Industrial Disputes Act (1947), S. 10 (1)—Refusal to refer — Writ against order — Parties to. 1965 Cur L J 541 : ILR (1965) 2 Punj 802 : (1965-66) 29 F J R 155.

——Art. 226 — Parties to writ petition—Addition of — Writ petition by a Samiti registered under the Societies Registration Act against Registrar, Co-operative Societies — Arya Samaj seeking to be impleaded as party, not a registered body who can neither sue nor be sued in a Court of law in its own name—Arya Samaj cannot be impleaded as party especially when it was objected that the person who styled himself as its pradhan was not validly elected — Civil P. C. (1908), O. 1, R. 10; O. 29, R. 1. 1965 Raj L W 282 : ILR (1965) 15 Raj 653.

——Art. 226 — Parties — Application against State alone — Maintainability.

Where both the order of appointment and the order of termination of service of an acting clerk in the Munsiff's Court were passed by the High Court, but the only respondent made in the application under Art. 226 was State Government :

Held, that the application had to be dismissed. It may be that the High Court was not impleaded because it was not possible for the High Court to issue a writ to itself. But it would not preclude the petitioner from moving the High Court on its administrative side and seeking appropriate reliefs. 1955 Ker L T 813 : ILR (1955) Trav.Co 848 : AIR 1957 Trav-Co 176 (176, 177) (Prs 2, 3) (DB).

87 (d). Misdescription.

——Art. 226 — Parties — Wrong description — Effect of.

Error in name and business of opposite party No. 1 in petition under Art. 226 — Relief sought particulary against him — Correct description averred in counter affidavit by opposite party — But no attempt to amend and correct the petition made by petitioner. Failure to amend petition and implead the correct party held was itself sufficient ground for dismissal of petition. 1954 All W R (H C) 235 : 1954 All L J 344 : AIR 1954 All 490 (490) (Pt A) (Pr 1).

——Art. 226 — Petition by person alleging to be managing partner of a firm — Such description appearing in power of attorney but not in the petition — Description cannot be treated as part of petition or as evidence of the fact stated therein. I L R (1953) Patiala 451 : AIR 1953 Pepsu 88 (89) (Pt C) (Pr 3) (DB).

87 (e). State and Government of India.

——Art. 226 — Validity of Act challenged — Concerned State must be impleaded as party to writ petition. (1964) 15 S T C 505 : AIR 1965 All 86 (91) (Pt F) (Pr 31) (DB).

● ——Art. 226—Parties—"Option papers" circulated to State employees by Chief Secretary to the State Government for opting either to India or Pakistan—Terms and conditions of service guaranteed — Employee discharged — Petition under Art. 226 — Government of India not necessary party—(Indian Independence Act (1947), S. 9).

Chief Secretary of the Assam Government sent a circular letter to the employees of the State including the petitioner in Class II, Cadre in the State Education Service, known as 'option letter', giving the employees option to opt for Pakistan or 'rest of India' upon the partition of India. The letter did not only forward the questionaire but also contained an assurance that the representatives of the future Government consequent upon partition of India, guaranteed their existing terms and conditions of service. The petitioner who had opted for the 'rest of India' was discharged from service on the ground of retrenchment after the partition of India, consequent upon the partition. In his petition under Art. 226, he impleaded the State of Assam as respondent. It was

contended on behalf of the State that the Government of India was a necessary party, since the 'option papers' were circulated at the instance of the Government of India and that the State had not offered any guarantee to the petitioner :

Held, that the argument was not tenable in view of the circular letter of the Chief Secretary of the State and that the Government of India was not a necessary party.

Per Majority. — The option given to Government servants was according to the decision of the Special Committee of the Partition Office of Government of India. It was part of the scheme of partition. It was, therefore, binding on both the Dominions under S. 9, Indian Independence Act (1947), even after 15th August. It could not be argued that the Provinces in the two Dominions were not bound by orders because they were issued by the Government of India. The Government of Assam was bound to give effect to the guarantee even though the option papers offered the guarantees of the two future Dominions.

The Government of India was not at all a necessary party to the proceedings. No relief could be asked for against that Government. The Government of Assam was bound by the decision of the Partition Committee of the Government of India. The decisions of that Committee were not dependent on the assent of the Government of Assam. They were binding on all the Provinces by virtue of the provisions contained in the Independence Act. If the consent of the Assam Government was necessary, it was given by necessary implication The option was conveyed to officers through the Assam Government. The Government of Assam thus became a party to the implementation of the decisions. Effective relief could be given to the petitioner in the petition, as constituted, and the petition could not fail for want of necessary parties.

Per (Contra). — The option letter did not give any indication whatsoever that the Assam Government undertook any responsibility for providing the officer with any job if he elected to serve in the rest of India. The Provincial Government had no say in the matter nor was any assurance given on behalf of the Provincial Government nor any inkling given that they would retain their jobs in the Province in some shape or another. The Chief Secretary only circulated the decision of the Partition Committee which was appointed by the representatives of the two future Dominions and asked for a reply in those terms. If the petitioner wanted to say that because of this exercise of option as was requested by the letter of the Chief Secretary that he was relieved of his job in the Murarichand College (which went to Pakistan) by the successor Government, that is, the East Bengal Government, he might sue the Chief Secretary or the Assam Government for damage, but could not say that there was a legal obligation to absorb him in some of the Government Offices in Assam or in Educational Service of Assam Government, and could in no way ask for a writ to have him so absorbed irrespective of any vacancy in the said Province. Surely the responsibility, if any, was of the Central Government. This was a matter that ought to have been decided in the presence of the Indian Government as a party. Hiranmoy v. State of Assam, AIR 1954 Assam 224 (235, 236, 237) (Pt E) (Pr 13) (FB).

——Art. 226 — Parties — (Municipalities — Assam Municipal Act (1923), Ss. 89 and 292).

Order disposing of review application under S. 88, Assam Municipal Act — Application under Art. 226, Constitution of India, for quashing same—Provincial Government is not necessary party, even though petitioner had applied to Provincial Government for reversal of the order under S. 292 of the Municipal Act. ILR (1953) 5 Assam 45 : AIR 1953 Assam 132 (135) (Pt C) (Pr 15) (DB).

——Art 226 — Parties—Amendment of Constitution requiring ratification by State Legislatures challenged — Ground that resolutions passed by States did not amount to ratification — Union and ratifying States are necessary parties. 68 Cal W N 958 : AIR 1964 Cal 500 (503) (Pt C) (Pr 12).

——Arts. 226, 361 (1) — Petition asking writ of 'certiorari' to quash Governor's decision in appeal— Governor is not necessary party.

In a petition under Art. 226 asking for the issue of a writ of certiorari to quash the Governor's decision in appeal it is not incumbent on the petitioner to implead the Governor as a party. Article 361 (1) shows that the Governor cannot be made a party to any proceedings in Court, inter alia, in a case where his decision could have been questioned on grounds available to a citizen against other authorities justifying the quashing of any order A citizen is not without redress when his complaint relates to the performance of the powers and duties of the office of the Governor. Even though he cannot implead the Governor as a party, it will be enough if he impleads the State Government and asks for appropriate relief. Notwithstanding the absence of the Governor as a party the citizen can be given relief if the State Government is before the Court : AIR 1963 S C 786; AIR 1963 S C 1124, Rel. on. 68 Cal W N 203 : AIR 1964 Ca 184 (189, 190) (Pt B) (Pr 26) (DB).

● **——Art 226—Parties to writ proceeding.**

Where the Chief Justice of the High Court withdrew the duties and functions from a Judge of the High Court acting on the decision reached by the Union Government as to the completion of 60 years of his age by the said Judge, then a writ if otherwise claimable under Art. 226 of the Constitution against the Chief Justice may still issue notwithstanding the absence of the Union Government Jyoti Prakash Mitter v. Hon'ble Mr. Justice H. K. Bose Chief Justice of High Court, Calcutta, 67 Cal W N 662 : AIR 1963 Cal 483 (489) (Pt F) (Pr 25) (SB).

——Art. 228 — Subordinate officer passing orders under statutory provisions within jurisdiction of Calcutta High Court — Orders not challengeable unless statutory provisions are challenged — Union and Superior Officer are necessary parties — Office of Superior Officer in Delhi — Calcutta High Court has no jurisdiction against Union and Superior Officer — Relief cannot be given against subordinate officer. AIR 1956 S C 246, Disting. AIR 1961 Cal 289 (293, 294) (Pt C) (Pr 4).

—Arts 226 239 (1), Sch I. Part II — Procedure— Writ petition against Himachal Pradesh Administration as main respondent — Himachal Pradesh being Union territory administered by the President through Administrator—Neither President nor Administrator impleaded—'Himachal Pradesh Administration' being not a juristic person cannot sue or be sued — Order on writ petition would not bind President or Administrator—Frame of petition therefore held defective —C. P. Code (1908) S. 79. AIR 1964 Him Pra 19 (22) (Pt A) (Pr 8).

● **——Art 226 and Art. 32 (2-A) (Jammu and Kashmir) — Parties — Writ proceeding against Election Commissioner — Kashmir Ordinance No. I of 1957— Validity challenged — Government is necessary party—(Constitution of Jammu and Kashmir, S. 103)**

The petioner sought a writ of mandamus against the Election Commissioner, and during the pendency of the petition an ordinance was promulgated depriving the petitioner of the right claimed. The petitioner submitted that this Ordinance was ultra vires of the

provisions of the Indian Constitution as applicable to the State of Jammu and Kashmir.

Held, that as the Election Commissioner was powerless to do anything in the matter, and ultimately it was the Government which could advise the Sadar i-Riyasat to promulgate an Ordinance or replace one by a fresh Ordinance the Government was a necessary party and in its absence the petition deserved to be rejected. Jagat Ram Aryan v Election Commissioner, Jammu and Kashmir, AIR 1957 J & K 45 (46) (Pr 4) (FB).

——**Art. 226 – Necessary parties — Tax imposed by Local Authority — Constitutionality in question — Government if necessary party.**

Where constitutionality and legality of a tax imposed and recovered by a Local Authority are matters arising for consideration, the State is not a necessary party to such a proceeding. AIR 1954 Kutch 50 (51) (Pt A) (Pr 5).

——Art 226 - Parties to writ petition — **Prayer for joinder of Union Government against which no relief has been claimed, cannot be granted.**

Where in the course of hearing of the writ petition the petitioner submitted an application for joinder of the Union Government as respondent to the petition, the prayer cannot be granted, if in the application, no relief has been claimed against the Union Government. 1965 M P L J 825 : 1965 Jab L J 1008 : A I R 1966 Madh Pra 134 (136) (Pt C) (Pr 8) (DB).

——Art. 226 — Government not necessary or proper party to industrial dispute See Industrial Disputes Act (1947) S. 18 (b) AIR 1954 Mad 686.

——Art. 226 — Parties to writ proceedings—Necessary parties.

Where the house properties of the petitioners in Manipur State were removed or destroyed by the Allied Military forces under Rr. 49 and 78, Defence of India Rules and the Extra Assistant Commissioner (Claims), Manipur and the Chief Commissioner, Manipur, having failed to perform their statutory obligations under R. 98, Defence of India Rules the petitioners applied for a writ of mandamus against them, the Union of India should be added as a necessary party to the petition. AIR 1956 Manipur 1 (2) (Pt A) (Pr 4).

——**Art. 226 — C P. and Berar Letting of Houses and Rents Control Order, Cls. 13 and 21.**

Writ — Certiorari—Parties — Procedure — Tenant appealing against order of Rent controller — S. D. O. deciding appeal – Landlord applying for writ—D. C. and State of M. P. are not necessary parties — Procedure is now well settled. ('51) 1951 Nag L J (Notes) 102 (DB).

——**Art. 226 - Writ application—Parties to —Notification issued by Central Government—Central Government should be made party — In its absence writ cannot be issued against local official who alone is made party.**

Where under the power vested by a provision of an Act or of a rule made thereunder a notification is issued by the Central Government, it is that Government that should be made a party to a writ application filed under Art. 226 of the Constitution. No writ will lie against the local official. A I R 1956 S C 246 and AIR 1958 Cal 570, Disting. ILR (1961) Cut 316 : AIR 1961 Orissa 186 (187) (Prs 6, 8) (DB).

——Art. 226—Parties— Vires of Central Act challenged — Petitioners not claiming any relief against Central Goverament — Union of India need not be impleaded as party. ILR (1959) 9 Raj 424 : 1959 Raj L W 496 : A I R 1959 Raj 177 (191) (Pt L) (Pr 75) (DB).

[Reversed on another point in AIR 1961 S C 1402.]

——Art. 226—Parties—Petition challenging validity of award of labour Court — Necessary party — Art. 227.

In a petition under Arts. 226 or 227 of the Constitution when what is questioned is the validity or legality of the award of the Labour Court, the Government is not a necessary party. AIR 1959 Tripura 8 (9) (Pt C) (Pr 6).

87 (f). Non-joinder and mis-joinder.

——Art. 226—Writ petition — Parties — Non joinder of — Effect — Procedure — Petition for writ arising out of pending suit — Pro forma defendants in suit not joined as parties — Does not render petition not maintainable for non joinder. A I R 1964 All 386 (388, 389) (Pt B) (Pr 4) (DB).

——Art. 226—Relief against persons not impleaded as parties cannot be granted. 1963 All L J 909.

——Art. 226 - Other persons vitally interested in question not made parties— Question is not fit subject for decision in writ application. A I R 1955 N U C (All) 3292 (DB).

——Art. 226—Parties.

A Court cannot adjudicate on the validity of an act of an authority in its absence and any person who is likely to be affected by any decision given by a Court should be added as a party. AIR 1960 Andh Pra 431 (435) (Pt A) (Pr 18) (DB).

——Art. 226—Parties- Non-joinder—Effect—Issue of writ to person not party to petition — No direction can issue. See Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwari Act (26 of 1948), S. 4. (1958) 1 Andh W R 124.

——Art. 226—Parties to writ petition – Misjoinder — (Civil Procedure Code, 1908), O. 1, R. 9).

Where a person files a petition under Art. 226 on the ground that the seizure of his property was illegal the fact that the petitioner is his son will not create any interest or right in his father when they are separate in business and the property belongs exclusively to the son. Hence if the father is added as petitioner No. 2 to the petition the petition suffers from the defect of misjoinder of the petitioners. But this defect cannot be deemed to be of such a fatal nature as to entitle the dismissal of the petition on this very ground. AIR 1956 Bhopal 43 (44) (Pt A) (Pr 6).

——Art. 226 – Jurisdiction—Rule 'nisi'— Rule cannot be issued against party not mentioned in writ application. 68 Cal W N 958 : A I R 1964 Cal 500 (503) (Pt F) (Pr 11).

——Art. 226 — Parties — Person in possession not made party – Effect. See Houses and Rents— Requisition and Control (Temporary Provisions) Act (5 of 1947), S 3 ('58) 62 Cal W N 158.

——Art. 226 — Powers of Court – Person not before Court—Order affecting his rights—Power to make.

Where a person is not before the High Court in a proceeding under Art. 226, it can make no order affecting his rights in his absence. 61 Cal W N 479 : AIR 1957 Cal 460 (461) (Pt B) (Pr 6).

——Art. 226 — Writ for quashing orders of Revenue Tribunal confirming order of Deputy Commissioner— Parties—Revenue Tribunal and Deputy Commissioner both to be impleaded—Omission to implead either of them fatal to petition—Mere fact of presence of complete record before High Court cannot cure omission. A I R 1956 Nag 65, Rel. on. 1961 Jab L J 1344: 1961

M P C 755 : 1961 M P L J 1403 : I L R (1961) M. P. 821.

——Art. 226—Parties— Absence of necessary parties —Effect.

The extraordinary jurisdiction under Art. 226 of the Constitution cannot be exercised when the necessary parties are not impleaded and any order passed in such an event would be infructuous. (1962) 28 Cut L T 298.

——Art. 226—Parties to writ petition — Non-joinder of—Effect — (Travancore Cochin Panchayat Act (2 of 1959), S. 46).

In a writ petition to quash the order of the Government passed under S. 40 (1), Cl. 12, Travancore-Cochin Panchayat Act, removing the petitioner from the office of the president, the members of the panchayat by whom the no-confidence motion which led to the passing of the order, was passed are the real parties in the matter of the propriety or the otherwise of the resolution. In the absence of all the members of the panchayat from the record except the vice-president it is not competent for the Court to declare the resolution invalid. **AIR 1956 Trav.Co 45 (45, 46) (Pr 2) (DB).**

——Art. 226—Parties to writ proceedings.

A petition for a writ of mandamus by a person who has been deprived of his valuable tea estate cannot be deemed to be in any way defective on account of non-joinder of any temporary occupier for an indefinite period or for non-joinder of a person who has no adverse interest against the petitioner. **A I R 1956 Tripura 9 (14) (Pt D) (Pr 27).**

87 (g). Amendment.

——Art. 226 — Parties — Amendment of — Duty of Court.

If the defect in a writ is material such as a defect of parties it cannot be out right by amendment of a writ. But different considerations apply at the stage of the rule nisi and a defect of parties can easily be remedied at that stage.

Further, it is the Court's duty, in proceedings under Art. 226, no less than proceedings in general to avoid, if possible, a multiplicity of judicial proceedings.

Where in a petition under Art. 226, against the Secretary of the Board of Secondary Education the respondent's case was that the party really interested was the Board and that the petition could not proceed in its absence,

Held, that the discharge of the rule nisi without allowing amendment would inevitably give rise to further application. The Board could, therefore be made a party by amending the petition. ILR (1956) 1 Cal 235: AIR 1954 Cal 208 (211) (Pt B) (Pr 12).

88. Pending cases.

——Art. 226—Writ petition pending appeal.

Where the petitioner's appeal presented to the authorities at Ajmer has not as yet been disposed of, it would not be proper to allow the petitioner to present a writ petition at this stage. A I R 1954 S C 207, Rel. on. 1955 Am LJ 40: AIR 1955 Ajmer 39 (40) (Pt B) (Pr 4).

——Art. 226 — Issue of writ when subject-matter pending before Court of law.

Ordinarily Court would not issue a writ when the subject-matter involved is already pending in a case before a Court of law. A I R 1952 Ajmer 31 (2) (32) (Pt A) (Pr 2).

——Art. 226 — Certiorari — Issue of, against interlocutory order.

There may be cases where it may be necessary for a petitioner to ask for both the relief of certiorari and prohibition, the writ of certiorari to quash the order which does not finally dispose of the controversy between the parties and a direction in the nature of prohibition restraining the Court from further proceeding with the case. It cannot, therefore, be contended that as a universal principle no writ of certiorari will issue against an interlocutory order.

The power being discretionary, such a writ may not be issued in a case where an interlocutory order may be revisable by a superior Court on revision or in appeal or in a case where any alternative remedy may be available. But in a case where the order of a subordinate Court disposes of a preliminary issue which, if decided, may affect the jurisdiction of the Court, it may be desirable to consider such an order and if other conditions are fulfiled, a proper direction may be issued by the High Court. A I R 1955 SC 233 and AIR 1952 All 99, Rel. on. **AIR 1956 All 89 (91, 92) (Pt A) (Pr 7).**

——Arts. 226 and 227 — Criminal P. C. (1898), S. 561A—Interference by High Court at an interlocutory stage See Criminal P. C. (1898), S. 561-A. **A I R 1953 All 630.**

——Art. 226 — Scope of inquiry — Orders of Labour Court during pendency of reference under Industrial Disputes Act — Industrial Disputes Act (1947), S. 10 (1) (c).

Whether a particular person is a workman or not and whether in the circumstances of a case, there is an industrial dispute or not especially when a reference under S. 10 (1) (c), Industrial Disputes Act, has been made by the appropriate Government, are matters entirely for the Labour Court to consider and determine including such preliminary objections as to jurisdiction as the parties may choose to raise. The petitioner-employer cannot raise them in High Court in an application under Art. 226 of the Constitution filed by him, questioning the orders of the Labour Court after the Labour Court has set the employer ex parte and purported to proceed with the enquiry. (1960) 1 Andh W R 360; (1960) 1 Lab L J 611.

——Art. 226—Administrative Tribunal— Order during pendency of writ proceedings — Validity — Quashing of.

If a party does something with the object of getting the position of advantage in the action, before a Court could interfere, he will not be permitted to plead that since he had already done the thing, it should not be undone. The Court has ample powers to direct the restoration of the status quo ante. But it cannot be said that any order passed subsequent to the issuance of a writ nisi is without jurisdiction and consequently should be struck down. (1958) 2 An W R 598: ILR (1958) Andh Pra 701: AIR 1958 Andh Pra 697 (704, 705) (Pt F) (Prs 21, 23) (DB).

——Art. 226 — Interlocutory proceedings — Interference by High Court — Proceedings before Collector under S. 56 — Bombay Tenancy and Agricultural Lands Act (46 of 1948).

Except on proof of clear and patent want of jurisdiction the High Court does not normally entertain an application before any final adjudication has been made by a subordinate tribunal judicial or quasi-judicial.

Thus where the Collector is exercising his jurisdiction under S. 56 of the Bombay Tenancy and Agricultural Lands Act, 1948 for the purpose of considering whether he should or should not sanction the scheme which had been framed by the Manager, there is nothing irregular or illegal in the attempted exercise of his powers by the Collector which calls for interference by the High Court under Art. 226.

59 Bom L R 339: I L R (1957) Bom 656: A I R 1957 Bom 155 (159, 160) (Pt E) (Pr 11) (DB).

——Art. 226 — Certiorari or prohibition—Writ of—Appeal to Custodian against decision of Deputy Custodian under S. 2 (d) (i) and (iii) of Administration of Evacuee Property Act (1950).

When the petitioners filed an appeal to the Custodian without prejudice to their contention that no appeal lay to him against the decision of the Deputy Custodian holding them evacuees within the meaning of S. 2 (d) (i) and S. 2 (d) (iii) the petitioners should have waited for the decision of the Custodian before coming to the High Court. As they had preferred the appeal to the Custodian and as they had raised the question of jurisdiction, primarily it was for the Custodian to decide whether he had jurisdiction or not. Assuming he erroneously came to a decision, with regard to his jurisdiction, it would then have been perfectly competent to the appellants to come to the High Court for a writ of certiorari or prohibition. 54 Bom L R 822: ILR (1953) Bom 406: AIR 1953 Bom 26 (27) (Pt C) (Pr 1) (DB).

——Art. 226 — Land Acquisition Act (1894), S. 18 — Claim for increased compensation already filed — — Petitioner held not permitted to challenge acquisition under Art. 226 of Constitution. See Land Acquisition Act (1894), S. 18. ('62) 66 Cal W N 115.

——Art. 226 — Appeal from conviction under impugned Act under valid provisions thereof pending —Whether writ of certiorari to quash conviction can issue — Quaere. Anwar Ali v. State of West Bengal, 1952 Cri L J 450: AIR 1952 Cal 150 (163, 164) (Pt E) (Pr 93) (FB).

——Art. 226 — Interlocutory orders — Interference with.

Even interlocutory orders will be interfered with when they are passed in flagrant violation of a party's right. AIR 1958 S C 398, Foll. 1958 Ker L J 992.

——Art. 226—Interim orders—Interference with.

Where no final order has been passed there is no justification to invoke the extraordinary jurisdiction of the High Court to interfere with the interim order and to quash it by the issue of a writ of certiorari. 1957 Ker L J 217: ILR (1957) Kerala 59: 1957 Ker L T 198: A I R 1957 Kerala 22 (24) (Pt B) (Pr 6) (DB).

——Arts. 226 and 227 — Powers of High Court — Interference at interim stage.

In a matter arising under Art. 226 of the Constitution the High Court will not at an interlocutory stage decide upon the correctness of orders made by a Tribunal with jurisdiction. Where it is open to the Tribunal to reach a conclusion, if the Tribunal errs in reaching that conclusion then it is not a matter which can be corrected by the High Court in the exercise of the extraordinary jurisdiction which it possesses either under Art. 226 or under Art. 227 of the Constitution. 1958 Jab L J 1: ILR (1957) Madh Pra 479: 1958 M P C 336: 1958 M P L J 426: AIR 1958 Madh Pra 168 (174) (Pt G) (Pr 26) (DB).

——Art. 226—Powers of High Court — Proceedings before Revenue Court—Joinder of parties.

It is not the concern of the High Court exercising its power under Art. 226 of the Constitution to order revenue authorities to join parties to proceedings which have terminated on the assumption that all the necessary parties were not brought before the Revenue Courts. 1957 M P L J (Notes) 167.

——Art. 226 — Mineral Concession Rules (1949) — R. 57 (2) — Revision against non-disposal of application under R. 27 — Revision pending before the Central Government — Writ petition under Art. 226 for same relief—Central Government being competent to grant relief, no relief can be granted in writ petition while the revision is pending—See Mineral Concession Rules (1949), R. 57 (2). AIR 1961 Pat 487.

——Art. 226—Certiorari — Prayer for quashing of interim order of Industrial Tribunal—Entire proceedings if can be quashed—(Industrial Disputes Act (1947), S. 33-A).

Where the petitioner has only asked in an application under Art. 226 for quashing the interim order of the Industrial Tribunal and not for quashing the entire proceeding taken by the Industrial Tribunal under S. 33-A, but the petitioner has pleaded the necessary facts in the application and the respondent has notice of those facts and has made an attempt to controvert them in the counter affidavit, the High Court can quash the entire proceeding started by the Industrial Tribunal under S. 33-A and also the interim order. AIR 1951 S C 41, Foll. (1956) 1 Lab L J 278: (1956 57) 10 F J R 89: A I R 1956 Pat 518 (521, 522) (Pt D) (Pr 11) (DB).

——Art. 226 — Other remedy open—Error apparent on face of record—Effect.

Held, that the pendency of the appeal before the Labour Appellate Tribunal against the award in question could not prevent the petitioner from seeking a relief by way of issue of writ from the High Court when the award on its own terms had been found to be without jurisdiction. AIR 1955 Cal 341, Not Foll. 1956 B L J R 270: (1958) 1 Lab L J 84: (1956-57) 10 F J R 255: ILR 35 Pat 292: A I R 1956 Pat 294 (299) (Pt G) (Pr 14) (DB).

——Arts. 226 and 227 — Houses and Rents — Bihar Building (Lease, Rent and Eviction) Control Act (1947), S. 18-A—Order as to costs—Revision against, pending — High Court would not interfere on an application under Arts. 226 and 227 — See Houses and Rents—Bihar Building (Lease, Rent and Eviction) Control Act (1947), S. 18A. A I R 1955 N U C (Pat) 2151.

——Art. 226 — Representation of the People Act (1951), Ss. 80, 81, 83, 90 (5), 100 (1) (b), 123 (vii) — Election petition — Charge of corrupt practice — Amendment by introducing fresh instances of corrupt practice—Order is essentially an interlocutory order—Appeal against if lies under S. 116A, Representation of the People Act—High Court will not interfere in writ proceeding. See Representation of the People Act (1951), S. 80. 65 Pun L R 324.

——Art. 226—Scope—High Court when would interfere at an interlocutory stage of proceedings—Notice under S. 22 (2), Income-tax Act calling upon assessee to file return — Objection by assessee without filing return — Threat to proceed ex parte — Quashing of notice by a writ — Held writ petition could not be thrown out as incompetent without hearing the Petitioner—No cogent ground in the instant case for bypassing the prescribed procedure and for holding enquiry. (1962) 46 I T R 436: A I R 1962 Punj 41 (42, 43, 44) (Prs 5, 9).

——Art. 226—Writs in pending cases.

Where the points raised in a petition under Art. 226 have also been raised by the petitioners in a dispute referred to the Labour Court and that Court is properly seized of the matter, the High Court will not interfere under Art. 226. (1962-63) 23 F J R 200 (Punj).

——Arts. 226 and 311—Interlocutory orders—Interference.

Interference with interlocutory orders passed in the course of removal proceedings would be produc-

tive of nothing but mischief and the Court would be extremely reluctant to issue writ of certiorari. 58 Punj L R 512 : ILR (1957) Punj 198 : AIR 1957 Punj 42 (45) (Pt F) (Pr 16) (DB).

[Overruled on another point in AIR 1958 S C 36].

——Art. 226 — Another remedy taken and pending.

Applicant already seeking remedy by way of appeal under Act against order — Appeal pending — He cannot resort to Art. 226. (1922) 8 Tax Cas 327 ; A I R 1951 Punj 1, Relied on. I L R (1953) T C 173 : A I R 1953 Trav Co 296 (298) (Pt D) (Pr 5).

——Art. 226 — Habeas Corpus — Writ in pending cases — Question of illegal detention under S. 167, Cr. P. Code sub-judice — Matter cannot be decided in proceedings for habeas corpus — Cr. P. Code (1898), Ss. 491, 167 and 55. 1961 (2) Cr L J 588 : AIR 1964 Tripura 57 (59) (Pt A) (Prs 9, 10).

89. Personally aggrieved.
See Note 6.

90. Powers of High Court.
See Notes 69 and 79.

91. Powers of Supreme Court and High Court.
See Note 13.

92. Power of Supreme Court under Art. 32.
See Note 12.

93. Premature writs.
See also Notes 88 and 175.

■ ——Art. 226 — Lock-out and closure — Distinction — No industrial dispute in respect of closure — Employer can move High Court at initial stage of proceedings before Industrial Tribunal regarding jurisdiction of Industrial Tribunal — Normally such question to be decided by the Industrial Disputes Act, 1947), S 2 (k). Management of Express Newspapers (Private) Ltd. v. The workers, (1963) 3 S C R 548 : (1962) 2 Lab L J 227 : (1962) 5 Fac L R 205 : (1962-63) 23 F J R 1 : A I R 1963 S C 569 (573, 574, 575) (Pt A) (Prs 10, 11, 12, 14, 15).

——Arts. 226, 19 (1) (f) and 31 (1) — Infringement of fundamental right — Who can apply under Art. 226 — Title to hold property in dispute and subject of adjudication — Complaint about infringement of right to hold property is premature - Bihar Land Reforms Act (1 of 1950), S. 4 (b).

Before a party can complain of an infringement of his fundamental right to hold property he must establish that he has title to that property and if his title itself is in dispute and is the subject of adjudication in proceedings legally constituted, for example an enquiry under S. 4 (h) of the Bihar Land Reforms Act (1 of 1950), he cannot put forward any claim based on his title until as a result of that enquiry he is able to establish his title. It is only thereafter that the question whether his rights in or to that property have been improperly or illegally infringed could arise. (1962) 2 Ker L R 19 : (1962) Supp 3 S C R 831 : 1962 B L J R 654 : A I R 1963 S C 516 (518) (Pr 4).

——Art. 226 - Premature petition — Potential threat not enough — Land of petitioners acquired under U. P. Acquisition of Property (Flood Relief) Temporary Powers Act — Orders for compensation not issued — Provision of Act cannot be challenged on ground of inadequacy of compensation — Government of India Act (1935), S. 299.

Where no orders have been passed in respect of compensation, the Bhumidars, whose plots have been acquired under the U. P. Acquisition of Property (Flood Relief) Temporary Powers Act cannot challenge the validity of the first Proviso to S. 9 (1) of the Act, by way of a petition under Art. 226 of the Constitution, on the ground that no provision for adequate compensation, as contemplated by S. 299 of the Government of India Act, 1935, has been made in the said proviso. Even though the petitioners are able to show that there is a potential threat to the invasion of their rights, their petitions are still liable to be dismissed. Potential threat cannot be the cause of action for a petition under Art. 226 of the Constitution and the appropriate time for such a petition can be only after the right has already been invaded. Moreover, a declaratory relief under Art. 226 cannot be granted. AIR 1951 S C 41 and AIR 1953 Cal 187 and AIR 1959 All 57, Rel. on. A I R 1962 All 606 (609, 610) (Pt A) (Pr 8) (DB).

——Art. 226 — Premature petition — Notice of suspension from service is issued by competent authority under R. 4 and final action by President under R. 3 is only consequential — Writ petition challenging validity of notice is not premature — Central Civil Service (Safeguarding of National Security Rules (1953), Rr. 3, 4.

Rule 4 itself postulates the competent authority to issue a notice in writing and the action which the President can take under R. 3 must necessarily be consequential to such a notice. The mere fact that the ultimate order is required to be passed by the President after taking into consideration the representation of the Government servant concerned, does not come in the way of the petitioner seeking relief in High Court if he can show that the notice under R. 4 is bad on any valid ground.

Where the notice under R. 4 nowhere stated that the President had formed an opinion that the petitioner was reasonably suspected to be engaged in subversive activities; and as the notice showed that it was the competent authority who had taken the initiative to issue such notice, and who had intiated action against the petitioner, the writ petition even if filed before final action is taken by the President under R. 3, cannot be considered as premature. Special Civil Appln. No. 317 of 1961 (Bom), Foll. 1963 Mah L J 15 : 65 Bom L R 48 : (1963) 1 Lab L J 459 : ILR (1963) Bom 425 : AIR 1965 Bom 59 (62) (Pt D) (Prs 10, 11) (DB).

——Art. 228 — Premature writ — Show-cause notice under S. 167 (8), Sea Customs Act — Objection that facts stated therein do not amount to offence under S. 167 (8) — Cannot be raised by writ application — Customs authorities have jurisdiction to decide it.

Where the Assistant Collector of Customs issued a show-cause notice to the petitioner to show cause why penalty should not be imposed upon the petitioner being a person concerned in the offence of unauthorised importation under S. 167 (8), Sea Customs Act and the petitioner filed a writ petition on the ground that the matter did not come within the purview of S. 167 (8), Sea Customs Act and as such the show-cause notice and the proceedings initiated thereby were without jurisdiction :

Held, that the writ application was entirely premature and ought not to be entertained at that stage. AIR 1957 Cal 608, Rel. on. 1961 (2) Cri L J 635 : AIR 1961 Cal 616 (619) (Pt B) (Pr 6).

——Art. 226 — Premature application — (Calcutta Improvement Act (5 of 1911), S. 78A).

Sub-section (1) of S. 78A, Calcutta Improvement Act is severable from sub-s. (2) and therefore where the real grievance of the party is against sub-s. (2), he will be entitled to raise objection when proceedings for the assessment of a betterment fee are actually initiated. If he succeeds in establishing that S. 78A (2)

is unconstitutional and therefore invalid, the mere inclusion of the land under S. 78A (1) will in no way affect his position. But so far as the inclusion of the property in the area marked out for a betterment fee and the operation of S 78A (1) are concerned he cannot raise any question of an invasion of the fundamental right. ILR (1959) 1 Cal 175 : AIR 1957 Cal 578 (582, 583) (Pt D) (Pr 13) (DB).

——Art. 226—Right to apply under.

It is immpossible to lay down the proposition that a citizen whose right to property under Art. 19 (1) (f) is threatened by the State, must wait until the police or military arrive and throw him out. AIR 1956 Cal 437 (441, 442) (Pt B) (Pr 12).

——Art. 226—Maintainability — Application under S. 42 of Wakf Act (1954)—Wakf Board has jurisdiction to go into question—Application under Art. 226 premature.

Where there is a dispute as to the propriety or validity of the removal of the petitioner from mutavalliship and the appointment of another person to the post, S. 42 is attracted. The High Court is not at the stage of writ petition concerned with the question whether the allegations in the petition before the Board are well founded. What is necessary to note is that there obviously is a dispute as to the alleged appointment of the other person as mutavali. The Board will, therefore have prima facie jurisdiction to go into the question, whatever may be its decision on merits. Therefore, the petition under Art. 226 of the Constitution is premature. AIR 1963 Mad 132 (133) (Pt B) (Pr 2).

——Arts. 226 and 311—Scope — Disciplinary action against Civil servant — Interference.

A notice calling upon the petitioner to show cause why disciplinary action should not be taken against him for leaving the headquarters during the period of suspension is an enquiry of an ordinary disciplinary character, and so long as no action has been taken against him, it would not be proper to act in exercise of the extraordinary powers under Art. 226 of the Constitution. 1957 Nag L J 75: 1957 M P L J (Nag) 115.

——Arts. 226, 310 and 311—Certiorari — Railway servants—Misconduct — Departmental enquiry — Nature of — Not quasi-judicial but administrative—No Certiorari to quash report of Enquiry Committee—Show cause notice on basis of report of Enquiry Committee—Final orders not passed — Application for certiorari to quash proceedings premature.

The Civil Services (Classification, Control and Appeal) Rules as well as the rules embodied in the Railway Establishment Code are all administrative rules, and any committee appointed to enquire into the allegations of misconduct against railway servant cannot be regarded as a statutory body, but an administrative body. AIR 1954 SC 375 and AIR 1958 S C 300 and AIR 1958 SC 36 and AIR 1959 S C 107 and AIR 1950 SC 222, Rel on. No duty is cast by a legislature upon such a committee to determine or decide facts judicially. Its function is merely advisory, and it may record its opinion in order to furnish fuller information to the authority empowered to punish the civil servant. The report of such a committee is nothing but a mere expression of opinion.

Three courses are open to the authority empowered to punish a civil servant, namely, (1) it may accept the report as correct and base its decision thereon; (2) where the proceedings have been duly conducted, and there is no denial of reasonable opportunity nor infringement of the rule of natural justice, but the opinion expressed by the committee is, in its view, not correct, it may come to a different decision, and (3) where the proceedings have not been duly conducted, it may direct fresh enquiry or itself hear the case. All these courses are open to the authority concerned, and unless and until the final order imposing penalty on the civil servants is passed, they can have no grievance. It is thus manifest that, before the final orders are passed the petitions under Art. 226 for a writ of certiorari are wholly misconceived and, premature. The report of the Enquiry Committee, therefore is not open to review even where the members have been biased or likely to be biased. AIR 1959 S C 107 and AIR 1950 S C 222 and AIR 1958 SC 36, Rel. on.

An order of the authority calling upon the civil servant to show cause against the proposed punishment is not a final order and is still inconclusive and therefore does not fall within the purview of certiorari. If the report of the Enquiry Committee is vitiated and the authority empowered to punish the civil servant bases its decision upon that report without further consideration, the order of the authority concerned is indeed a judicial order and if made in contravention of Art. 311 of the Constitution, process of certiorari may issue to quash such orders. Until that stage is reached, the affected civil servants, have no right to come to the High Court at intermediate stage and ask it to quash the order either on the ground of denial of reasonable opportunity, or on the ground of violation of natural justice, or for any other reason. 1928 A C 586 and AIR 1958 S C 86 and AIR 1957 Andh Pra 414 and 1958 Andh Pra 636, Disting.

It is not however the privilege of a civil servant proceeded against to require production of all documents, relevant or irrelevant, and, if not produced, to complain that they were not given any real and effective opportunity of meeting any relevant allegations made against them. What the law requires is that the evidence, oral or documentary, which forms the basis of the decision must be made available to the delinquent civil servants. AIR 1959 Pat 382, Disting. AIR 1963 Pat 38 (42, 43, 44, 45, 46) (Pt B) (Prs 10, 11, 12, 14) (DB).

94. Prerogative writs.

— Art. 226 — Origin and history of prerogative writs in England stated. AIR 1962 All 551 (557, 558) (Pt D) (Prs 32, 35).

● ——Art. 226 - History and origin of high prerogative writs traced. Bhailal Jagdish v. Additional Deputy Commissioner Akola. ILR (1952) Nag 839: 1952 Nag L J 613 : AIR 1953 Nag 89 (108, 109) (Pt F) (Prs 107, 109) (FB).

95. Presentation of petition.
See Note 11.

96. President, writ against.
See Note 54.

97. Private person, writ against.
See Note 5 (a).

98. Procedure.
(a) Affidavit.
See Note 11.
(b) Civil P. C., applicability of.
See Note 22.
(c) Delay in applying.
See Note 35.
(d) Form of prayer.
See also Note 58.
(e) Intervener.
(f) Joint application.
See Note 11.

(g) New point, new plea, new case and new grounds.
(i) Point not taken in grounds.
(ii) Point raised during argument.
(iii) Point depending on facts.
(iv) Prejudice to opposite party.
(v) Point abandoned or not pressed.
(vi) Point of law.
(vii) Point of jurisdiction.
(viii) New case
(ix) Plea not available earlier.
(x) Point not raised at preliminary hearing.
(h) Notice and hearing.
(i) Notice under S. 80, Civil P. C.
See also Civil P. C. (1908), S. 80.
(j) Parties.
See Note 87.
(k) Presentation of petition.
See Note 11.
(l) Proceedings, whether suit.
See Note 79.
(m) Preliminary issues.
(n) Res judicata.
See Notes 105, 114, 213 and 216.
(o) Review.
See Note 108.
(p) Rules of High Court.
(q) Return by respondent.
(r) Abatement.

98(a). Affidavit.
See Note 11.

98(b). Civil P. C., applicability of.
See Note 22.

98(c). Delay in applying.
See Note 35.

98(d). Form of prayer.
See also Note 56.

—Art. 226—Statement of reliefs.

A party seeking relief under Art. 226 of the Constitution should precisely state what writ, order or direction it is that he seeks for redressing a wrong which affects him personally. Otherwise the application is liable to be dismissed on the simple ground that the reliefs asked for are neither precisely nor intelligibly stated. 1954 Cri L J 691 : I L R (1955) 1 All 25 : AIR 1954 All 319 (322) (Pt A) (Pr 2) (DB).

—Art. 226 — Applicability — Nature of relief claimed to be specifically stated.

Per Mehrotra, J. — The remedy provided under Art. 226 of the Constitution is an extra-ordinary remedy available to a citizen and it is essential that the direction or the relief which the petitioner is seeking should be clearly and specifically mentioned in the petition. Dharmeshwar Kalita v. A. Ahmed. (1960) 1 Assam L R 268 : AIR 1961 Assam 158 (160) (Pt C) (Pr 3) (SB).

—Art. 226—Pleadings—Contents of petition.

What is the right of the petitioner which has been infringed and for the enforcement of which the petitioner moves the High Court under Art. 226 of the Constitution has got to be clearly stated in the petition. It is further necessary to clearly specify the nature of the direction which the petitioner desires the High Court to issue so as to give an opportunity to the opposite party to meet the contentions of the petitioner. The duty of the petitioner is not discharged by simply asking the Court to issue some sort of direction which the Court thinks proper under Art. 226 of the Constitution. If the intention of the petitioner was to pray for a writ in the nature of certiorari quashing the orders passed by the different authorities reducing him in rank, that prayer should be specifically mentioned. A I R 1959 Assam 112 (114, 115) (Pt A) (Pr 1) (DB).

—Art. 226 — Mere mention of Article in petition does not make out case for issue of writ. 1953 Cri L J 495 : I L R (1954) 4 Assam 320 : AIR 1953 Assam 61 (62) (Pt b) (Pr 4).

— Art. 226 — Procedure — Order of externment under S. 57, Bombay Police Act — Appeal dismissed by Government — Petition under Art. 226 challenging order of Deputy Commissioner of Police — Validity.

(Obiter) Where an order of externment is made by the Deputy Commissioner of Police under S. 57, Bombay Police Act, 1951, and the appeal to the Government of Bombay against that order is rejected, the order of the Deputy Commissioner of Police is really merged in the order made on appeal to the Government of Bombay and therefore the petitioner under Art. 226 challenging the order of externment should pray for setting aside the order of the Government of Bombay. A I R 1956 Bom 582 (583) (Pt C) (Pr 7).

—Arts. 32, 226 — Breach of fundamental rights — Prayer for wrong writ.

Whatever principles may apply when a mandamus is sought, entirely different considerations would apply when the question is of enforcing fundamental rights, and there is no doubt—and there can be no doubt—that the High Court has been given the widest powers of issuing any order, any direction or any writ under Art. 226 appropriate to the occasion and the situation which would safeguard the fundamental rights of a citizen or any person affected by the violation or contravention of fundamental rights. An application under Art. 32 cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for. A I R 1951 S C 41, Rel. on. ('53) 4 STC 10 : 55 Bom L R 246 (DB).

[Reversed in AIR 1953 S C 252.]

—Art. 226—Pleadings—Relief.

Where the Central Government, in exercise of the powers conferred by S. 6 (1) of Act 41 of 1955 and S. 10 (1) (b) of the Industrial Disputes Act, 1947, made a reference of certain industrial disputes for adjudication, the orders of reference are not judicial orders and certainly cannot be set aside by a writ of mandamus. The appropriate form should be to ask for a writ in the nature of certiorari quashing the reference and the proceedings and for a writ in the nature of mandamus on the respondents directing them to forbear from proceeding with the reference. A I R 1958 Cal 297 (300) (Pt A) (Pr 8).

—Art. 226—"Directions, orders or writs"—Effect of.

The prayers of a petition under Art. 226 should be as specific and definite as they can be, but the application of the petitioner cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for. AIR 1951 S C 41, Foll. 57 Cal W N 122 : AIR 1953 Cal 520 (521, 522) (Pt B) (Pr 6).

—Art. 226—Prayers under.

Very often prayers in petitions are couched as follows: "The Court may be pleased to grant such

writs as it may think fit within Art. 226 of the Constitution." The prayers must be specific, the prayers must be precise. Necessarily the prayers must depend on the writs asked for. They must be specified with exactitude and clarity. A I R 1936 P C 269, Rel. on. 1951-20 I T R 400 : 56 Cal W N 232 : AIR 1952 Cal 901 (603) (Pt C) (Prs 11, 13) (DB).

——Art. 226—Procedure—Powers under, are not trammelled by procedural niceties of English Law—Petitioner asking for particular kind of writ instead of a different kind of writ—High Court can mould remedy to circumstances of the case. 1959 Ker L J 1425 : 1960 Ker L T 85 : A I R 1960 Ker 229 (231) (Pt C) (Pr 15) (DB).

——Art. 226—Application for writ — Prayer must be specific and precise — General words "as the Court may be pleased to grant such writs as it may think fit" should be avoided. A I R 1952 Cal 601, Rel. on. ILR (1953) Madh B 24 : A I R 1953 Madh B 54 (55, 56) (Pt D) (Pr 6) (DB).

■ ——Art. 226 — Compliance with S. 4 of Abducted Persons Recovery and Restoration Act — Allegations vague in petition — Objection as to compliance, was not entertained. Sohan Singh v. The State, 1955 Cri L J 50 : A I R 1955 Pepsu 1 (3) (Pr 6) (FB).

——Art. 226 — Procedure — Form of prayers in writ application.

There is no doubt that in writ petitions the petitioner should come to Court with a clear case and definite allegations. A I R 1954 All 319, Rel. on.

But even where the petitioner has asked for other writs besides the writ of mandamus, the High Court has ample power and very wide discretion in the matter of framing writs to suit the exigencies of the particular case, and the application of the petitioner cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for. A I R 1951 S C 41 and A I R 1953 Cal 520, Rel. on. A I R 1956 Tripura 9 (12) (Pt A) (Pr 13).

98 (e). Intervener.

■ ——Art. 32 — Practice — Petition under Art. 32 of the Constitution — Counsel for intervener—Normally not allowed a right of reply. Kherbari Tea Co., Ltd. v. State of Assam, (1964) 2 S C A 319 : A I R 1964 S C 925 (930, 931) (Pt L) (Pr 3).

98 (f). Joint application.

See Note 11.

98 (g). New point, new plea, new case and new grounds.

(i) Point not taken in grounds.
(ii) Point raised during arguments.
(iii) Point depending on facts.
(iv) Prejudice to opposite party.
(v) Point abandoned or not pressed.
(vi) Point of law.
(vii) Point of jurisdiction.
(viii) New case.
(ix) Plea not available earlier.
(x) Point not raised at preliminary hearing.

98 (g). New point, new plea, new case and new grounds.

■ ——Art. 226—Procedure—Petition by a company against order of Sales-tax Officer under S. 8 (3) (b) of Central Sales-tax Act — High Court cannot deal with matters never in issue.

In writ petition by a company against the order of the Sales-tax Officer under S. 8 (3) (b) read with R. 13 it is not open to the High Court to expand the scope of the petition challenging the correctness of that order, and to deal with matters which were never in issue or to decide that other categories of goods which the Sales-tax Officer had not ordered to be deleted did not fall within the terms of S. 8 (3) read with R. 13. J. K. Cotton Spinning and Weaving Mills, Co., Ltd. v. Sales-tax Officer, Kanpur, (1965) 16 S T C 563 : A I R 1965 S C 1310 (1312) (Pt A) (Pr 5).

■ ——Art. 226—New point.

Where the appointment of the respondent No. 2, by the respondent No. 1, (University) as a reader was challenged only on the ground that the respondent No. 2, did not have the qualifications advertised for the post and no attempt was made to show that the appointment was illegal on the ground of statutory provisions and the High Court issued a writ of quo warranto quashing the appointment on the grounds alleged, without considering the statutory provision, in an appeal against the orders of the High Court to the Supreme Court, it would not be open to the petitioner to take a ground about the effect of the statutory rules and ordinances, for the first time. University of Mysore v. C. D. Govinda Rao, (1964) 1 S C W R 44 : A I R 1965 S C 491 (495) (Pt B) (Pr 10).

■ ——Art. 32—Scope of inquiry—New case.

The case of the petitioner was referred to the Commission under the provisions of S. 5 (4) of the Taxation on Income (Investigation Commission) Act and was not referred to the Commission by the Central Government under the provisions of S. 5 (1).

Held, that being so, an enquiry into the validity of S. 5 (1) was really outside the scope of the present case. Surajmal Motha and Co. v. A. V. Visvanatha Sastri, 1954 S C J 611 : 1954 S C A 743 : 67 Mad L W 759 : (1954) 26 I T R 1 : (1955) S C R 448 : A I R 1954 S C 545 (551) (Pt A) (Pr 13).

——Art. 226 — New point — Point not raised before subordinate authorities—No hard and fast rule about not allowing it to be raised for the first time in writ petition—Point sought to be raised going to the root of the matter—Point not requiring further inquiry—No prejudice caused to opposite parties — Point can be allowed to be raised.

There is no hard and fast rule that a new ground of attack is not permissible in the writ petitions. It depends on facts and circumstances of each case. Ground raising a question which goes to the root of the matter as to jurisdiction or power of an authority, whose acts or orders have been brought up before the High Court in a petition under Art. 226 of the Constitution, can be allowed to be raised if it otherwise, does not require any further enquiry and no prejudice is thereby caused to the opposite parties at the hearing. 1965 All W R (HC) 716.

——Art. 226 — Application in respect of claims filed before Consolidation Courts — Opposite party raising no objection in lower Courts that the application is barred under S. 34 (5) of U. P. Land Revenue Act (1901) — High Court will not entertain objection for the first time in writ proceedings. 1964 All W R (H C) 593 : A I R 1964 All 424 (424, 425) (Pt A) (Pr 1).

——Art. 226 — Assessment proceedings—Objections cannot be raised for the first time in writs. AIR 1963 All 446 (446) (Pt A) (Pr 3).

——Art. 226—New point.

While exercising jurisdiction under Art. 226, High Court, does not and cannot usurp the functions of a Court of Appeal and for that reason cannot permit the party to raise a fresh point for the first time before it. Even otherwise, the High Court can presume that a point not raised before the subordinate authorities had been given up as being without any substance. A I R 1961 All 169 (170) (Pt A) (Pr 5).

——Art. 226 — New point — Court will not entertain a fresh point in a writ petition, when it was not raised before the Board of Revenue. 1961 All W R (HC) 121 : 1961 All L J 87.

——Arts 226 and 227 — New plea — Plea of mixed question of law and fact — Question whether document was duly registered under U. P. Tenancy Act so as to be admissible in evidence not raised in Courts below cannot be raised in proceeding under Arts. 226 and 227. ILR (1958) 2 All 652 : 1958 All L J 565 : 1958 All W R (HC) 664 : A I R 1959 All 13 (14) (Pt B) (Pr 5) (DB).

——Art. 226—New plea.

A new point raised for the first time in an application under Art. 226, requiring determination of the questions of fact will not be entertained. 1957 All L J 548 : 1957 All W R (HC) 487.

——Art. 226—New plea

Where the plea that the Standing Orders were not applicable, was not taken before either of the inferior Tribunals, i.e., the Industrial Tribunal or the Labour Appellate Tribunal, it cannot be raised in the applications under Art. 226. (1957) 1 Lab L J 603 : ILR (1957) 1 All 109 : A I R 1956 All 644 (653) (Pt L) (Pr 51) (DB).

——Art. 226—Preamble—New point.

The grounds which are not taken in the writ petition nor before the Commissioner whose order is impugned cannot be raised at the time of hearing the petition. A I R 1963 Andh Pra 292 (295) (Pt D) (Pr 22) (DB).

——Art. 226—Point not raised before Returning Officer, District Judge and in petition — Could not be raised at the time of hearing of the petition — Election. (1962) 1 Andh L T 356 : (1962) 1 Andh W R 149.

——Art. 226—New plea—Plea of legality of assessment not raised at any stage — Maintainability in writ petition.

Section 44, I. T. Act as it stood in 1950 seems to proceed upon the footing that on the dissolution of a firm or an association of persons, the firm or the association, as such cannot be assessed and that the procedure would be to assess the partners or the persons as the case may be jointly and severally. The assessee firm did not, at the stage of its assessment as such or in the further appellate stage before the Appellate Assistant Commissioner or the Tribunal, raise the point that it was a dissolved firm by virtue of S. 41 (b), Partnership Act, and as such the assessment on the dissolved firm was illegal in view of S. 44, Income-tax Act as it stood in 1950. When proceedings were taken for the recovery of arrears of tax and penalty from the assessee firm, the latter applied under Art. 226 of the Constitution for a writ of prohibition on the ground that the assessment was illegal :

Held, that the duty of proving the basic fact of the dissolution and discontinuance of business rested upon the petitioner. Having regard to the conduct of the petitioner he was not entitled to raise that question. AIR 1957 S C 397, Rel. on. (1961) 43 I T R 344 : AIR 1961 Andh Pra 253 (254, 255, 256) (Pt A) (Prs 7, 18, 21).

——Art. 226 — New plea— Objection based on non-compliance with Art. 166 of the Constitution not raised before labour Court · Held, petitioner could not raise objection before High Court. AIR 1927 Mad 130 (FB), Rel. on. (1960) 1 Fac L J 494 : (1960) 1 Lab L J 599 : A I R 1960 Andh Pra 556 (559) (Pt D) (Pr 9).

——Art. 226—New point — Case under Motor Vehicles Act (1939), S. 57.

Point that petitioner had no right to apply for route permit and consequently he was not a party aggrieved by the grant of permit in favour of opposite party not raised before Regional Transport Authority or Central Road Traffic Board or State Government—Point not even raised in counter-affidavit filed in proceedings under Art. 226—High Court refused to permit the opposite party to raise question for the first time. 1955 Andh L T (Civil) 831 : 1956 Andh W R 652 : A I R 1957 Andh Pra 739 (742) (Pt D) (Pr 16).

——Art 226—Validity of order made or executed by Governor—Bar of judicial enquiry—Writ proceedings—Plea as to validity cannot be allowed to be raised for first time at the stage of argument. See Ibid. Art. 166 (1). AIR 1962 Assam 88 (DB).

——Art. 226—New point—(Sales Tax — Assam Sales Tax Act (14 of 1947), S 3

A question of fact not urged before any of the taxing officers in proceedings under the Assam Sales Tax Act cannot be urged in support of a prayer for a writ. AIR 1956 Assam 66 (72, 73) (Pt C) (Pr 16) (DB).

——Art. 226 — Question not raised as contemplated by S. 5, Assam Sales Tax Act — Petition under Art. 226 — Petitioner cannot have any advantage of S. 5 at that stage—(Sales Tax—Assam Sales Tax Act (14 of 1947), S. 51). A I R 1956 Assam 66 (73) (Pt D) (Pr 17) (DB).

——Art. 226—New point not allowed.

Where the plea, that the Government plot was sold by the Rehabilitation Authority by inviting tenders and not by public auction as required under R. 39 of the Displaced Persons (Compensation and Rehabilitation) Rules, and that the sale, therefore, was illegal was not raised by the claimant either in his application or in appeal or in revision, he was not allowed to raise that point for the first time in writ petition. 67 Bom L R 470 : 1965 Mah L J 631 : AIR 1966 Bom 58 (54) (Pt B) (Pr 3) (DB).

——Art. 226—New point.

In exercise of its writ jurisdiction, the High Court is only entitled to find out whether there is any error apparent on the face of the record. The petitioner will not be allowed to argue an entirely new point which was never canvassed before the Tribunal which has not been dealt with by them and in respect of which it cannot be said that there is an error apparent on the face of the record. 59 Bom L R 846 : ILR (1957) Bom 874.

——Art. 226—New point—Petitioner cannot be allowed to put forward cause of action which has not been pleaded. AIR 1964 Cal 539 (542, 543) (Pt B) (Pr 5).

——Art. 226—New point.

A plea of contravention of Art. 19 (1) (g) of the Constitution not taken in the writ petition, nor in the memorandum of appeal preferred from the order made in the writ petition will not be allowed to be urged in appeal. I L R (1960) 2 Cal 886 : (1960) 11 S T C 47 : AIR 1960 Cal 424 (426) (Pt E) (Pr 3) (DB).

——Art. 226—New plea.

Where the petitioner never took the point that he continued to be a member of the West Bengal Police Force and the Deputy Commissioner of Police, Enforcement Branch Calcutta, could not dismiss him and on the contrary, he alleged that the Deputy Commissioner should himself have drawn up the proceedings and heard the matter.

Held, that it was too late to raise the point that the Deputy Commissioner of Police had no authority over the petitioner at all, in the writ proceedings. ('58) 62 Cal W N 437.

——Art. 226—New plea.

If it is open to a party to raise a point before a Tribunal whose order is being challenged but if such point is not raised at all before the Tribunal, the party should not be allowed to challenge the order by agitating the point in a proceeding for the issue of a writ. AIR 1954 Bom 202, AIR 1952 All 489 and AIR 1953 Mad 105, Rel. on.

Hence, where the petitioner whose application for permit has been refused by the R. T. A. does not raise certain points before the Appellate Authority in an appeal against the order, he would be precluded from attacking the order of R. T. A. on any such points in his application under Art. 226. ILR (1958) 1 Cal 486 : 61 Cal W N 726 : A I R 1957 Cal 638 (643) (Pt D) (Pr 17).

——Art 226 — New point — Petition under Art. 226 for setting aside notification under Ss. 4 and 6, Land Acquisition Act — Point that delegation of authority on Commissioner issuing notification, under Art 258 (1) was invalid because it contravened Art. 77—Cannot be allowed to be raised for the first time if not urged anywhere, in the petition. (1963) 4 Guj L R 405 : AIR 1963 Guj 80 (82) (Pt A) (Pr 4) (DB).

——Art 226—New plea—Petition for quashing order of Custodian General passed on a review petition — Plea that opposite party had no locus standi to file review petition—Plea not taken in review proceedings —Plea cannot be allowed to be taken in writ petition. AIR 1960 J & K 125 (126) (Pt B) (Pr 3).

——Art. 226—New plea—Point of limitation not raised before Custodian-General whose order is attacked —Point cannot be allowed to be raised in writ proceedings especially when it is mixed question of law and fact. A I R 1960 Jand K 119 (121, 122) (Pt C) (Pr 11).

——Art. 226—New Plea — Retrospective amendment of provisions of law—Plea based on amended provisions not taken in appeal and revision before tribunal because amendment had not been effected at the time — Plea cannot be taken in writ proceedings —Interpretation of Statutes—Change of law with retrospective effect — Retrospectivity is for all legal purposes — Interpretation of Statutes — Retrospectivity.

Where an order for eviction was made by the Rent Control Court on 12-2-1960 under the Kerala Buildings (Lease and Rent Control) Act 1959 against the tenant and after an appeal and revision filed by the tenant against that order was dismissed the tenant filed a writ petition and during the pendency of the writ an amendment to the Kerala Buildings (Lease and Rent Control) Act was introduced with retrospective effect from 3-4-1959 and the tenant thereupon contended that the order made on 12-2-1960 was not in accordance with the amended provisions introduced with retrospective effect from 3-4-1959 and so was liable to be quashed:

Held that the non-observance of the provisions of the Act as amended was not complained of by the tenant in the appeal or revision filed by him and since a plea not taken before the concerned statutory tribunals cannot ordinarily be made the foundation of the complaint in a writ proceeding, the writ was liable to be dismissed. The retrospective amendment cannot be confined to find errors in the order of the Rent Control Court which were in accordance with the law existent at the time of their rendition but must extend to find abandonment of the plea available thereunder by the tenant when he preferred an appeal and sought revision of that order : AIR 1958 S C 878, Rel. on. 1963 Ker L T 688.

——Art. 226 — Procedure — Grounds to be stated in application — Case tendered by petitioner different from that set up in argument — Writ will be refused. AIR 1955 N U C (Madh B) 3872 (DB).

——Arts. 226 and 227 — Procedure — Subject-matter of petition.

Per Newaskar J. and Tare J. (sitting as Division Bench).—Mere raising of grounds is not enough. It must appear that those grounds had been pressed. It is only the grounds proposed before the Tribunal and dealt with by it that can form the subject-matter of the petition under Arts. 226 and 227 of the Constitution. Himat Singh Kubersingh v. Board of Revenue, Madhya Pradesh, **A I R 1966 Madh Pra 43 48 (Pt B) (Pr 17) (FB).**

——Art. 226—Certiorari—New point—Writ proceedings challenging order of Appellate Authority under Motor Vehicles Act (1939) granting permit—Contention not raised before Appellate Authority, held could not be raised by respondent in defence—Motor Vehicles Act (1939), Ss. 48 (1) Proviso and 64. 1964 Jab L J 637 : 1965 M P L J 41 : A I R 1965 Madh Pra 286 (287) Pt B) (Pr 5) (DB).

——Arts. 226 and 227 — Objection not taken before the Tribunal, cannot be allowed to be taken before High Court in writ proceedings.

One of the principles on which the High Court acts in granting the writ of certiorari ex debito justitiae is that the objection on which the petitioner relies should have been taken before the Special Tribunal. (1914) 1 K B 608 and A I R 1957 S C 397, Rel. on. **1964 M P L J (Notes) 168.**

——Art. 226 — New plea — Objection not raised before Tribunal — It cannot be raised in a prayer for writ of certiorari

A petitioner cannot be permitted to rely upon an objection in support of his petition for the issuance of a writ of certiorari to quash the orders by a special Tribunal, if the objection was not pressed before the Special Tribunal. (1914) 1 K B 608, Rel. on. **1961 M P L J (Notes) 64.**

——Art. 226 — New point — Point not raised before State Transport Authority in appeal — Cannot be raised in writ petition. 1959 M P L J (Notes) 103 : 1959 M P C 419 : 1959 M P L J 791 : A I R 1959 Madh Pra 320 (321) (Pt C) (Pr 8) (DB).

——Art. 226—New plea — Plea not taken before the tribunal—Effect.

The petitioner cannot be allowed to raise an objection to the jurisdiction of the Income-tax Officer to make a certain order when the objection had not been taken before the Income-tax Officer himself. **1957 M P C 338 : 1957 Jab L J 714 : (1957) 32 I T R 656 : (1957) M P L J 518 : A I R 1957 Madh Pra 148 (151) (Pt B) (Pr 8) (DB).**

——Art. 226 — Madras Hindu Religious and Charitable Endowments Act (19 of 1951), Ss. 3 and 6 (4) — Notification under S. 3 of Madras Act extending provisions of that Act to a charity — Petitioner in suit not objecting to validity of notice on ground that the charity was not exclusively confined to Hindus — Held, petitioner could not agitate that point, after dismissal or even second appeal filed by him in writ petition.

A notification was made by the State Government in 1958 under S. 3 of the Madras Act extending the provisions of that Act to the charitable endowment in dispute. The petitioner instituted a suit for a declaration that the notification was without juris-

diction. The suit was dismissed. Appeal arising therefrom also failed. Even a second appeal was dismissed by the High Court at the admission stage. The petitioner in the suit asked for a declaration that the impugned notification was without jurisdiction only on the ground that the property in question did not constitute a trust and if it did, the trust was a private one. No objection to the validity of the notification was raised in the suit on ground that the charity was not exclusively confined to Hindus and consequently it was not governed by the provisions of the Madras Act.

Held, the petitioner could not agitate that point by means of the petition under Art. 226. The impugned order was passed as early as 1958, and the writ petition was filed in 1962. Though in justification it may be said for the petitioner, that he had been agitating the matter in the suit, the petitioner could not have a double advantage namely, to have the delay condoned and at the same time, have the omission to take the point in the suit excused. (1965) 1 Mad L J 311 : I L R (1965) 2 Mad 505 : A I R 1965 Mad 416 (417) (Pt A) (Prs 3, 4).

——Art. 226—New plea — Order of removal of petitioner from office of trustee passed by Deputy Commissioner and confirmed by Commissioner — Petitioner cannot be allowed to take for first time points which have not been taken before the authorities. 76 Mad L W 36 : (1963) 1 Mad L J 225 : 1963 Mad W N 275 : AIR 1963 Mad 205 (206) (Pt A) (Pr 4).

——**Art. 226 (1) — Prosecution under S. 15 (b), Madras General Sales tax Act — Accused taking out writ of certiorari for quashing proceedings — Contentions which can be raised—(Sales Tax — Madras General Sales-tax Act (9 of 1929), S. 12-A).**

Where the petitioners who were being prosecuted under S. 15 (b) of the Madras General Sales Tax Act, took out a writ for quashing those proceedings on the ground that the Act and the Rules and the assessment made thereunder were void and that the prosecution was illegal :

Held, that the petitioners were duly served with notice under the Act and had ample opportunity of putting forward before the Tribunals constituted under the Act all contentions based on the provisions of the Act or the Rules. Not having done so, they could not be permitted to put forward in these proceedings contentions which were available to them before the Tribunals. The only pleas that were open to them were those which could not have been urged before the Tribunals, such as the plea that the Act is ultra vires which could not obviously be entertained by a Tribunal which owes its very existence to the Act. (1952) 3 S T C 367 : 1952 Mad W N 847 : 1952 Mad W N (Cri) 235 : (1952) 2 Mad L J 598 : 65 Mad L W 1030 : 1953 Cri L J 277 : AIR 1953 Mad 105 (107) (Pt A) (Pr 3) (DB).

——Art. 226—Constitution of India, Art. 226 (1).

Application for issue of writ of certiorari to quash order of Court — Particular objection not taken in Court nor in affidavit — Objection cannot be raised for first time in writ of certiorari. 1952 Mad W N 219 : 65 Mad L W 275 : 1952-1 Mad L J 472 : 1953 Cri L J 18 : A I R 1952 Mad 855 (855, 856) (Pt A) (Pr 1).

——Art. 226—Procedure—New inconsistent grounds in course of arguments cannot be allowed.

The petitioner under Art. 226 cannot be allowed to traverse grounds in the course of the arguments which are totally inconsistent with the grounds set forth in his petition. A I R 1963 Manipur 28 (31) (Pt A) (Pr 5).

——**Art. 226—New plea — Proceedings under Motor Vehicles Act — Objection on ground of non-compliance with requirements of S. 63 (3) — Objection not raised before authorities under the Act—Urging of objection for the first time in writ proceedings is not permitted—Motor Vehicles Act (1939), S 63 (3).**

Where the stage carriage permit to operate on inter-regional route granted by the transport authority of one region, possessed the counter signature of the transport authority of another region, the objection against the validity of the permit on the ground that before making the counter signature the transport authority of another region had not followed the procedure required under the Act could not be urged for the first time if the same was not raised before the authorities under the Act. AIR 1963 Mys 329, Rel. on. (1964) 1 Mys L J 318 : AIR 1965 Mys 41 (43, 44) (Pt B) (Pr 4) (DB).

——**Art. 226 — Duty of each party to place before Court basic facts in support of his case—Contention based upon facts not stated in affidavit cannot be allowed to be raised at the stage of argument — Further opportunity to state facts not to be given.**

In a petition under Art. 226, the contesting respondents cannot be allowed to raise a contention at the time of arguments, that the petition should be dismissed without going into the merits, where the basic facts relied upon in support of that contention have not been placed before Court by way of affidavit or other acceptable documentary evidence.

A party, who knew the facts and should have stated them in support of his case in the first instance, is not entitled to the indulgence of being given at that stage another opportunity to state facts which become or appear to be necessary in support of a contention raised by his counsel during the course of his arguments. (1963) 1 Mys L J 477 : A I R 1964 Mys 6 (8) (Pt A) (Pr 8) (DB).

——**Arts. 226, 227 — New plea — Plea not raised before Election Tribunal.**

Where a contention is not urged before the election tribunal and the contesting party had therefore no opportunity of meeting it, the petitioner cannot properly be allowed to canvass the contention in a petition either under Art 226 or Art. 227 of the Constition. 35 Mys L J 152 : ILR (1957) Mys 53 : A I R 1957 Mys 76 (77, 78) (Pt C) (Pr 4) (DB).

——Art. 226 — New point—(Tenancy Laws — Berar Regulation of Agricultural Leases Act (24 of 1951), Ss. 8 and 19).

Where in proceedings under the Berar Regulation of Agricultural Leases Act (24 of 1951), the Deputy Commissioner confirms the order of the Sub-Divisional Officer disallowing costs and no point as to costs is taken before the Board of Revenue in appeal such a point cannot be allowed to be raised for the first time in the High Court in a writ petition. 1955 Nag L J 735 : ILR (1956) Nag 60 : AIR 1956 Nag 174 (175) (Pt A) (Pr 8) (DB).

——Art. 226 — Ground not taken in petition.

It must be distinctly understood by litigants that the High Court has to examine the case only from the point of view of the challenge raised in the petition, and if no such challenge is raised, the High Court will not go out of its way to fish into the record to find out if there is or there is not some evidence in support of a particular finding. 1953 Nag L J 385 : ILR (1953) Nag 834 : AIR 1953 Nag 250 (250) (Pr 4) (DB).

——Art. 226 — New point — Reference under S. 10, Industrial Disputes Act (1947) — Point that employee was governed by particular Rules not raised before

Tribunal — Cannot be raised in writ proceedings — Industrial Disputes Act (1947), S. 10. ILR (1965) Cut 839 : (1965) 2 Lab L J 376.

——Art. 226 — Certiorari — New plea — Cannot be allowed for the first time. 68 Punj L R 237 : 1966 Cur L J 1 (Punj).

——Art. 226 — Proceedings under — Scope of — Point not raised in lower Court — If can be raised on writ side.

Writ proceedings cannot be equated with appeals and, therefore, cannot be considered to amount to a re-hearing. A point not properly raised and canvassed before the lower tribunal can scarcely be permitted to be raised for the first time on writ side, particularly when it requires going into facts and circumstances of the controversy. (1963) 65 Pun L R 157 : (1962) 5 Fac L R 405 : (1963) 1 Lab L J 231.

——Art. 226 — Plea not taken before tribunal — (Industrial Disputes Act (1947), S. 10 (1)).

It is open to a bank to raise before the Industrial Tribunal the plea that the dismissal of its employees was in accordance with the principles laid down in the Sastry Award and, as such, it cannot be raised in a writ petition in the High Court. (1957-58) 13 F J R 425 : (1958) 2 Lab L J 107 : AIR 1958 Punj 14 (15) (Pt B) (Pr 7).

——Art. 226 — New plea — If open.

As a matter of practice no objection which was not raised in the subordinate tribunal can be allowed to be raised in the High Court in a motion for certiorari. ILR (1955) Trav-Co 1003 : AIR 1956 Trav-Co 174 (176) (Pt C) (Pr 11) (DB).

——Art. 226 — New point.

Point not raised either in petition, affidavit or other papers filed — It cannot be allowed to be taken. ILR (1953) Trav-Co 173 : AIR 1953 Trav-Co 296 (297, 298) (Pt B) (Pr 4).

——Art. 226 — New plea — Cannot be allowed.

In a writ proceeding challenging the order of the Labour Court passed on an application under S. 33-C (2), Industrial Disputes Act points which only an appellate Court can go into cannot be allowed to be raised. So also points which are not raised before the Labour Court cannot be allowed to be raised for the first time. AIR 1964 Tripura 32 (34) (Pt A) (Prs 8, 9).

98 (g) (i). Point not taken in grounds.

●——Art. 226—Writ Petition—Necessity to adhere to allegations in petition or counter-affidavits - Central Provinces and Berar Municipalities Act (2 of 1922), S. 38 — City of Jabalpur Corporation Act (M. P. Act 3 of 1950), S. 81 — Land transferred to Municipality by C. P. State Government — Power of successor State Government of M. P to resume.

Save in the exceptional cases, parties to a Writ Petition should be held strictly to their pleadings and if owing to discovery of new matter or grounds, there is need to add to or to modify the allegations either in the petition in or in the counter affidavit, the Court should insist on formal a nendments being effected, for this would enable each party to state its case with precision and definiteness and the other side would have a proper opportunity to know this case and meet it with appropriate defences. Where on the terms of the conveyance there was a grant by the Government of Central Provinces to a Corporation it is open to the successor Government (the State of Madhya Pradesh) to resume the grant under S. 38 (2) of the C. P. Municipalities Act, 1922. Having accepted the grant from the State Government the Corporation was estopped from contending that the land of which it continued in possession under that grant was not one by the State Government or that the State Government had not the authority to make the grant. The State Government could validly issue a notification under S. 81 of the City of Jabalpur Corporation Act (Madhya Pradesh Act, 3 of 1950), which repealed the Central Provinces and Berar Municipalities Act, 1922 divesting the Corporation of a strip of land in its possession under a grant by the predecessor State, Government of the Central Provinces. The Municipal Corporation v. The State of Madhya Pradesh, (1965) 2 S C J 197 : (1963) 2 S C R 135 : 1966 Jab L J 536: AIR 1966 SC 837 (840, 841) (Prs 7, 9, 10)

●——Art. 226 — Writ petition — Procedure — Plea not raised in petition or in the affidavit in its support but specifically taken up in affidavit-in-rejoinder — Respondent having full notice of it — Rejection of petition by High Court on the ground that the plea was raised for the first time at time of argument — Order held erroneous ILR (1962) Mad 449, Reversed Sri-la Sri Subramania v. State of Madras, 1965 S C D 918 : (1965) 2 S C J 711 : (1965) 2 Andh W R (SC) 167 : (1965) 2 Mad L J (SC) 167 : AIR 1965 S C 1578 (1582) (Pt B) (Pr 17).

● ——Arts. 226, 133 — New plea - Plea not raised by appellant in his petition under Art. 226 not allowed to be raised for first time in appeal. Associated Cement Co. v. P. D. Vyas, 1960 S C J 1269 : (1960) 2 S C R 974 : AIR 1960 S C 665 (668, 669) (Pt C) (Pr 9).

● ——Art. 32 — New plea.

Petitioner not allowed to urge grounds which he had not taken in the petition. Tropical Insurance Co., Ltd. v. Union of India, (1955) 2 SCR 517: 1956 SCA 131 : 1956 S C J 11 : (1955) 25 Com Cas 91 : AIR 1955 S C 789 (790) (Pt A) (Pr 3).

● ——Art. 32 — Objection not raised in petition cannot be permitted to be raised in argument. Bhikaji Narain v. State of M P., 1956 S C A 1: (1955) 2 SCR 589 : (1956) 1 Mad L J (SC) 37 : AIR 1955 S C 781 (786) (Pt B) (Pr 11).

[Held Overruled on another point by AIR 1959 S C 648 in AIR 1961 Mys 3.]

——Art. 226 — Point not raised in petition cannot be raised in arguments. AIR 1965 All 356 (364) (Pt H) (Pr 26).

——Art. 226 — Procedure — New point cannot be raised for the first time. 1965 All L J 1069.

——Art. 226 — Pleadings — Petitioner has to be confined to the pleas taken by him in the writ petition. AIR 1964 All 356 (357, 358) (Pt B) (Pr 3).

● ——Art. 226 — New point.

Points not raised in the application under Art. 226 cannot be allowed to be raised for the first time at the hearing. AIR 1955 S C 789 and AIR 1956 Pat 228, Rel. on. Sri Durga Gita Vidyalaya v. State of U. P., 1962 All L J 329 : 1962 All W R (HC) 243 : ILR (1962) 1 All 737 : AIR 1962 All 187 (191) (Pt A) (Pr 14) (FB).

● ——Art. 226 — Threat to legal right of party — Held that the right to obtain grant-in-aid for the institution from education department was a right different from the right to dismiss the principal of the Institution — The two rights were independent of and separate from each other, and a threat to one right could not in law constitute a threat to another — relief in respect of grant-in-aid not asked for in petition — Ambit of petition held could not be extended. Sri Durga Gita Vidyalaya v. State of U. P., 1962 All L J 329 : 1962 All W R (HC) 243 : ILR (1962) 1 All 737 : AIR 1962 All 187 (191) (Pt D) (Pr 14) (FB).

——Art. 226—Tribunal passing orders on footing urged - Orders not outside jurisdiction—Writ quashing those orders on new grounds cannot be issued. A I R 1952 S C 319; AIR 1952 S. C 192, Rel. on. **1952 All L J 703 : 1953 All W R (HC) 150 : AIR 1953 All 117 (118) (Pr 4) (DB).**

——Art. 226 – New plea – Notice under S. 7 (1), Administration of Evacuee Property Act - Contention that notice was defective and consequently no notice was issued —Point not taken in grounds of petition—If can be raised in argument – See Administration of Evacuee Property Act (1950), S. 7 (1). **AIR 1958 All 104 (105) (Pt B) (Pr 4).**

——Art. 226—New Plea – Contentions not found among the grounds on which relief was sought in the petition and no statement made in affidavit in support of petition—Contention raised for first time in rejoinder affidavit — Contention not entertained. Acarsh Bhandary. Sales Tax Officer, 1957 All L J 654 : (1957) 8 STC 666 : 1957 All W R (HC) 692 : A I R 1957 All 475 (482) (Pt J) (Pr 40) (FB).

——Art. 226—New point—Shifting of ground in petition, will not be allowed — New point will not be allowed. **AIR 1955 N U C (All) 2718 (DB).**

——Art. 226—New plea.

It is not open to a petitioner under Art. 226 to advance a new plea for first time at the hearing of the petition. He should be confined to the objections put forward in the petition and cannot be permitted to travel beyond them. (1958) 2 An W R 598 : I L R (1958) Andh Pra 701 : AIR 1958 Andh Pra 697 (700) (Pt A) (Pr 5) (DB).

——Art. 226—No specific allegation in petition that there was no notification delegating the power under S. 3 of the Foreigners Act (1948) to the Superintendent of Police by the State Government — In the absence of a clear averment in the petition challenging the factum of delegation, it cannot be assumed that no such notification exists and High Court will not ask the respondents to prove the existence of such a notification. ILR (1963) 15 Assam 279 : AIR 1963 Assam 105 (106) (Pt A) (Pr 4) (DB).

——Art. 226—Petitioner cannot be allowed to depart from pleadings.

No party can be allowed to depart from the pleadings and to subsequently urge that the facts were not such as were mentioned in the petition. **A I R 1956 Bhopal 43 (45) (Pt B) (Pr 8).**

——Art. 226 - New point.

A point not taken in the writ application and of which the respondent had no opportunity to meet with cannot be allowed to be raised at the time of arguments. **57 Bom L R 1088 : AIR 1956 Bom 368 (372) (Pt E) (Pr 21) (DB).**

——Art. 226—Ground of objection not specifically set out in petition - Point cannot be allowed to be agitated **AIR 1965 Cal 380 (385 to 387) (Pt E) (Pr 10).**

——Art. 226—Question of fact not disclosed in petition —Point based on such question of fact cannot be allowed to be raised at hearing of application. (1961) 3 Fac L R 391 : AIR 1962 Cal 3 (4, 5) (Pt A) (Pr 3).

——Art. 226—New plea.

Held, that it was not for petitioner under Art. 226 to make out a new case before the High Court and that too, in an affidavit filed at a late stage which the respondents were not bound to controvert. 1960 Ker L J 725 : 1960 Ker L T 636 : AIR 1960 Ker 378 (379) (Pt B) (Pr 3).

——Art. 226—Point not taken in petition but based on statement in return cannot be allowed.

In regard to applications for prerogative writs, the settled practice of English and American Courts is that no ground shall be relied upon or relief sought at the hearing of the motion except the grounds and relief set out in the application and a writ would be refused where the case tendered by the petition is radically different from that set up upon argument. The practice being one which only carries out the object with which a copy of the application for the issue of a writ is served on the opponent and he is called upon to show cause in respect of the grounds stated in the application, must be adopted as regards applications under Art. 226 also. The applicant cannot be permitted to argue and raise objection on the basis of an incidental statement in the return. **1953 Cr L J 1409 : AIR 1953 M B 236 (240) (Pt D) (Pr 12) (DB).**

——Art 226—Plea not raised in petition cannot be urged in the Court.

The Municipal Committee resolved to lease out plots to respondents. The petitioner challenged it before the High Court on the ground that the Committee could lease out only by public auction. The plea was not raised specifically in the petition.

Held, that the petitioners having failed to raise a specific plea were not entitled to challenge the resolution on that ground. **1962 M P L J (Notes) 219.**

——Art. 226—New plea.

Ground not taken in the petition and which was not prima facie substantial, was not allowed to be raised. **1962 Jab L J 408 : 1959 M P L J 1070.**

——Art. 226—New plea.

A new plea of fact which was not taken in the petition cannot be raised at the hearing of the petition. **1961 M P L J 1011 : 1961 M P C 734 : 1961 Jab L J 1327.**

——Art. 226—New plea.

The petitioner will not be allowed to raise a ground for relief which he has not stated in the petition, during the course of the hearing. **1959 M P C 597 : 1960 Jab L J 181 : 1959 M P L J 534.**

——Art. 226—Writ application — Point not taken in application cannot be allowed to be raised—Practice — Writ application. **1965 B L J R 924.**

——Art. 226 – New plea—Plea as to want of publication of Regulations not raised in original application —Plea raised in supplementary affidavit after respondent made return to rule nisi—Respondent not having opportunity to meet it, plea cannot be entertained at stage of argument. **1965 B L J R 513.**

[Reversed in AIR 1966 S C 707].

——Art. 226—Procedure — New point — Only vires of action under S. 46 (1) (2) of Income-tax Act (1922) attacked in petition — Vires of the section itself not challenged—Vires of the section cannot be allowed to be challenged during hearing – AIR 1951 S C 41 Foll. I L R (1965) 2 Punj 21 : (1965) 2 I T J 50 : AIR 1965 Punj 333 (335, 336) (Pt C) (Pr 8) (DB).

——Art. 226—Procedure — New point — Point not taken in petition cannot be taken at the time of arguments 67 Pun L R 572 : AIR 1965 Punj 307 (305) (Pt B) (Pr 8).

——Art. 226 – New point – Plea neither raised in writ petition nor even in replication cannot be allowed to be raised. 1965 Cur L J 3 : 67 Pun L R 144 : I L R (1965) 1 Punj 358 : AIR 1965 Punj 217 (219, 220) (Pt C) (Pr 14) (DB).

——Art. 226—Practice— Party not allowed to set up new case.

It is the general principle particularly in the matter of writ petitions under Article 226 of the Constitution

that no party should be allowed to depart from his pleadings and set up a new case. 1965 Cur L J 810 : 68 Pun L R 93.

——Art. 226 – New plea — Proceedings under East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) – Plea that repartition had infringed the provisions of para. 2 of the scheme not raised in writ petition Petitioners held could not be permitted to raise it for the first time at the time of arguments especially when questions of fact were involved therein. (1965) 67 Pun L R 276.

——Art. 226 –Writ petition—Practice—Question not raised in petition cannot be permitted to be raised in course of argument. 65 Pun L R 754 : I L R (1963) 2 Punj 773 : A I R 1964 Punj 90 (99) (Pt H) (Pr 14) (DB).

——Arts. 226 and 227 — Notice under S. 210 of Income-tax Act (1961) to pay advance tax by 1-3-1963— Petitioner raised objections regarding date before Income-tax authorities — Authorities though found the objection incorrect, yet changed the date to avoid unnecessary controversy—Petitioner challenging the power of changing date—Objection not taken in writ petition but later on referred to in replication filed by petitioner — High Court will not interfere on this ground in writ proceedings. (1964) 66 Pun L R 972 : (1964) 2 I T J 624.

——Art. 226 –New point — Point not raised in petition cannot be allowed to be raised at stage of argument. 62 Punj L R 218 : A I R 1960 Punj 387 (387) (Pt B) (Pr 3).

——Art. 226 –New point.

A new point when not raised in the writ petition cannot be permitted to be urged at the time of hearing. A I R 1960 Punj 58 (61, 62) (Pt D) (Pr 5).

——Art. 226—New case.

A question that has not been made a ground in support of a petition under Art. 226 cannot be permitted to be taken at the stage of arguments. (1959) 35 I T R 584 (Punj).

——Art. 226 — Ground not taken in petition cannot be allowed to be raised at stage of arguments. 1962 Raj L W 197 : I L R (1961) 11 Raj 1214.

——Art. 226—Procedure—New grounds—Laches.

Where the ground that the petition suffered from laches has not been taken by the opponent State in their return, ordinarily the Court would not be inclined to permit that new ground to be taken. 9 Sau L R 62 : A I R 1956 Sau 14 (16) (Pt A) (Pr 2) (DB).

——Art. 226 — Application for writ — Admissibility of additional affidavits raising new grounds—(Civil P. C. (1908), O. 19, R. 1).

Additional affidavits raising new grounds to sustain a prayer for relief in an application for a writ are permitted in England. Order 19, Civil P. C. pertaining to trial of original suits no doubt does not apply as such to the trial of original petitions for writs in the High Court but there is no reason why the salutary provisions contained therein except as regards the cross-examination of deponents should not be followed in the enquiries in the High Court connected with petitions for writ. A I R 1956 Trav-Co 85 (41) (Pt F) (Pr 25).

——Art. 226 — Amendment by introducing new grounds.

No doubt, Cl. 2 of R. 11 of the Rules framed by the Travancore-Cochin High Court to regulate proceedings under Art. 226 the Constitution gives a discretion to the Court to permit an application filed under that section to be amended under justifiable circumstances. But that provision has to be read and understood in the light of the provision contained in Cl. 1 of R. 11. A relaxation of the rigour of Cl. 1 of R. 11 by permitting the amendment as contemplated by Cl. (2) can be thought of only under very exceptional circumstances of a compelling nature and any move in that direction by a party who has been indulging in obstructive and delaying tactics throughout with the least good faith on his part, has to be sternly discountenanced. 1954 Ker L T 278 : I L R (1954) Trav Co 189 : A I R 1954 Trav-Co 291 (297) (Pt D) (Pr 10) (DB).

——Art. 226—New case.

Parties to proceedings under Art. 226 should be confined to matters mentioned in the affidavits as constituting the scope of the proceedings. I L R (1952) Trav Co 960 : A I R 1953 Trav-Co 146 (154) (Pt C) (Pr 18) (DB).

98 (g) (ii). Point raised during argument.

——Art. 226—New point.

Where a ground is not disclosed in the petition under Art. 226 the High Court will not allow it to be raised for the first time at the late stage of arguments unless the opposite party is given an opportunity of filing a further counter affidavit to meet that ground. 1953 All W R (H C) 474 : 1953 Cri L J 1855 : 1954 All L J 673 : A I R 1955 All 12 (19) (Pt I) (Pr 29) (DB).

[Overruled on another point in A I R 1961 S C 14.]

——Art. 226—New point—Point not taken in petition and not urged during hearing of rule — Point discovered by petitioner in course of argument — Point, a jurisdictional one — Opposite party not inconvenienced nor seeking adjournment to consider the new point — The point was allowed to be raised. 70 Cal W N 280 : (1965) 2 Com L J 152 : A I R 1966 Cal 151 (165) (Pt L) (Pr 33).

——Art. 226—New point.

In the case of high prerogative writs new matters cannot be allowed to be introduced at the hearing. I L R (1955) 1 Cal 401 : 57 Cal W N 397 : A I R 1953 Cal 548 (558) (Pt I) (Pr 40).

——Art. 226 — New plea — Quo warranto — New grounds at time of argument—Permissibility.

Where the petition for a writ of quo warranto does not mention certain grounds and hence the respondents have no opportunity to meet them in their return, a last minute attempt to raise these new grounds for the first time at the time of argument cannot ordinarily be permitted. I L R (1957) Madh Pra 188 : 1962 M P L J (Notes) 5 : 1957 M P C 177 : 1957 Jab L J 170 : A I R 1957 Madh Pra 60 (63) (Pt C) (Pr 25).

——Art. 226 — New plea — Application under, for issue of a writ of prohibition against Hindu Religious Endowments Board, Madras, prohibiting it from proceeding to frame a scheme for administration of Shirur mutt.

Objection that the Mutt in question is not really a public religious institution within the meaning of S. 1 (2) of Madras Hindu Religious and Charitable Endowments Act, 1951 raised for the first time in course of arguments before High Court — Objection, held could not be entertained at such late stage in absence of evidence on the point. 1952 Mad W N 299 : 1952-1 Mad L J 557 : A I R 1952 Mad 613 (631) (Pt F) (Pr 25) (DB).

——Art. 226 — New plea, where towards the end of the arguments, an attempt was made to allege want of good faith against Government, the Court did not allow this belated plea which was raised after

knowing the views of the Court on a part of the case. (1957) M P L J 1 (Nag).

——Art. 226 — New point of fact — Writ application filed long ago — Date of hearing fixed from time to time — New point of fact raised at date of final hearing, held could not be entertained, specially when affidavit in support of it did not disclose clearly when the applicants became aware of the information which was the basis ot the new ground. 19 Cut L T 103 : 1953 Cri L J 1041 : A I R 1953 Orissa 153 (154) (Pt A) (Pr 2) (DB).

——Art. 226—New plea at hearing—If open.

Where the points have not been raised in the application under Art. 226 they cannot be permitted to be raised for the first time at the hearing when the State had no opportunity to meet them. 1956 Pat L R 110 : A I R 1956 Pat 228 (231) (Pt C) (Pr 6) (DB).

——Art. 226—Procedure—Complaints against President and member to Government — Removal by Government — Objection that there was no proposal before Government—Objection could not be raised at the hearing as it was not raised in petition, being based on question of fact. See Municipalities—Punjab Municipal Act (3 of 1911), S. 16. I L R (1954) Patiala 265 : A I R 1954 Pepsu 186 (DB).

——Art. 226—New point by State—Propriety of.

In writ cases it is the duty of the State to put the correct position before the Court and then support the order that is challenged by the writ petition. The Court will not allow the State to take a new plea at the stage of argument, when the new point is inconsistent with one of the paras of its written statements. I L R (1958) Punj 36.

98 (g) (iii). Point depending on facts.

■——Art. 226 — New case — Petition challenging validity or order terminating service—Ground that it was dismissal by way of punishment not raised in lower Court or in petition — Being question of fact, it could not be raised in argument.

Where in a petition under Art. 226, an employee of a District Board challenged the validity of the order terminating his services on the ground firstly, that the Board had no power to terminate his employment and secondly that it was not justified in terminating the employment and it was never contended that the order terminating the employment was one in reality of the nature of dismissal as punishment, and the form used in the resolution of the Board was merely to camouflage the real object of the Board, and such a plea was also not raised in the lower Court but was sought to be raised at the time of argument.

Held, that averment in the petition that the Board had acted capriciously and without any justification does not amount to a plea that the order was intended to be one of dismissal though in form one of determination of employment. Held, further that as the question raised was one primarily of fact ; and was never raised, nor explored in the lower Court on proper pleadings, it would be taking the Board by surprise to allow the petitioner to make out this new case at this stage. The petitioner was therefore, not allowed to raise the question. S. R. Tewari v. District Board, Agra, (1964) 3 S C R 55 : 1964 All L J 944 : 1964 S C D 314 : ILR (1963) 2 All 883 : (1964) 2 S C J 300 : (1964) 1 Lab L J 1 : AIR 1964 S C 1680 (1689) (Pt D) (Pr 14).

■——Art. 32 — New plea — Plea depending upon elucidation of new facts — When to be allowed.

Ordinarily, when a question raised depends upon an elucidation of further facts not disclosed in the statements already filed, the Supreme Court in a petition under Art. 32 would be very reluctant to allow a party to raise such a plea at the time of arguments. But where the validity of the impugned Act (here Madras Act 32 of 1955) depends upon the application of Art. 31-A of the Constitution the Supreme Court would not be justified in not allowing the respondents to raise the contention that the petitioner's sthanam is an 'estate' within the meaning of Art. 31-A of the Constitution and therefore the Act extinguishing or modifying the rights pertaining to the said sthanam cannot be questioned on the ground that it infringes Arts. 14, 19 and 31 of the Constitution even though there is no sufficient material on the record. Kochuni v. States of Madras and Kerala, 1960 Ker L J 1077 : 1960 Ker L T (S C) 31 : (1960) 2 S C A 412 : (1960) 3 S C R 887 : (1961) 2 S C J 443 : AIR 1960 S C 1080 (1085, 1086) (Pt B) (Pr 14).

■——Art. 32 — New point.

It would not be right to permit the petitioner to raise question, which depends on facts which were not mentioned in the petition but were put forward in a rejoinder to which the respondents had no opportunity to reply. M. S. M. Sharma v. Sri Krishna Sinha, (1959) 2 M L J (S C) 125 : (1959) 2 Andh W R (S C) 125 : 1959 Mad L J (Cr) 660 : 1959 S C J 925 : (1959) Supp (1) S C R 806 : AIR 1959 S C 395 (412) (Pt I) (Pr 33).

——Art. 226 — "New plea as to question of fact cannot be raised"—AIR 1955 N U C (All) 1412.

——Art. 226 — New plea as to questions of fact.

The question whether there existed any Magisterial authority for detaining the applicant in custody after a certain date or not is a question of fact which cannot be permitted to be raised for the first time in argument. The applicant should have alleged it in the affidavit and given an opportunity to the opposite party to contest the allegation. ILR (1955) 1 All 355 : 1955 Cri L J 623 : AIR 1955 All 193 (198) (Pt F) (Pr 4) (DB).

——Art. 226 — New plea — Plea involving investigation into facts not already on record—Plea cannot be raised for the first time at the hearing. AIR 1963 Andh Pra 292 (295) (Pt B) (Pr 18) (DB).

——Art. 226 — New point — Question dependent on facts — Admissibility.

The determination of the question whether the Union constitutes an industry depends upon facts and those facts cannot, for the first time, be ascertained by the High Court. (1958) 1 Lab L J 17 : ILR (1958) Andh-Pra 183.

——Art. 226 — Question of fact.

Where the contention raised by the applicant for writ was one which was not raised before the lower authorities and which was one of fact requiring evidence for its disposal :

Held that the contention could not be allowed to be raised. (1957) 8 S T C 445 : 59 Bom L R 851 : 1957 Nag L J 369 : I L R (1958) Bom 961.

——Art. 226 — New point — Point not put forth in petition — If can be raised.

Ordinarily parties are not allowed to travel beyond what they have said in the petition or return, as the case may be, but where all the facts are clear on the record a party can raise a contention which is based on facts which are already on record though that contention is not expressly set up in the petition or return. 60 Bom L R 1446 : ILR (1959) Bom 592 : 1958 Nag L J 457 : AIR 1958 Bom 498 (505, 506) (Pt E) (Pr 37) (DB).

——Art. 226 — New plea at hearing.

The applicants for Prerogative Writs must come to Court with all the materials or grounds on which they want to rely in support of their applications. It would be extremely undesirable and in fact it would lead to a most unsatisfactory state of affairs if petitioners were allowed to raise new grounds involving new facts by supplementary affidavits put in at the hearing. 56 Cal W N 137 : AIR 1952 Cal 100 (101) (Pt A) (Prs 15, 16).

——Art. 226 — New grounds—Application against order of Labour Court — Grounds not taken before such Court and involving investigation of facts cannot be urged before High Court.

In a reference relating to the dismissal of a workman the management took up the plea that the Labour Court had no jurisdiction on the ground that the dispute in question was an individual dispute and the sponsoring of the cause of the workman by the general Union of which the workman was not a member, did not convert such dispute into an industrial dispute. The Union without pleading in the alternative that the dispute was an industrial dispute because it had been supported by a substantial body of workmen of the establishment in which the workman belonged, fought the case merely on the basis of their right to espouse the cause of the workman. Ultimately the Labour Court rejecting the claim of the Union adjudicated that the dispute in question was an individual dispute and not an industrial dispute.

Held, that the Union could not be allowed to raise that alternative plea for the first time in the writ application against the order of the Labour Court. No doubt the workman had the right to plead that there was the support by a substantial body of the workmen of the management and hence it was an industrial dispute. But when the management took up the position that it was not an industrial dispute, there was a duty on the part of the Union which was more or less taking defence to that plea to raise all grounds which would sustain its stand that it was not an individual dispute but really an industrial dispute.

It was competent for the Union to take before the Labour Court besides the plea taken by them in support of their contention that the dispute was an industrial dispute, an alternative plea that support had been given by a substantial body of workers of the establishment to which the dismissed workman belonged. Had they raised that plea, the facts as to how many employees of the management made the request to the Union concerned to take up the cause of the workman and whether they constituted a considerable body of the workmen of the management would have been investigated. But as the Union did not choose to raise that plea before the Labour Court, it would not be allowed to raise it for the first time in the writ petition. AIR 1965 Ker 171 (173, 174) (Pt B) (Prs 21, 22, 23).

——Art. 226—Preliminary objection as to maintainability—Dependent on pleading and investigation — Not taken by way of counter-affidavit — Objection not maintainable.

Where the preliminary objection as to the maintainability of the petition under Art. 226 by a Secretary of an Association of certain employers on the ground that he was not the personally aggrieved party, had not been taken by way of counter-affidavit and hence the petitioner had no opportunity to plead, whether or not under the rules and regulations of the Association, the petitioner had right to carry on a civil proceeding on behalf of the employers whom the Association represented and who were undoubtedly aggrieved parties and has a locus standi, the preliminary objection, being dependent on matters which required pleading and investigation, was not maintainable. (1960) 1 Lab L J 780 : 1960 Ker L T 563 : 1960 Ker L J 491.

——Art. 226 — New plea—Plea not taken in specific terms in counter-affidavit but necessary averments of facts set out — It can be urged. 1960 Ker L J 192 ; 1960 Ker L T 243.

——Art. 226 — Sales Tax — Question whether turnover exceeds taxable limit—Question of fact—Cannot be allowed for first time in writ petition. See Sales Tax — C. P. and Berar Sales Tax Act (21 of 1947), S. 11. AIR 1964 Madh Pra 161 (DB).

——Art. 226—New plea — Point involving question of fact.

It is not open to the petitioner to raise a new contention in proceedings under Art. 226 of the Constitution, when the contention involves investigation of facts. 70 Mad L W 895 ; (1957-58) 13 F J R 159 : (1957) 2 Mad L J 438 ; (1958) 1 Lab L J 74 : AIR 1958 Mad 139 (141) (Pt B) (Pr 15).

——Art. 226 — New ground — Petition against order of Certificate Officer regarding arrest of managing director of incorporated company—Question whether company was incorporated and whether petitioner was its managing director was not raised before Certificate officer—Question being one of fact cannot be raised during hearing of writ petition. 1965 B L J R 341.

——Art. 226—New plea.

The question as to the nature of the building contract is a mixed question of fact and law and should have been agitated by the petitioner before the Superintendent of Sales Tax and before the appellate and revisional authorities constituted under the machinery of the Bihar Sales Tax Act. Not having produced the contracts before the Superintendent of Sales Tax, it is not open now to the petitioner to say that the High Court should enter into the question and decide whether the petitioner is liable to pay sales tax under the provisions of the Bihar Sales Tax Act or not. AIR 1958 S C 560, Foll. 1960 B L J R 11.

——Art. 226—New plea — Point involving question of fact—(Houses and Rents—Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 6 (2)).

The question whether S. 6 (2) of Bihar Act (3 of 1947) rendered the letting out of the building illegal is essentially one of fact. Where the point is not raised either before the Controller or the Appellate authorities under the Act, the point cannot be permitted to be raised in the High Court. Misc. J. C. No. 369 of 1952, dated 7-1-1954 (Pat), Foll. (1921) 2 K B D 716, Ref. to. 1956 Pat L R 493 : AIR 1957 Pat 717 (720) (Pt B) (Pr 15) (DB).

——Art. 226 — Additional ground involving facts not on record — Cannot be allowed to be raised at hearing except by way of amendment.

No additional ground can be allowed to be urged in a writ petition at its hearing particularly if it involves facts which are not patent on the existing record except by way of amendment. The court cannot be asked to look for additional grounds in miscellaneous applications filed for ancillary purposes. 1965 Pun L R (Sup) 703.

——Art. 226 — New point requiring evidence. See Tenancy Laws — Pepsu Tenancy and Agricultural Lands Act (1955), S. 32 (P) (1). (1963) 65 Pun L R 559.

——Art. 226 — Question involving investigation of matters of fact — Cannot be agitated for the first time in writ petition. AIR 1962 Punj 523 (524) (Pt B) (Pr 6).

——Art. 226 — New plea — Question whether a person is agent of assessee — Mixed question of law and fact — (Income-tax Act (1922), S. 66).

A new plea as to whether a person sent by the assessee only for the specific purpose of producing the account books before the Income-tax Officer becomes his agent entitled to accept notice of the adjourned date raises a mixed question of law and fact and cannot be entertained in writ proceedings in absence of evidence. AIR 1957 Tripura 15 (17) (Pt B) (Pr 18).

98 (g) (iv). Prejudice to opposite party.

——Art. 226—New point in rejoinder affidavit.

In a writ petition, the affidavit must contain all the material facts, otherwise the Courts can disregard facts not contained therein and in any case can accept whatever may be put forward by the respondents in their counter affidavit A rejoinder affidavit is meant to meet any new point raised in the counter affidavit. and not to make good any omission in the affidavit originally filed If the petitioner wants to use the new assertions as his evidence, it is necessary for him to seek permission of the Court to file a supplementary affidavit so that the respondents may have an opportunity to meet the new case of the petitioner. 1959 All W R (HC) 644 : 1959 All L J 789.

——Art. 226 — New point will not be allowed for first time at late stage of arguments unless opposite party is given opportunity of filing further counter affidavit. 1954 All L J 673 : AIR 1955 All 12 (19) (Pt I) (Pr 29) (DB).

——Art. 226 — Foreigners Act (1948), S. 3—Citizenship Act (1955), Ss 5, 10 and 17 — Person holding certificate of citizenship — Service of notice under S. 3 Foreigners Act — Validity — Writ petition to quash notice — State claiming that certificate was obtained by misrepresentation and fraud or was not granted by proper authority — If valid defence.

Where the petitioner under Art. 226 who was served with notice to quit India under S. 3, Foreigners Act, claimed on the basis of a certificate of citizenship that he was a citizen of India and as such the notice under S 3 was invalid it is not open to the State to contend that the certificate had been obtained by misrepresentation and fraud, because it was open to it to get the certificate cancelled under S. 10, Citizenship Act or to prosecute the petitioner under S. 17 of that Act. But so long as the certificate is in force the petitioner cannot be treated to be a foreigner and the notice under S. 3 of the Foreigners Act will be invalid.

Further when the certificate is in the form prescribed by rules and it purports to be granted by Sub-Deputy Collector in the exercise of powers under S. 5, Citizenship Act, it is not open to the State to contend at the hearing of the petition that it has not been granted by the proper authority. The official act will be deemed to have been done in accordance with the law and if the point had been taken by the State in the counter-affidavit that it is not a certificate granted by the proper authority, the petitioner might have been in a position to file certain notification authorising the Sub-Deputy Collector to entertain such an application. But in the absence of any such point prima facie the certificate has to be accepted and the order asking the petitioner to quit India is illegal. AIR 1963 Assam 55 (55, 56) (Prs 2, 3) (DB).

——Art. 226 —New grounds.

To allow the petitioners to raise a fresh point, specially one of fact, for the first time during the arguments would be to cause a great prejudice to the respondent, who will not have any opportunity to meet out the latest version either by producing the original documents or by filing an affidavit. Therefore, any facts not clearly brought out in the petition or in the affidavit accompanying thereto, should not be allowed to be raised subsequently. AIR 1956 Bhopal 43 (47) (Pt F) (Pr 15).

——Art. 226 — Practice — Plea not taken in counter affidavit — Petitioner not having opportunity to meet it — It cannot be raised at the time of hearing. 1965 Ker L J 1161 : AIR 1966 Ker 100 (103) (Pt B) (Pr 14).

——Art. 226 — New point taken in supplementary affidavit.

After the filing of the counter-affidavits on behalf of the respondents no new ground of attack can be made by the petitioner by merely mentioning a new fact in a supplementary affidavit without an amendment of the original application 1963 B L J R 254 : AIR 1963 Pat 201 (203) (Pt A) (Pr 3) (DB).

——Art. 226 — New plea — New ground raised in rejoinder — Sustainability.

A ground not taken in the petition for writ cannot be raised for the first time in the rejoinder to the counter affidavit filed by the opposite party. AIR 1957 Pat 676 (678) (Pt C) (Pr 5) (DB).

——Art. 226 — Writ petition under — Practice — Objection not contained in the return — Cannot be allowed to be raised before the Court. ILR (1964) 2 Punj 150 : AIR 1964 Punj 533 (539) (Pt B) (Pr 13) (DB).

——Art. 226 — Scope — Petition under S. 66 (4), Income-tax Act read with Arts. 226 and 227 of the Constitution—New case sought to be made out during arguments — No notice to respondents Competency. See Income-tax Act (1922), S. 66 (4). AIR 1957 Punj 284 (DB).

98 (g) (v). Point abandoned or not pressed.

——Art. 226 — New point.

Where the Labour Appellate Tribunal has omitted to consider a point which arises on the admitted and proved facts of the case and has thus failed to exercise its jurisdiction of deciding the appeal on merits, the petitioner under Art. 226 is entitled to raise that point before the High Court and his omission to urge it before the Labour Appellate Tribunal should not be a bar to his taking the point in the petition under Art. 226. AIR 1956 All 401 (402) (Pt B) (Pr 6).

——Art. 226 —Writ petition against decision of Industrial Tribunal—Contention though raised not pressed before Tribunal — Same cannot be raised again in writ petition. ILR (1963) 1 Ker 673 : AIR 1965 Ker 112 (113) (Pt A) (Pr 5).

——Art. 226 —Certiorari—Bias—Enquiry against railway servant — Enquiry by officer who conducted investigation regarding alleged charge — Servant, though aware of his right to object to enquiry being conducted by the officer, not objecting — Held, he could not be allowed to contend in writ, that enquiry was biased — Disciplinary authority could consider whether prejudice had been caused or not. AIR 1957 S C 425, Foll. Conduct and Discipline Rules for Railway Servants, R. 1713. 1965 Ker L T 554 : I L R (1965) 1 Ker 536.

——Art. 226 — Writ proceedings — High Court will not upset award of tribunal on point not argued before it and therefore it had no occasion to decide the same.

Where the point raised in writ proceedings, regarding validity of an industrial dispute on the ground of competence on the part of the Union to take up the cause of the aggrieved workman, was though

raised before the Tribunal also, but neither the evidence was let in, nor argument was addressed on the question :

Held, that the High Court would not upset, in writ proceedings, the award of the Tribunal on a point not argued before it and, therefore, it had no occasion to decide the same. (1964) 2 Lab L J 164 : AIR 1965 Mad 263 (264) (Pt B) (Pr 2).

——Art. 226 — Point raised in lower Court — Party, however, failing to put forward relevant argument in its support — Party is not barred from urging that argument in writ petition.

Where the requisite plea has been raised in the lower Court, and the omission relates only to the failure to put forward a relevant argument in support of it, there will be no bar to prevent the party from urging that argument in support of the plea, before the High Court wherein he has sought the remedy by way of writ. No further investigation into the facts is involved, because the facts are apparent from the record itself and have not been disputed. Since the appellant had challenged the jurisdiction of the lower Court before it, it is open to him to support that contention in the High Court in certiorari proceedings, by a ground of law applicable to the admitted facts, even though he has not relied on that ground before the lower Court AIR 1927 Mad 130, Applied. (1964) 1 Lab L J 493 : (1965) 10 Fac L R 120 : ILR (1964) 1 Mad 819 : (1965) 1 Mad L J 100 : 78 Mad L W 120 : AIR 1965 Mad 253 (255) (Pt B) (Pr 6) (DB).

——Art. 226—Writ jurisdiction — New point—When could be allowed to be raised for the first time in such petition — Election petition — Recount of votes ordered against provision to that effect in Election Rules — Respondent, returned candidate, in Election petition not raising any objection to such order before prescribed authority — No such point raised by him in his written statement—Waiver - Election set aside on the ground of wrong counting of votes — Objection that the order of recount was illegal raised for first time in writ petition against order setting aside the election —Held, the conduct of petitioner, in the circumstances of the case, did not amount to waiver —Point, therefore, allowed to be raised. 1965 Cur L J 772: (1965) 67 Punj L R 1211.

98 (g) (vi). Point of law.

——Art. 226—New point.

If the objection relates to the constitutional invalidity of a provision of the Act and the rules and affects the petitioner's fundamental right, that objection can be raised for the first time in the High Court. 1956 All W R (HC) 643: 1956 All L J 878 : AIR 1957 All 297 (304) (Pt L) (Pr 31) (DB).

——Art. 226—New point — Grounds although not contained in the petition were allowed to be taken as they raised pure questions of law. 1956 Cri L J 1152: AIR 1956 All 589 (593) (Pt F) (Pr 10) (DB).

——Art. 226—Writ of certiorari — Question of law raised for first time before High Court.

A pure question of law affecting the rights of the petitioner and not dependent on any question of fact cannot be barred out of consideration on the ground that it is taken for the first time in a writ petition proceeding and not before the Tribunal against which the writ is sought. (1955) 2 Lab L J 1 : ILR (1956) 1 All 216 : AIR 1955 All 578 (580) (Pt E) (Pr 13) (DB).

——Art. 226—New point — Question of law.

A pure question of law, which arises on the facts proved and upon a consideration of the relevant sections of an Act and the rules even though has not been specifically raised in the petition under Art. 226, can be canvassed and dealt with by the High Court. 59 Bom L R 1088 : ILR (1958) Bom 113.

——Art. 226—New point — Question of law Industrial dispute — No objection that Tribunal had no jurisdiction.

Objection though based on pure question of law will not be allowed to be raised in an application for a writ or order in nature of certiorari, for the first time. If the objection were raised before the Tribunal, the workmen might have obtained an order from the State Government referring the particular issue to the Tribunal for adjudication. AIR 1927 Mad 130 (FB); AIR 1953 Mad 59; AIR 1957 SC 397, Rel. on. (1960) 2 Lab L J 189 (1960) 1 Fac L R 384 : ILR (1961) 2 Cal 35 : (1960-61) 18 F J R 412 : 64 C W N 950 : AIR 1961 Cal 315 : (318) (Pt B) (Pr 14) (DB).

——Arts. 226 and 14—Averment as to unreasonable classification for the purpose of impugned Act not made in affidavit filed with writ petition No opportunity to State to counter such averment—Argument on point should not be considered. 1963 Ker L J 1193 : 1964 Ker L T 47 : AIR 1964 Ker 141 (143) (Pt B) (Prs 5, 6)

——Art. 226 - Question of violation of principles of natural justice — Question not raised in petition — It cannot be allowed to be raised at the stage of argument. 1965 Jab L J 1087 : 1965 M P L J 990.

——Art. 226 — Appellate Tribunal can consider objections raised by rival claimants which were not raised in representation — Tribunal basing decision on Government orders — Validity of Government orders can be challenged in writ petition though they were not challenged before tribunal. See Motor Vehicles Act (1939), S. 47 (1). AIR 1965 Mad 79 (FB).

[Partially reversed in AIR 1966 S C 1366.]

——Arts. 226, 20 (3), 14—Practice—Appeal from decision on a writ petition — Validity of a section challenged on ground of contravention of Arts. 14 and 20 (3) of Constitution — Plea under Art. 14 neither taken before lower Court nor mentioned in grounds of appeal — Question allowed to be raised in view of importance of the matter. (1965) 1 Mad L J 465 : 1963 (2) Cri L J 636 : ILR (1964) 1 Mad 451 : A I R 1963 Mad 434 (435) (Pt D) (Pr 1) (DB).

——Art. 226 — New point — Objection purely legal going to very root of case — Point can be rightly allowed to be raised in writ proceedings. A I R 1965 Punj 267 (268) (Pt A) (Pr 4) (DB).

——Art. 226 — New plea — Plea not taken in writ petition — When can be allowed.

Where all the necessary facts have been pleaded in the writ petition, a legal plea based on those facts, though not taken in writ petition in so many words can be allowed to be raised at the hearing especially when the respondents' counsel did not contend that he was being taken by surprise by such argument but only wanted time for meeting the argument by a further supplementary written statement or otherwise. 1964 Cur L J 333 : (1964) 66 Pun L R 938.

98 (g) (vii). Point of jurisdiction.

——Art. 226 - Jurisdiction — Omission of party to raise question of.

Per Das Gupta, J. — Where an authority whether judicial or quasi-judicial, has in law no jurisdiction to make an order the omission by a party to raise before the authority the relevant facts for deciding that question cannot clothe it with jurisdiction. Pioneer Traders v. Chief Controller of Imports and Exports, Pondicherry, (1964) 1 S C J 595 : (1963) Supp (1) S C R 349 : (1963) 2 S C A 243 : A I R 1963 S C 734 (745) (Pt E) (Pr 31).

●——**Art. 226—New plea.**

In a petition under Art. 226 for a writ of certiorari to quash certain order the High Court acts rightly in allowing the petitioner to urge a plea which goes to the root of the matter, although the petitioner had submitted to the jurisdiction of the authority whose jurisdiction was being questioned by the new plea and had not taken the objection in his petition under Art. 226. A. St. Arunchalam Pillai v. M/s. Southern Roadways Ltd., **(1961) 3 S C R 764 : (1961) 1 S C J 421 : (1961) 1 Mad L J (S C) 104 : (1961) 1 Andh W R (S C) 104 : AIR 1960 S C 1191 (1194) (Pt A) (Pr 5).**

——**Art. 226 — Objection regarding lack of jurisdiction not taken before statutory authority— Whether can be taken in application under Art. 226 —:(Motor Vehicles Act (1939), S. 64 (f)).**

If a party does not raise any objection to the jurisdiction of the Chief Commissioner to hear appeals under S. 64, Motor Vehicles Act, which depends upon the allegation and proof of certain facts and there is no patent lack of jurisdiction, the party not having raised the question of jurisdiction before the Chief Commissioner, is not entitled to raise it in an application under Art. 226 of the Constitution of India. AIR 1953 Raj 193, Rel. on. **AIR 1956 Ajmer 41 (43) (Pt D) (Pr 10).**

——**Art. 226**—New contention not raising jurisdictional issue going to the root of the matter, cannot be raised for first time. **1965 All L J 1013.**

——**Art. 226 — Contention not raising question of jurisdiction or manifest error of law cannot be raised in writ petition — Income-tax Act (1961), S. 141.**

The contention that the Income tax Officer having included a sum of money for a particular assessment year, could not include the same sum for another assessment year does not raise any issue of jurisdiction or manifest error of law. The contention cannot therefore be raised upon the writ petition before High Court. (1965) 1 I T J 580 : (1965) 58 I T R 823 (All).

——**Art. 226**—Question of law or jurisdiction — If can be raised for the first time in second appeal — Position under S. 115, Civil P. C. and Art. 226 of Constitution compared. **AIR 1964 All 136 (138, 139) (Pt A) (Prs 7, 9).**

——**Art. 226** — New plea as to jurisdiction — High Court can in its discretion refuse relief if party by his conduct has disentitled himself to it — See Civil P. C. (1908), S. 100. **AIR 1960 All 573.**

——**Art. 226**—New plea as to jurisdiction in writ petition. See Co-operative Societies—Co-operative Societies Act (1912), S. 43 (2) (1). **AIR 1960 All 294 (DB).**

——**Art. 226—New plea of jurisdiction.**

Whether in any case a writ under Art. 226 should issue is a matter which always lies within the discretion of the Court. The fact that a petitioner has not raised the question of jurisdiction before the subordinate tribunal is not necessarily a bar to the objection being taken for the first time in a writ petition the question in such a case will be whether he has by his conduct precluded himself from obtaining the relief which he asks. (1941) 1 K B 608, Rel. on. **ILR (1959) 1 All 289 : AIR 1959 All 710 (711) (Prs 4, 5) (DB).**

——**Art. 226—New plea — Jurisdiction.**

No doubt the power exercised by the High Court in issuing writs is discretionary and if a person has omitted to challenge jurisdiction in an inferior tribunal, he should not be heard on that point in a writ petition. In cases in which the objection goes to the root of the matter the High Court is competent to quash the order in spite of the fact that a plea of jurisdiction was not raised at the earliest opportunity or before the tribunal. AIR 1955 All 113 and AIR 1956 Bom 530, Rel. on. **1958 All L J 271 : 1958 All W R (H C) 307 : ILR (1957) 2 All 269 : AIR 1958 All 362 (362, 363) (Pt A) (Pr 3).**

●——**Art 226** — Replacement of two out of five panchas — Objection not taken under R. 84-D of Rules under U. P. Panchayat Raj Act — Panchayati Adalat is not bound by technical rules of procedure and evidence — High Court is reluctant to interfere — Provisions of S. 49 (2), U. P. Panchayat Raj Act, do not go to the root of jurisdiction— If no objection was taken under R. 84D' to the constitution of the Bench, it cannot be raised in writ petition. See U. P. Panchayat Raj Act (26 of 1947), S. 49. **1955 Cri L J 313 : AIR 1955 All 122 (FB).**

——**Art. 226 — New point — (Evidence Act (1872), S. 115).**

When the Additional District Magistrate heard the revision against an order passed under S. 45 (3), Criminal P. C., the applicant did not challenge his jurisdiction to hear it. Held, that he could not be permitted to challenge it for the first time through an application for a writ of certiorari. If he acquiesced in the Additional District Magistrate's jurisdiction in the hope of getting a favourable decision from him, the doctrine of estoppel should be applied against him and the discretionary writ of certiorari should not be issued at his instance when he was disappointed. **1954 All W R (H C) 155 : 1954 Cri L J 879 : 1954 All L J 198 : AIR 1954 All 447 (448) (Pt B) (Pr 5) (DB).**

——**Art. 226—Objection as to jurisdiction — Raising for the first time in application under Art. 226.**

Where a party has submitted to jurisdiction, he cannot raise an objection to the exercise of the jurisdiction for the first time in an application under Art. 226 of the Constitution. **1952 All W R (H C) 178 : 1952 All L J 106 : 1952 Cri L J 900 : ILR (1953) 2 All 855 : AIR 1952 All 489 (490, 491) (Prs 7, 8) (DB).**

——**Art. 226 — New plea — Point not raised before subordinate tribunal or in petition— It can be urged at hearing.**

A plea, not at all raised at any time before a Tribunal ought, even when it relates to a question of a jurisdiction, to be raised in the petition for issue of writ itself; it will not be allowed to be raised for the first time in the argument before the High Court. (1958) 1 Andh W R 290 : 1958 Andh L T 545 : AIR 1960 Andh Pra 17 (20) (Pt C) (Pr 12).

——**Art. 226** – Motor Vehicles Act (1939), Chap. IV-A —(As amended by Act 100 of 1956) – Foundation for jurisdiction to initiate scheme — Requisite opinion — Procedure — Jurisdiction of High Court under Art. 226 — If the petitioner had not taken the point as to the invalidity of the initiation of the scheme in the petition under Art 226, the objection cannot be allowed to be raised because normally the petitioner should confine his case to the averments in the petition and should not be allowed to travel beyond them. See Motor Vehicles Act (1939) (as amended by Act 100 of 1956), Chap. IV-A. AIR 1959 Andh Pra 292.

——**Art. 226** –Certiorari — New plea — Proceedings arising out of notice under S. 3, Foreigners Act — Question of cessation of Indian citizenship raised— Question or voluntary acquisition of foreign citizenship cannot be allowed to be raised subsequently so as to oust the jurisdiction of the High Court by virtue

of S. 9, Citizenship Act. ILR (1962) 14 Assam 313 : AIR 1962 Assam 103 (106) (Pt B) (Pr 7) (DB).

——Arts. 226 and 227—New plea of—Jurisdiction.

A party who takes a chance before a Court or a Tribunal cannot later on turn round and say that the finding recorded is without jurisdiction. Before a question of jurisdiction of a Tribunal is raised on a petition under Arts. 226 and 227, objection to jurisdiction must be taken before the Tribunal whose order is being challenged. The petitioner not having done so, on the other hand, having chosen to invite a decision of the Tribunal on the question it is no more open to him to say that the decision of the Tribunal on the question of fact is without jurisdiction so far as the petition under Arts. 226 and 227 is concerned. AIR 1954 Bom 202, Rel. on. 1959 Nag L J 497 : 61 Bom L R 1671 : ILR (1960) Bom 437 : AIR 1960 Bom 219 (219, 220) (Pt A) (Pr 2) (DB).

——Arts. 226, 237—New plea—Objection to jurisdiction.

Before a question of jurisdiction of a tribunal could be raised on a petition under Arts. 226 and 227, objection to jurisdiction ought to have been taken before the Tribunal whose order was being challenged. AIR 1954 Bom 202, Foll. 61 Bom L R 148 : ILR (1959) Bom 462 : (1959) 1 Lab L J 576 : AIR 1959 Bom 538 (542) (Pt B) (Pr 8) (DB).

——Art. 226—New plea—(Income-tax Act (1922), S. 35).

Where the ground that a certain order of the Income-tax Officer is without jurisdiction, in that the error mentioned in the notice under S. 35 of the Income-tax Act is not an error at all, has not been clearly pleaded in the petition under Art. 226, this infirmity in the petition does not affect the jurisdiction of the High Court to grant relief, especially when the plea of want of jurisdiction but not the true ground in support thereof has been raised. If in fact there was no error committed which the Income-tax Officer sought to rectify, the High Court will not be justified in refusing to quash the order merely on the plea that the Income-tax Officer was not asked to stay his hands on the ground mentioned before the High Court. 59 Bom L R 268 : (1957) 32 ITR 350 : ILR (1957) Bom 428 : AIR 1957 Bom 134 (138) (Pt G) (Pr 13) (DB).

——Art. 226—New point—Not generally allowed.

Generally speaking, an application to the High Court for a high prerogative writ of certiorari cannot be allowed on grounds which were not taken in the Courts below and which are being taken in the High Court for the first time. Even when it relates to the question of jurisdiction the objection as to jurisdiction ought to have been taken in the Court of the first instance. AIR 1957 Cal 638 and AIR 1954 Bom 202 and AIR 1958 Cal 208, Rel. on. AIR 1961 Cal 195 (197) (Pt A) (Pr 4).

——Art. 226—New plea—Point of jurisdiction.

A person who wishes to raise a point of jurisdiction and has not raken it in the Court below, has to satisfy the High Court that he was unaware of the defect in the jurisdiction and that is why it was not taken. AIR 1954 Bom 202; (1914) 1 K B 608, Rel. on; AIR 1930 All 873, Dist. 62 Cal W N 426 : (1958) 1 Cal L J 90 : AIR 1958 Cal 641 (641, 642) (Pr 3).

——Art. 226—New plea—Jurisdiction.

Where the objection to jurisdiction was neither raised before the Industrial Tribunal nor before the Appellate Tribunal the petitioner ought not to be allowed to raise the point for the first time in an application for issue of writ of certiorari or mandamus. AIR 1958 Cal 456 (457, 458) (Pt B) (Pr 2).

——Art. 226 — New plea — Question of jurisdiction not raised before Industrial Tribunal — If can be taken in writ petition.

Where the party to an industrial dispute proceeding before the Tribunal, though aware of the defect of jurisdiction of the Tribunal, does not take it before the Tribunal at all and the result is that the issue is not raised and the Tribunal is never called upon to decide it, the party cannot be permitted to take this point before the High Court in writ petition under Art. 226. AIR 1957 S C 425; AIR 1957 S C 397; AIR 1954 Bom 202, Rel. on. 62 Cal W N 248 : (1958) 2 Lab LJ 198 : (1958) 14 FJR 145 : AIR 1958 Cal 208 (212) (Pt F) (Pr 14).

[Overruled on another point in A I R 1958 S C 1018.]

——Art. 226—New plea—Ground that resolution of Regional Transport Authorities was without jurisdiction not taken in appeal — Ground cannot be agitated in proceeding under Article for obtaining writ of certiorari. ('57) 61 Cal W N 779.

——Art. 226 — New plea — Notification by Collector re-forming wards in a village for Panchayat elections under Bombay Village Panchayat Act — When forming wards, Collector was not functioning as a Court or Tribunal — Notification re-forming wards contrary to provisions of Bombay Village Panchayats Act—Plea that Collector had no authority to re-form wards could be taken for first time in writ petition before High Court though not taken previously before the Collector. Case law discussed. Panchayats —Bombay Village Panchayats Act (3 of 1959), S. 19. (1962) 3 Guj L R 56.

——Art. 226 — New plea—Objection to jurisdiction not taken or taken only in general form—Effect.

A petitioner cannot succeed on the ground against the jurisdiction of an authority whose order he is challenging unless he has taken the ground before the authority making the order. A general objection to the jurisdiction taken by him before the authority is not sufficient for the purpose. The reason for the rule is that the authority making the order must have the opportunity of adjudication on the objection and where the ground be vaguely put the authority does not have a fair opportunity of doing so. Nor can a party be treated as diligent when though armed with a legal objection which is known to be strong, he intentionally refrains from urging or pressing the ground in that form : AIR 1954 Bom 202 and AIR 1961 Ker 117, Rel. on. 1960 Ker L J 1234 : 1960 Ker L T 1340 : AIR 1961 Ker 182 (183) (Pt A) (Pr 4) (DB).

——Arts. 226 and 227 — New plea of jurisdiction—Absence of jurisdiction in lower tribunal — Objection — If can be taken in writ petition for the first time.

Where a suit has been decreed by a Court having no jurisdiction. the parties cannot by their mutual consent, convert, proceeding into a judicial process and where there is no inherent jurisdiction in the Court neither submission to jurisdiction nor acquiescence nor taking part in these proceedings will debar the party from contending that the decree is one passed without jurisdiction. But in cases where a party invokes the extraordinary jurisdiction of the High Court under Arts. 226 and 227 of the Constitution no general rule can be laid down that in every case in which objection to jurisdiction had not been taken before the tribunal, no relief should ever be granted in the exercise of the discretionary powers vested in the High Court. How far the conduct of a petitioner has disentitled him to any relief, would depend on the facts of each case. (1960) 1 Ker L R 565 : ILR (1960) Ker 717 : 1960 Ker L T 798

1960 Ker L J 1145 : AIR 1961 Ker 117 (119, 123) (Prs 7, 21, 22) (DB).

—— Art. 226 – Estoppel - Failure to raise objection to jurisdiction before lower tribunal– Effect.

The High Court has the power to grant or refuse to grant a writ of certiorari. The failure to raise objection to the jurisdiction of the inferior Court before that Court is a relevant point to be borne in mind. A party may be precluded by his conduct from claiming a writ, whether the proceedings challenged are void or voidable. If they are void, it is true, that no conduct of his will validate them, but such considerations do not affect the principle on which the High Court acts in granting or refusing the writ of certiorari. 1960 Ker L J 38 : 1960 Ker L T 7 : ILR (1960) Ker 266 : AIR 1960 Ker 186 (187, 188) (Pr 3)

——Art. 226—New plea of jurisdiction.

Ordinarily a party is disabled to raise the question of jurisdiction in certiorari proceedings when he has failed to raise it before the subordinate tribunal but this will not hold good when the tribunal was non-existent altogether in point of law and the petitioner had no knowledge of the defect that attached to the tribunal at the time it purported to pass an order. The petitioner is not precluded from raising the question before the High Court. 1959 Ker L J 410 : 1959 Ker L T 521 : 1959 Ker L R 1107 : ILR (1959) Ker 1124 : AIR 1959 Ker 347 (349, 350) (Pt D) (Prs 6, 7).

[Impliedly overruled on another point in A I R 1963 S C 274.]

——Art. 226—Certiorari—Submission to jurisdiction —Question raised for first time in writ proceedings —(Motor Vehicles Act (1939), S. 44)

It is not open to a party to raise for the first time in certiorari proceedings the question of jurisdiction of the subordinate tribunal unless he had challenged the jurisdiction before that tribunal itself or he satisfies the Court that he was unaware of the circumstances which will put him on an enquiry as to the lack of jurisdiction of the subordinate tribunal. AIR 1953 All 624 (630), Rel. on.

It is not open to the applicants to raise the question about the defective constitution of the State Transport Authority for the first time in the High Court under Art 226 where the petitioners have submitted to the jurisdiction of the State Transport Authority. 1958 Ker L J 497 : 1958 Ker L T 410 : 1958 Mad L J (Cri) 518 : AIR 1958 Ker 341 (349, 352) (Pt E) (Prs 23, 40).

——Art. 226 – Question of jurisdiction not raised before lower tribunal—Ordinarily such question cannot be raised in proceedings under Art. 226. AIR 1959 Ker 347 (349, 350) (Pt D) (Prs 6, 7).

——Art. 226 – New point—Validity of Cls. 15 and 16 of T. C. Buildings (Lease and Rent Control) Order.

Where objection to the validity of Cls 15 and 16 of the Rent Control Order was not taken at the hearing of the revision petition by the Government and the petitioner submitted to their jurisdiction and took the chance of obtaining an order in his favour, the petitioner cannot be heard to raise the objection in the High Court at the hearing of the petition under Art. 226. AIR 1954 Bom 202 and 1955 Ker L T 568, Rel on. 1957 Ker L J 380 : 1957 Ker L T 411 : AIR 1957 Ker 109 (111) (Pt B) (Pr 4).

——Art 226 — Ground founded on undisputed fact and going to the root of the matter — Earlier consent would not preclude the petitioner to raise it. 1965 M P L J (Notes) 175.

——Art. 226 — Question of jurisdiction not raised before tribunal — Question cannot be permitted to be raised in the High Court. 1962 M P L J (Notes) 300.

——Arts. 226 and 227—New plea.

Even if the objections raised by the petitioner who has been convicted by the Nyaya Panchayat go to root of the jurisdiction of that tribunal to try the offences they cannot be made the basis of a petition under Arts. 226 and 227 when they had not been raised before that body itself. (1914) 1 K B 608, AIR 1954 Bom 202 and 1957 M P C 91, Rel. on. 1961 Jab L J 448 : 1961 M P C 209 : 1961 M P L J 761 : ILR (1959) Madh-Pra 884.

——Art 226 — Certiorari — Impugned order of the lower Court challenged on the ground of jurisdiction —Objection not taken before that authority — Objection cannot be permitted in proceedings to obtain writ of certiorari either on the ground of acquiescence or from the standpoint of certiorari : ILR 53 Mad 130; AIR 1957 S C 397, Rel. on. 78 Mad L W 241 : ILR (1964) 2 Mad 747 : AIR 1965 Mad 321 (323) (Pt D) (Pr 4).

——Art. 226 — Appellate Tribunal can consider objections raised by rival claimants which were not raised in representation—Tribunal basing decision on Government orders—Validity of Government orders can be challenged in writ petition though they were not challenged before tribunal—See Motor Vehicles Act (1939), S. 47 (1). AIR 1965 Mad 79 (FB).

——Art. 226 — Objection to jurisdiction not taken at proper time—Writ jurisdiction is not affected. See Madras Hindu Religious and Charitable Endowments Act (22 of 1959), S. 101. ('64) 77 Mad L W 109.

——Art. 226 — New plea — Jurisdiction—Objection cannot be heard in writ petition. (1960) 1 Lab L J 794 : 73 Mad L W 406 : ILR (1960) Mad 768 : (1960) 2 Mad L J 452 : 1960 Mad L J (Cr) 765 : 1960 Mad W N 420.

——Arts. 226, 227—New plea—Objection as to jurisdiction—When can be raised.

The principle that where the question of jurisdiction is not a pure question of law, but it is mingled with facts, a party cannot be allowed to raise it for the first time in an appeal to the Supreme Court from the decision of the Appellate Tribunal applies to writ petitions also. AIR 1953 S C 437, Rel. on. (1958-59) 14 F J R 182 : (1958) 2 Lab L J 95 : AIR 1958 Pat 120 (124) (Pt B) (Prs 19, 20) (DB).

——Art. 226 — Ground raised for first time in petition under.

Where the ground that the orders of the authorities under the Evacuee Property Act were without jurisdiction was not taken before either of those authorities it cannot be allowed to be raised for the first time in petition under Art. 226. ILR (1955) Patiala 529 : AIR 1955 Pepsu 142 (143) (Pt A) (Pr 6).

——Art. 226 — Error apparent on face of record— Inherent lack of jurisdiction in Tribunal in passing certain order — Objection to jurisdiction though not taken before Authority, relief in writ petition is not barred See Displaced Persons (Compensation and Rehabilitation) Act (1954), S 22. 1965 Cur L J 872 (Punj).

——Art. 226—Certiorari — Objection as to jurisdiction of Tribunal passing order attacked—Absence of indication in the order that such objection was raised before Tribunal — Not sufficient ground for refusing to exercise powers under Art 226,

An objection even with regard to the jurisdiction should be raised before a Tribunal when the matter is heard by it, but if a reasonable explanation has

been given either for not raising it or the High Court is satisfied that it was raised but the tribunal either failed or omitted to decide it, then the High Court will not decline to exercise the extraordinary power conferred by Art. 226 merely because there is nothing in the order to indicate that such an objection was raised or pressed. ('62) 64 Punj L R 1024.

——Art. 226—New point — Objection as to jurisdiction.

No appearance or consent can ever give a jurisdiction to a tribunal or a Court of limited jurisdiction, which it does not otherwise possess. If an order is made without jurisdiction it is never too late, in the absence of some supervening consideration, to give effect to the plea that it is a nullity.

Where from the facts and circumstances of the case it could not be said that the petitioner sat on the fence and took his chance before the District Judge by deliberately and consciously refraining from raising the objection relating to his jurisdiction to entertain and dispose of the reference made to him under the proviso to S. 9 of the Displaced Persons (Compensation and Rehabilitation) Act 1954; on the contrary the District Judge did not care to satisfy himself if he had the requisite jurisdiction to entertain and dispose of the reference made to him, then in such a case it would not promote the ends of justice if relief is refused to the petitioner and the order of the District Judge which is indisputably without jurisdiction and therefore, a nullity, is allowed to stand. AIR 1959 Punj 389; AIR 1927 Mad 130 (FB), Disting. ('61) 63 Punj L R 444.

——Art. 226—New plea — Plea of want of jurisdiction of Tribunal on grounds different from those stated before Tribunal.

Where the jurisdiction of the Tribunal, whose order was later sought to be quashed in proceedings under Arts. 226 and 227 of the Constitution, was challenged before the Tribunal on somewhat different grounds from those raised before the High Court :

Held, that it was not fair to shut out the arguments based on want of jurisdiction of the Tribunal in making the order in question, before the High Court in proceedings under Arts. 226 and 227. (1961-62) 20 F J R 253 : ILR (1961) 2 Punj 421 : (1962) 1 Lab L J 534 : 1961 Cur L J 1.

——Arts. 226, 227 — Discretion — Objection as to jurisdiction—When to be taken.

The grant of relief under Arts. 226 and 227 is of a discretionary nature and if the order sought to be impugned is attacked on the ground of jurisdiction such an objection ought to be taken before the tribunal whose order is being challenged. The objection cannot be allowed to be taken for the first time in the writ application. AIR 1954 Bom 202 and AIR 1958 Cal 456, Rel. on 62 Punj L R 302 : AIR 1960 Punj 432 (433) (Pt B) (Pr 5).

——Art. 226—Certiorari — Jurisdiction of the Tribunal—Objection can be raised even for the first time in writ proceedings — It is open to High Court to consider such objection, though it is not bound to give relief on it.

When the objection raised goes to the root of the jurisdiction of the subordinate Tribunal, it is open to the High Court to quash a decision of that Tribunal in proceedings for the grant of a writ of certiorari notwithstanding the fact that the petitioner failed to question the jurisdiction of the Tribunal before it, and challenged the jurisdiction of the subordinate Tribunal before the High Court for the first time. But this does not mean that in every case of want of jurisdiction a writ of certiorari must be issued as of right. In the matter of certiorari the law is that 'The issuance of the writ, in the exercise of superintending control over inferior Courts is not a matter of right, but one of discretion largely. It will be granted or denied according to the circumstances of each particular case, as the ends of justice may require and in accordance with sound public policy. AIR 1957 S C 227 and AIR 1960 Raj 105, Rel. on. ILR (1965) 15 Raj 1114 : 1966 Raj L W 66.

——Art. 226 — Decision of lower Court or tribunal without jurisdiction — Failure to raise objection — Writ petition against decision—Objection to jurisdiction of tribunal raised for first time—High Court should go into.

Where it is found by High Court that a lower Court or a tribunal has given a decision which amounts to a nullity on accout of inherent or patent lack of jurisdiction, then it becomes its duty to quash it by the grant of a writ of certiorari notwithstanding the fact that the petitioner failed to question the jurisdiction of the lower Court or the tribunal at an earlier stage and challenged that juri diction before the High Court for the first time. When it is found that the decisions were not given by the proper tribunal, the High Court should not go into the merits of the case because it is for the appropriate tribunal to first weigh the evidence of the parties and then to decide the case on merits. AIR 1954 S C 340, Rel. on. (1964) Raj L W 1 : ILR (1963) 13 Raj 1101.

——Art 226—Writ of Certiorari—Suit against panch — Gram panchayat has no jurisdiction — Objection raised for first time in certiorari proceeding—High Court held precluded from quashing decree See Panchayat - Rajasthan Panchayat Act (21 of 1953), S. 89, Proviso. 1961 Raj L W 229.

——Art. 226—New plea—Plea of jurisdiction.

Where an objection goes to the root of the jurisdiction of the authority, rendering its decision a nullity, no waiver or consent can confer jurisdiction on the authority. In such a case objection can be raised for the first time in the writ petition, against the decision of the authority even though it was not raised before the authority. ILR (1959) 9 Raj 869 : AIR 1960 Raj 105 (112) (Pt A) (Pr 28) (DB)

——Art. 226—New plea.

Where the lack of jurisdiction to the Assistant Custodian was patent, the mere fact that no objection was taken by the applicant before the Custodian or the Custodian General would not disable the applicant from raising the point in proceedings under Art. 226 though the matter would have been different if the question of jurisdiction depended upon the allegations and proof of certain facts. AIR 1953 Raj 193, Rel. 1955 Raj L W 95 : ILR (1954) 4 Raj 526 : AIR 1954 Raj 214 (216 (Pt D) (Pr 1) (DB).

—— Art. 226—Petition under Plea of want of jurisdiction in Lower Court, cannot be allowed unless it was taken before the Lower Court itself. AIR 1955 NUC (Trav-Co) 1657 (DB)

——Art. 226—New ground of want of jurisdiction if open—(V. P. Gram Panchayat Ordinance (1949), S. 49 (1)),

Where lack of jurisdiction is patent the mere fact that no objection was taken before the statutory authority would not disable the applicant from raising such question in an application under Art. 226. AIR 1953 Raj 193, Rel on.

Accordingly, the applicant is not debarred from contending that no Bench of five Panchas for the trial of the cases was formed as required by S 49 (1), that the decision was ultimately given by six Panchas and that all of them did not attend all the hearings and that the decision given was accordingly without jurisdiction and should be set aside, in an application

under Art. 226. AIR 1956 Vind Pra 6 (7) (Pt C) (Pr 4).

98 (g) (viii). New case.

■ —Art. 226—New case—Petitioner should not be allowed to change case during arguments—Jabalpur Corporation Act, 1944 (M. P. Act 3 of 1950), S. 81 — C. P. and Berar Municipalities Act (2 of 1922), S. 38 (1) (f)—C. P. Govt. trasferring land to Jabalpur Municipality under S. 38 (1) (f),—Land vesting in Jabalpur Corporation on coming into force of Jabalpur Corporation Act — Successor Govt. of Madhya Pradesh can resume the land under S. 81 of the Jabalpur Corporation Act.

The question as to who is a transferor, is obviously a question of fact or at best a mixed question of law and fact and when a party in a writ petition does not allege any such fact, it stands to reason that he ought not to be permitted to travel beyond the facts stated, at the stage of the arguments. To confine a party to his pleadings, particularly to his allegations as regards facts is dictated not merely by the need for orderliness in these proceedings but for avoiding surprise to the other party and consequent injustice resulting therefrom. Save in exceptional cases, parties should be held strictly to their pleadings and if owing to discovery of new matter or grounds, there is need to add to or to modify the allegations either in the petition or in the counter affidavit, the Court should insist on formal amendments being effected; for this would enable each party to state its case with precision and definiteness and the other side would have a proper opportunity to know this case and meet it with appropriate defences.

The State Government of Madhya Pradesh issued a notification under S. 81 of the Jabalpur Corporation Act, 1948, resuming the land granted to the Jabalpur Municipality under S. 38 (1) (f) of the Central Provinces Municipalities Act, 1922, by the Government of Central Provinces. The Corporation moved the High Court of Jabalpur for relief under Art. 226 praying for the issue of writ of mandamus quashing the notification. The Corporation did not deny the fact that it was the Government of C. P. and Berar that had effected the transfer and the allegation in the petition in fact proceeded on that basis. During the argument however, the Corporation put forward the case, that the transfer was not by the Government of the Central Provinces but by the Central Government. This new contention was based on the reasoning that S. 81 of the Jabalpur Corporation Act applied to transfers made after the Corporation Act came into force.

Held, that (1) the High Court should not have allowed the petitioner to put forward the new case, but should have proceeded on the basis of the pleading. (2) The contention that S. 81 applied to transfers made after the Corporation Act came into force was untenable. (3) The land in question was transferred to the Municipal Committee, Jabalpur, by the Government of the Central Provinces and not by the Central Government 1961 M P L J 797, Reversed.

The Corporation of Jabalpur was the successor-in-title to the Municipal Committee of Jabalpur and the property which was vested in the Municipal Committee of Jabalpur was transferred to and became vested in the Corporation under S. 71 of the Jabalpur Corporation Act. If any particular property had vested in the Municipal Committee subject to its being divested in particulr contingencies, the property in the hands of the Corporation would be held subject to the same obligations or disabilities. The successor Government of C. P. and Berar, viz., the State of Madhya Pradesh could under S. 81 of the Corporation Act take over the land from the Corporation for the purpose of forming a public road. Municipal Corporation v. State of Madhya Pradesh, (1963) 2 S C R 135 : (1965) 2 S C J 197 : AIR 1966 S C 837 (840, 841) (Prs 7, 9, 10).

■ —Art. 226—New plea—Action under Railway Security Rules—Writ petition on ground that Rules were ultra vires—Judgment proceeding on ground not raised by railway authorities—Interference — (Railway Services (Safeguarding of National Security) Rules (1949), R. 3)—(Railway Establishment Code, R 148 (3)).

Where the services of the appellants were terminated by orders of the railway authorities under R. 3 of the Security Rules and the appellants having filed a writ petition on the ground that the Security Rules were ultra vires, the High Court held that the orders could be sustained under R. 148 of the Railway Establishment Code, but that ground was not merely not in the contemplation of the authorities when they passed the orders, but was not even raised in the pleadings in Court.

Held, that though no exception could be taken to the proposition that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision, if it can be shown to be within its powers under any other rule, and that the validity of an order should be judged on a consideration of its substance and not its form, that proposition was not applicable to the instant case because it had not been the contention of the authorities at any stage that the orders in question were really made under R. 148 (3) of the Railway Establishment Code, and that the reference to R. 3 of the Security Rules in the proceedings might be disregarded as due to a mistake. P. Balakotaiah v. Union of India, 1958 S C A 209 : 1958 S C J 451 : (1958) 1 Andh W R (SC) 162 : (1958) 1 Mad L J (S C) 162 : 1958 S C R 1052 : AIR 1958 S C 232 (236) (Pt A) (Pr 10).

—Art. 226—U. P. Consolidation of Holdings Act (5 of 1954), Ss. 21 (2), 63-B—Appeal filed on 20-4-1963, against order of Consolidation Officer passed under S. 21 (1) on 24-1-1963, dismissed as time-barred and refusing benefit of S. 53-B—Appellant pleading, for first time in petition for certiorari that revised extract served on appellant on 16-4-1963 constituted sufficient cause — Held certiorari for quashing orders cannot be granted on ground taken for first time in certiorari. 1965 All W R (HC) 58 : 1965 All L J 172 : ILR (1965) 1 All 354.

——Art. 226 — New point — Relief on some grounds of law asked for — Relief can be given on other grounds of law where these grounds are disclosed from facts appearing in affidavits and counter affidavits and these grounds show an error of law on face of record. (1960) 39 I T R 497 : AIR 1961 All 133 (136) (Pt C) (Pr 5) (DB).

——Art. 226—New case cannot be allowed.

In proceedings under Art. 226 for the issue of a writ of certiorari for quashing an order of assessment, it is not open to the assessee or the Department to place new facts, which were never placed before the taxing authorities for assailing or supporting the impugned assessment. AIR 1948 Mad 454; AIR 1961 SC 1615, Rel. on. (1964) 15 S T C 554 : 1964 Jab L J 320 : 1964 M P L J 390.

98 (g) (ix). Plea not available earlier.

——Art. 226—Procedure—New point—Scope.

The writ of certiorari, which is in the discretion of the Court to issue under Art. 226, should not be issued ordinarily in cases where the applicant had failed to urge the grounds on which he claimed a writ of certiorari before the other Tribunals where he could have properly urged the grounds, unless he could show that he was unaware of those grounds

when the matter was before the other Tribunals. Case law considered. I L R (1954) 2 All 378 : AIR 1953 All 624 (630) (Pt D) (Pr 24) (DB).

——Art. 226—New plea — (Administration of Evacuee Property Act (1950), S. 7).

Where the law as to the effect of a defective notice was laid down by the High Court after the Custodian General had already decided the revision and similarly the application for review was dismissed before the decision laying down the law was published in the law reports.

Held, that the applicant could not be barred from raising those points before the High Court in proceedings under Art. 226 under the circumstances. 1955 Raj L W 95 : I L R (1954) 4 Raj 526 : AIR 1954 Raj 214 (216) (Pt E) (Pr 12) (DB).

——Art. 226—Certiorari, writ of — Application for confirmation of sale by evacuees — Sale in 1948 — Application in 1949 — Rejection by Custodian of evacuee property as not bona fide — Custodian-General on appeal rejecting application as barred by time — Powers of High Court to correct by writ.

Sale to the applicants by the evacuee was in May 1948. When Saurashtra Ordinance of 1948 was in force under S. 6-A, application for confirmation had to be made on 1-5-48 or within two months of the sale. It was replaced by Central Ordinance of 1949 published in Saurashtra Gazette on 4-8-1949. Application for confirmation was filed within 2 months of the publication. The Custodian rejected it as not bona fide. On appeal the Custodian-General rejected it as time-barred with reference to Saurashtra Ordinance of 1948. On an application for issue of a writ to quash the order:

Held, the Custodian-General could decide and ought to take into consideration the question of limitation as to the maintainability of the application. Even if it was wrong it was only an error of law and the High Court cannot embark on an inquiry as if it were an appellate Court. The High Court has no jurisdiction to correct the decision of the Custodian-General. AIR 1952 S C 179 and 192, Relied on.

A point not raised before or even in the application that for 2 months from the date of sale there was no Custodian to apply for confirmation cannot be allowed to be raised in the arguments. The petition cannot therefore be entertained under Art. 226. AIR 1952 Sau 112 (113) (Pt A) (Pr 3) (DB).

98 (g) (x). Point not raised at preliminary hearing.

——Art. 226—Practice—Point not raised in preliminary hearing of Rule — Can be considered in final hearing.

The Court is not precluded, at the final hearing of a Rule from considering a ground other than that on which the Rule nisi might have been issued after giving proper opportunities to the parties. 68 Cal W N 179, Rel. on. AIR 1965 Cal 389 (391) (Pt A) (Pr 6).

98 (h). Notice and hearing.

●——Arts. 226, 227 — Application under—Issue of Rule nisi — Practice — Question of competency of Home Minister to determine question of age of High Court Judge — Question being very important — Rule nisi should issue.

Dicta — Experience shows that in writ petitions filed in High Courts under Art. 226 which raise arguable issues of much less significance and importance, Rule nisi is usually issued and speaking broadly, there seems to be no justification for holding that in a case which undoubtedly raises questions of considerable importance, that course should not be adopted.

Where, therefore, in a petition for writ the main question round which the whole controversy centred was the competence of the Home Minister to determine the question about the correct age of a Judge of the High Court, and this question obviously was a matter of great importance as its decision was vitally connected with the status, dignity and independence of the judiciary in this country; and incidental to the decision of the question were other points:

Held, that the High Court was right in coming to the conclusion that the trial Judge should have issued a Rule nisi and should have called upon the appellant to file his return. Himansu Kumar Bose v. Jyoti Prokash Mitter. (1964) 1 S C A 347 : AIR 1964 S C 1636 (1640, 1641, 1642), (Pt C) (Prs 15, 22).

●——Art. 226—Duty of High Court — Dismissal of petition in limine—Propriety.

Certain industrial disputes arose between the management of certain Mill and the workers of the said Mill. Two references were made to the Tribunal and an award was given. Again a third reference was made and the Management thereupon filed a petition under Art. 226 of the Constitution of India for a writ of prohibition against the Tribunal and a writ of mandamus against the Government. The High Court dismissed the petition in limine, basing its decision on a mere comparison of the relative items in these references.

Held, that in view of the fact that there was an allegation of mala fide on the part of the Government and the terms of items of the third reference, though ostensibly worded differently from those of the relative items of the second reference were alleged to be identical with the same, it was the duty of the High Court to accord a hearing to the parties after issuing notice to the respondents and record its decision after considering all the circumstances of the case which would have thus been brought to its notice. British India Corporation Ltd. v Industrial Tribunal, Punjab, AIR 1957 SC 354 (356) (Pr 13).

——Art. 226 — Natural Justice — Proceeding under Chapters III, IV and V of U. P. Zamindari Abolition and Land Reforms Act—State Govt. is necessary party —Notice should be given to Collector or his nominee on behalf of State Govt. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 1951), S. 47. 1960 All L J 557.

——Art. 226 — Partnership Act (1932), S. 65 — Proceeding under—Rule issued upon Registrar of firms — Duty to appear and explain his conduct and action.

In a proceeding under Art. 226 of the Constitution where the Registrar of Firms was made a party respondent and a Rule was issued upon him to show cause, it is incumbent upon him to appear and explain his conduct and his action. It is all the more necessary for the Registrar to appear and help the Court in the proceeding having regard to S. 65 of the Partnership Act. ('65) 69 Cal W N 929.

——Art. 226 — Procedure — Rule 'nisi' when to be issued — Arguable issues—Meaning of.

Where there are 'arguable issues' relating to matters of considerable importance, a rule nisi should be issued. AIR 1964 S C 1636, Foll. A point raises 'arguable issues', if the Court has some doubt upon the question raised or there are obscure points which require elucidation and upon which two views may reasonably be held. 68 Cal W N 958 : AIR 1964 Cal 500 (503) (Pt D) (Pr 12).

——Art. 226—Mandamus — Petition found to be unmaintainable on technical grounds — Petitioner applying in person—Court to give petitioner audience on his grievance.

Even where a writ petition is found to be unmaintainable on technical grounds like absence of de-

mand for justice, impleading wrong parties, etc., if the petitioner applies in person the Court should ordinarily give a petitioner audience on his grievances irrespective of such technical defects. ('64) 68 Cal W N 403.

——Art. 226—Notice to Attorney General—Necessity of — Applicability of O. 27-A, Civil P. C. See Civil P. C (1908), O. 27-A, R. 1. AIR 1957 Cal 702.

——Art. 226 - Procedure—Duty of Court—Dismissal in limine.

Application under Art. 226—Some of the questions raised being not pure questions of law, but involving questions of fact — Application should not be dismissed in limine but the respondents should be asked to show cause against the application. I L R (1955) 2 Cal 28: 58 Cal W N 18 : AIR 1954 Cal 60 (67) (Pt N) (Pr 119) (DB).

——Art. 226 — Procedure — Summary dismissal — Notice.

There should not be mechanical admission of applications under Art. 226. Certainly, an application should be admitted if there is at least an arguable case. But if on the face of it there is no arguable case, and the mere reading of the enactment is sufficient to show the baselessness of the grounds, then the petition should be dismissed summarily. 1959 M P C 330 : 1959 Jab L J 467 : 1959 M P L J 1215 : AIR 1959 Madh Pra 365 (366) (Pt A) (Pr 3) (DB).

——Art. 226—Scope of inquiry — Point not seriously pressed.

In an application under Art. 226, their Lordships thought it unnecessary to discuss a technical objection which was not seriously pressed before them. 23 Cut L T 221 : (1957) 8 S T C 749 : I L R (1957) Cut 189 : AIR 1957 Orissa 240 (243) (Pt C) (Pr 14) (DB).

——Art. 226—Mandamus, writ of — Right to contest claim.

In proceedings for mandamus it is the authority to which a mandamus is to go which is entitled as of right to contest the petitioner's claim. There is, however, no prohibition or bar imposed on the High Court in the matter of hearing arguments from any counsel representing a party in the proceedings before it. AIR 1962 Punj 532 (533, 534) (Pt B) (Pr 10).

——Art. 226 — Practice and Procedure — Statutory body like Central Road Traffic Board impleaded in writ petition — Necessity of appearance through counsel—Costs.

The practice of Travancore-Cochin High Court has been for bodies like the Central Road Traffic Board to enter an appearance through counsel whenever they are impleaded in Writ Petitions and assist the Court at the hearing of the case. If a statutory body is appearing in the role of an amicus curiae no question of costs will arise. There will of course be circumstances in which they should appear as active contestants and it is only in those cases that the question of costs will assume practical importance and ordinarily follow the result of the contest. I L R (1956) Trav Co 183 : AIR 1957 Trav-Co 229 (229, 230) (Pt A) (Prs 5, 6, 10) (DB).

——Art. 226—Certiorari—Notice—Necessity.

Where a teacher whose services are terminated by the ad hoc committee of the school applies for the issue of a writ of certiorari under Art. 226, the application cannot be said to be not maintainable because no notice was given to the ad hoc committee. AIR 1959 Tripura 27 (33) (Pt J) (Pr 39).

98 (i). Notice under S. 80, Civil P. C.

See also Civil P. C. (1908), S. 80.

——Art. 226 — Civil P. C. (1908), O. 41, R. 14 (3) — Power under, is discretionary — Personal relief asked against respondents not appearing before lower Court —Service of notice should not be dispensed with. See Civil P. C. (1908), O 41 R 14(3). A I R 1952 Cal 825 (DB).

——Art 226—Civil P. C (1908), S 80 — Petition for certiorari by one of persons, interested in subject-matter—Parties referred to regular suit—Government agreeing to waive notice under S. 80—Waiver applies to all persons interested in subject matter. See Civil P. C. (1908), S. 80. AIR 1960 Mad 81.

——Art. 226—Procedure—Writ petition by Government servant — Prior permission of head of department—Necessity of.

If the service rules prescribe that without prior permission no writ could be filed against Government, the filing of the writ without permission might be a ground for taking disciplinary action against the officer but it is certainly not a ground for rejecting the writ petition. 70 Mad L W 60 : (1957) 1 Mad L J 28 : AIR 1957 Mad 338 (339) (Pt B) (Pr 2).

——Art. 226 — Petitioner Club paying sales tax on refreshment served by it to members, since 1939—No objection to tax taken — Petitioner challenging legality of the very levy of tax—Long and tedious avenue of appeal and revision not followed — Remedy by way of writ under Art. 226 held was appropriate and correct one—Revisional machinery provided by Sales Tax Act is primarily intended for individual assessees dissatisfied by assessment made—Though there is no provision in the Constitution it is desirable that before Government is put on its defence, in such a case, there should be notice to it, like one required under S. 80, Civil P. C — In the particular case however, no notice held was necessary—(Sales Tax—Madras Sales Tax Act (9 of 1939), S. 3(a). 1952 Mad W N 200 : 1952-1 Mad L J 401 : 1952-3 S T C 77 : AIR 1952 Mad 814 (816, 817) (Pt A) (Prs 6, 10).

98 (j). Parties.

See Note 87.

98 (k). Presentation of petition.

See Note 11.

98 (l). Proceedings, whether suit.

See Note 79.

98 (m). Preliminary issues.

——Art. 226—Preliminary issue regarding jurisdiction to entertain petition—(Civil P. C. (1908), O. 14, R 2))

Where at the hearing of the petition under Art. 226 asking certain reliefs, the opposite party raised a preliminary point, namely, that the High Court had no jurisdiction to entertain the petition.

Held, that the High Court should try the issue of jurisdiction as a preliminary issue. AIR 1932 Bom 128, Ref. 57 Bom L R 753 : I L R (1955) Bom 846 : AIR 1955 Bom 381 (382, 383) (Pt A) (Pr 2).

——Art. 226—Procedure.

It is always the practice of Courts not to go into all the questions canvassed before the Court where the case could be decided on a particular point. Munwar Khan v. Hyderabad State, I L R (1955) Hyd 768 : AIR 1956 Hyd 22 (24) (Pt C) (Pr 7) (FB).

——Art. 226 — Constitutional question, when need not be decided.

In any case where a constitutional question is raised, though it may be legitimately presented by the record, yet if the record presents some other clear grounds upon which the Court may rest its judgment and thereby render the constitutional question immaterial to the case, that course will be adopted. I L R (1955) Hyd

337 ; A I R 1955 Hyd 82 (89, 93) (Pt C) (Prs 23, 46) (DB).

——Art. 226—Quo warranto — Objections that petitioner has no sufficient interest and that he is guilty of laches not raised at time of admitting application can be raised during final hearing, when no formal procedure by way of obtaining leave to file motion had been adopted (Per Das C. J.). AIR 1952 Orissa 359 (373) (Pt G) (Pr 30) (DB).

98(n). Res judicata.

See Notes 105, 114, 213 and 216.

98(o). Review.

See Note 108.

98(p). Rules of High Court.

——Art. 226—Pleadings—Petition for quashing certain notices issued under S. 34 (1-A), Income-tax Act — Affidavit in support of petition mentioning that true copies of notices were attached — Copies of notices attached not bearing signatures of deponent or his authorised agent or of the Oath Commissioner before whom affidavit was sworn, **Held**, that the copies filed not being in compliance with law could be ignored —Petition held not maintainable for non-compliance with rules of Court. 1960 All L J 354 : 1960 All W R (HC) 319 : (1960) 40 I T R 407 : AIR 1960 All 377 (377, 378) (Pt A) (Pr 1) (DB).

——Art. 226 — Scope. See High Court Rules and Orders — Allahabad High Court Rules (1952), Chap VIII, R. 5. AIR 1957 All 414 (FB).

——Art. 226 — Rules of Allahabad High Court in regard to writs—R. 9—Scope of.

Rule 9 of the Rules made by the Allahabad High Court in regard to writs under Art. 226 of the Constitution concerns itself only with the formal presentation and does not regulate the right of audience either at the initial stage when the application is moved or at the time of the final hearing. G. P. Singh v. Hon'ble Judges of High Court, Allahabad, 1952 All L J 182 : 1952 All W R (H C) 234 : I L R (1953) 2 All 194 : AIR 1952 All 519 (520) (Pr 2) (SB).

——Art. 226 — All respondents to writ petition not residing or carrying on business or having offices situate within Ordinary Civil Jurisdictior of Calcutta High Court — Petition should be made in Appellate Side and not in original side—Objection on this score should be taken at inception — Defect is remediable defect. See High Court Rules and Orders — Calcutta High Court Writ Rules, R. 4. AIR 1966 Cal 151.

——Art. 226—Writ petition—Procedure—Petition in representative capacity — Maintainability — Civil P. C. (1908), O. 1, R. 8 — High Court Rules and Orders (Calcutta) Rules, Rr. 11 and 30.

An application under Art. 226 of the Constitution is in the nature of an original proceeding to be made before the constitutional writ jurisdiction of the High Court, except an application for a writ in the nature of habeas corpus, which is to be made in the Extraordinary Original Criminal Jurisdiction of the High Court. The applications are governed by procedural rules framed by the High Court. Reading Rr. 11 and 30 of the Rules made by the High Court (Calcutta) for filing applications under Art. 226 of the Constitution together, it appears that an application in a representative capacity is not wholly uncontemplated:

Held, that as the persons whom the petitioner wanted to represent did not have the same interest within the meaning of O. 1, R. 8, Civil P. C., leave to convert the petitions into a representative petition could not be granted. ('62) 66 Cal W N 912.

——Art. 226—Procedure—Application during vacation.

Rules framed by Nagpur High Court under Art. 225, R. 4 — Right to make petition during long vacation exists. I L R (1953) Nag 267 : 1953 Nag L J 503 : AIR 1953 Nag 81 (83) (Pt B) (Pr 9) (DB).

—Arts. 226 and 235 — Orissa High Court Rules (Vol. 1) R. 16 (vi) — Rule requiring disciplinary proceedings under Art. 235 to be placed before Full Court of all judges — Whether authority administratively recommending imposition of punishment on judicial officer can judicially decide legality of such punishment in writ petition. (Quaere). AIR 1965 Orissa 183 (188) (Pt I) (Prs 20, 21) (DB).

——Art. 226 — Venue — Case set down before High Court of Punjab at Chandigarh and not before Circuit Court — It is only administrative matter — Objection cannot be allowed to prevail when Circuit Bench cannot be treated as separate Court and not a part of High Court. (1963-64) 24 F J R 154 : (1963) 1 Lab L J 632 (Punj).

——Art. 226— High Court Rules and Orders (Punjab) Vol. 5, Chap 3 B Rr. 1 Proviso and 4 — Application under Art. 226 of the Constitution—Chief Justice has power to direct Division Bench to hear petition in exceptional cases — Constitution of India, Arts. 225 and 226 : See High Court Rules and Orders (Punjab), Vol. 5, Chap. 3-B, R. 1 Proviso. ('63) 65 Pun L R 125.

——Arts. 226, 227 — Commissions of Inquiry Act (1952), S. 4—Procedure regarding inspection of documents — High Court would not decide at what stage documents should be shown to petitioners. See Commissions of Enquiry Act (1952), S. 4. AIR 1960 Punj 86

98(q). Return by respondent.

——Art. 226—Pleadings—Plea in defence.

The law allows a party to take any defence which is open to him and except where there is a question of estoppel, the ethics of a party's conduct are not relevant.

Thus, the plea of a public body like the Port Commissioners as a respondent in a writ petition that though they had adopted the Fundamental Rules with the sanction of Government as long ago as in 1921 and though, at the time of the dismissal of the applicant they had been applying those rules uniformly for about sixty-one years, they were yet entitled to disregard the rules in the applicant's case, because they had adopted them without any power in law to do so, would not appear to be a very proper or becoming plea but it has to be entertained and examined. AIR 1957 Cal 720 (723) (Pt B) (Pr 12) (DB).

——Art. 226 — Application under — Case which opposite party is to answer—Need to be precise.

In matters in the nature of high prerogative writs, it is desirable to be precise as to the case which the opposite party is called upon to answer. Chairman, Budge, Budge Municipality v. Mangru Mia 57 Cal W N 25 : AIR 1953 Cal 433 (441, 442) (Pt H) (Pr 29) (SB).

——Art. 226—Civil P. C. (1908), O. 8, R. 1 — Written statement by Government — Not exempt from provisions of O. 27, R. 1, Civil P. C. See Civil P. C. (1908), O. 8, R. 1. AIR 1953 Him Pra 95.

——Art. 226—Practice — Duty of opponent Government officer to file return.

The High Court expects any Government officer who is an opponent party to proceedings under Art. 226 to file his return in obedience to the Court's order. It is his duty to file a return even if the order complained against was not passed on his own initiative but on the orders of the Government. 1956 Madh B L J 642 : Madh B L R 1956 Civil 413 : I L R

(1956) Madh B 330 : AIR 1956 Madh B 163 (164) (Pt C) (Pr 3) (DB).

——**Art. 226—Return by respondent under — Should not contain insinuations against petitioner.**

The return which is required of a respondent in proceeding under Art. 226 is as to the facts relied on as constituting a valid and sufficient ground for refusing the prayer of the petitioner and not of insinuations against the petitioner in the proceedings. **1962 M P C 142 : I L R (1963) Madh Pra 22 : 1961 Jab L J 1464 : 1962 M P L J 50 : AIR 1962 Madh Pra 128 (128) (Pt B) (Pr 7) (DB).**

——**Art. 226—Pleadings—Duty of respondent — Petition to quash deportation order of District Magistrate on ground that he had no jurisdiction to pass order — Counter statement of District Magistrate not stating whether power had been delegated to him but only submitting that notice was irregular — Counter statement held not proper. 1961 (2) Cri L J 291 : AIR 1961 Tripura 35 (36) (Pt B) (Pr 6).**

98 (r). Abatement.

——**Art. 226 — Abatement — Writ application made against decision of Board under Calcutta Improvement Act to include properties in scheme under the Act—One of appellants dying after hearing of appeal was concluded and judgment had been reserved—Held, appeal did not abate or was otherwise affected by the death. See Civil P. C. (1908) O. 22, R. 6. AIR 1957 Cal 578 (DB).**

——**Arts. 226 and 227 — Abatement — Petition for quashing order under S. 18, Land Acqqisition Act — Death of applicant — If can be continued by his brother.**

A member of a Nair Tarwad applied under S. 18 (1), Land Acquisition Act, for a reference to Court on behalf of the tarwad. The application was dismissed on ground that he was not the person interested and therefore he applied under Arts. 226 and 227 for quashing that order. During the pendency of the petition the original petitioner died and his brother was substituted in his place.

Held that the brother was entitled to continue the proceedings. Any fresh application subsequent to the death of the original petitioner would have been clearly barred by limitation under sub-s. (2) of S. 18. AIR 1929 Mad 451, Rel. on. **1957 Ker L T 508 : 1957 Ker L J 518 : I L R (1957) Ker 765 : AIR 1957 Ker 152 (153) (Pt B) (Prs 8, 9) (DB)**

——**Art. 226 — Writ petition by two heirs of the deceased with respect to his property—Death of one of petitioners — Will executed by her in favour of other petitioner — Other petitioner is entitled to continue writ petition.**

A died pending the writ petition filed by her and her son B challenging the order of cancellation of allotment of land to which they had succeeded after the death of C. Preliminary objection to the hearing of the petition was raised that respondents wanted to verify whether there were other heirs to A who were liable to be brought on record. On finding that A had executed a valid will in favour of B.

Held, that B was entitled to continue the writ petition in his personal capacity as well as in the capacity of A's legal representatives. **1965 Cur L J 817 (Punj).**

——**Art. 226 - Dismissal of petitioner on departmental enquiry—Writ of certiorari Death of petitioner — Legal representative not entitled to continue the writ.**

Where the issue of a writ was sought only to quash the order of dismissal and restoration of the petitioner to his rights in the service of the State, it is only a personal right of the petitioner, that is sought to be ventilated and therefore if the petitioner is no longer alive to avail himself of the benefits of the remedy, the legal representative of the petitioner cannot continue the writ. **(1985) 2 Mad L J 302 : AIR 1966 Mad 260 (262) (Prs 4, 5).**

99. **Proceedings under Art. 226.**
See Note 79.

100. **Prohibition.**
See under Part E (Notes 278 to 291).

101. **Quasi-judicial authority.**
See Note 168.

102. **Quo warranto**
See under Part F (Notes 292 to 305).

103. **Rajpramukh.**
See Note 54.

104. **Relief, consequential.**
See also Note 37.

——**Art. 226 — Powers of High Court — Consequential relief — High Court has power to order — This discretionary power how and when to be exercised.**

Where sales tax, assessed and paid by the dealer, is declared by a competent Court to be invalid in law, the payment of tax already made is one made under a mistake within S. 72 of the Contract Act and so the Government to whom the payment has been made by mistake must in law repay it. In this respect, the High Court has in exercise of its jurisdiction under Art 226 of the Constitution of India, power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law.

At the same time the special remedy provided in Art. 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil Court or to deny defence ligitimately open in such actions. The power to give relief under Art. 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where a person comes to the Court for relief under Art. 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil Court and to refuse to exercise in his favour the extraordinary remedy under Art. 226 of the Constitution.

The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period it will almost always be proper for the Court to hold that it is unreasonable. State of Madhya Pradesh v. Bhailal Bhai (1964) **6 S C R 261 : 1964 Jab L J 115 : (1964) 15 S T C 450 : 1964 M P L J 705 : 1964 Mah L J 601 : (1964) 1 S C W R 793 : AIR 1964 S C 1006 (1010, 1011, 1012) (Pt B) (Prs 14, 16, 17, 21).**

105. Res judicata.

See also Notes 114, 213 and 216 and Civil P. C. (1908), S. 11.

● —**Arts. 32 and 226 — Res judicata in writ proceedings — When doctrine can be invoked.**

Every citizen whose fundamental right is infringed by the State has a fundamental right to approach the Court for enforcing his right. If by a final decision of a competent Court his title to property has been negatived, he ceases to have the fundamental right in respect of that property and, therefore, he can no longer enforce it. In that context the doctrine of res judicata may be invoked. But where there is no such decision at all, there is no scope to call it in its aid. Where, therefore, the decision in petition under Art. 226, was not given on merits, the same would not operate as res judicata for maintainability of an application under Art. 32, for similar relief. Joseph Pothen v. State of Kerala, 1965 S C D 893 : 1965 Ker L T 633 : 1965 Ker L J 660 : AIR 1965 S C 1514 (1515) (Pt A) (Pr 5).

● —Art. 32 — Decision in earlier writ petition on merits — Subsequent suit involving same questions and for same reliefs is barred upon general principles of res judicata. See Civil P. C. (1908), S. 11. AIR 1965 S C 1153.

● —Art. 226 — Constructive res judicata — Writ petition under Constitution—Fundamental rights — Order of sales tax assessment for a year — Validity impugned — Dismissal of petition—Second petition under Constitution—Validity of order of same year impugned on new grounds not raised before — Bar of res judicata — Civil P. C. (5 of 1908), S. 11.

The assessee challenged, by a petition under Art. 226 of the Constitution the validity of the order of assessment for the year 1957-58 made under the Madhya Bharat Sales Tax Act. The High Court and the Supreme Court dismissed his petition. The Supreme Court in dismissing the appeal did not allow the assessee to raise two additional grounds not set out in the original petition. The assessee filed another petition under Art. 226 of the Constitution, challenging the validity of the same order of assessment, on the basis of the two additional grounds, the High Court dismissed the petition on merits. The assessee, by Special Leave, appealed,

Held, the assessee would be precluded from challenging the validity of the order on the principle of constructive res judicata. Though the Courts dealing with the questions of the infringement of fundamental rights must consistently endeavour to sustain the said rights, it would not be right to ignore the principle of res judicata altogether in dealing with writ petitions filed by citizens alleging contravention of their fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy, that decisions of competent Courts should be final, and no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice.

The rule of constructive res judicata that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in subsequent proceeding which is based on the same cause of action, is founded on the same considerations of public policy. If the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take proceedings one after another and urge new grounds every time, and that is plainly inconsistent with considerations of public policy.

In regard to orders of assessment for different years, the position may be different. The Court may ultimately adopt the same view which had been adopted on the earlier occasion, but if a new ground is urged, the Court may have to consider it on the merits, because, strictly speaking, the principle of res judicata may not apply to such a case. Devilal Modi v. Sales-tax Officer, Ratlam, (1965) 1 S C J 579; (1965) 1 I T J 508 : (1965) 16 S T C 602 : AIR 1965 S C 1150 (1153) (Prs 10, 11, 12).

● —Art. 226 — General principles of res judicata apply to writ petitions under Arts. 226 and 32. See Civil P. C. (1908), S. 11. AIR 1964 SC 1013.

● —Art. 32 — Res judicata — Writ proceedings challenging validity of certain notices under U. P. Act 31 of 1957 dismissed—Petitioner claiming certificate to appeal to Supreme Court but failing to deposit necessary security as required by High Court Rules and in consequence certificate granted cancelled — Subsequent writ petition under Art. 32 in Supreme Court challenging same proceedings are barred by res judicata. See Civil P. C. (1908), S. 11. AIR 1963 S C 1563.

● —Art. 32 — Civil P. C. (1908), S. 11 — Rule of res judicata is not merely a technical rule but is based on public policy — Can be invoked against a petition under Art. 32 of Constitution. See Civil P. C. (1908), S. 11. AIR 1961 S C 1457 (1461, 1462, 1463) (Pt C) (Prs 9, 10, 11).

● —Art. 226 — Civil P. C. (1908), S. 11 — Competency of Court — Constitution of India, Arts. 32 and 226 — Decision of High Court under Art. 226 if can be pleaded in bar to petition under Art. 32. See Civil P. C. (1908), S. 11. AIR 1961 S C 1457.

● —Art. 32—Civil P. C. (1908), S. 11 — Applicability to petitions under Art. 32 — Prior decision on a writ petition under Art. 226—When operates as a bar to petition under Art. 32—Principles. See Civil P. C. (1908), S. 11. AIR 1961 S C 1457.

● —**Arts. 32 and 226** — Succesive writ petitions against Committee of Privileges of State Legislative Assembly — Maintainability—Change in personnel of Committee—Effect—Res judicata—Applicability.

Where by a petition under Art. 32 against the Chairman and the members of the Committee of Privileges of a State Legislative Assembly, the petitioner sought to raise the same controversies or questions regarding the power or privilege of a House of a Legislature of a State decided in a former writ petition under Art. 32 by the same petitioner against the Chairman of the Committee of Privileges of the State Legislative Assembly the writ petition is barred by the principle of res judicata and, therefore, not maintainable. M. S. M. Sharma v. Dr. Shree Krishna Sinha, (1961) 1 Ker L R 8 : 1961 S C D 79 : (1961) 2 S C A 582 : (1961) 1 S C R 96 : (1961) 2 S C J 73 : A I R 1960 S C 1186 (1190) (Pt A) (Pr 8).

● —Art. 226 — Income-tax Act (1922), S. 10 (5) (b)—Written down value—Method enjoined by S. 10 (5) (b) — Written down value and depreciation determined under S. 35—Such determination does not operate as estoppel or res judicata — (Evidence Act 1872), S. 115 (Civil P. C. (1908), S. 11) — (Constitution of India, Art. 226). See Income-tax Act (1922), S. 10 (5) (b). A I R 1959 S C 881.

● —**Arts. 32, 226 — Direct petition to Supreme Court without appeal from decision under Art. 226—Effect.**

Where the questions dealt with under the petition under Art. 32 had been raised before the High Court at previous stages by means of applications under Art. 226 and decided against but no appeal to the Supreme Court had been taken against the orders therein, held, that nothing that the Supreme Court said was intended to be a pronouncement as to the correctness or otherwise of those orders, nor to

encourage the practice of direct approach to the Supreme Court (except for good reasons) in matters which had been taken to the High Court and found against, without obtaining leave to appeal therefrom. M. K. Gopalan v. State of Madhya Pradesh, 1954 Mad W N 564 : 1954 S C J 534 : (1954) 2 Mad L J 76 : (1954) Cri L J 1012 : 1954 S C A 557 : 1955 SCR 163 : 1954 All W R (SC) 392 : A I R 1954 S C 362 (364) (Pt E) (Pr 9).

● ——Arts. 32 and 226—Scope.

(Quaere). — Whether a proceeding under Art. 32 would lie after an application under Art. 226 for the same relief on the same facts had been rejected after the due enquiry by a High Court. Aswini Kumar v. Arbinda Bose, 1952 S C A 683 : 1952 S C J 568: 1953 S C R 1 : A I R 1952 S C 369 (370, 386) (Pt A) (Prs 2, 70).

● ——Art. 226 –Whether an application under Art. 32 is maintainble after a similar application Art. 226 is dismissed by the High Court (Quaere), Janardhan Reddy v. The State, 1951 Mad W N (Cr) 189 (2) : 64 Mad L W 401 : 1951 S C 320 : 52 Cri L J 786 : 1951 S C R 344 : 1951 All L J (SC) 94 : 1951 Mad W N 813 (2) : AIR 1951 S C 217 (226) (Pt H) (Pr 29).

● — Art. 226 –Civil P. C. (1908). S. 11 – State Government's power under S. 7-F. U. P. (Temporary) Control of Rent & Eviction Act, to grant permission to landlord to file ejectment suit – Tenant challenging Government's power by writ petition – Petition dismissed—Subsequent suit between the same tenant and his landlord –Point in dispute whether State Government had power to grant permission to landlord to file ejectment suit—Held, per Majority: that decision in writ petition operates as res judicata — Per Desai, C. J. contra): No res judicata since earlier proceedings were for issue of certiorari and High Court had no jurisdiction to try the suit for ejectment and the issue decided in earlier proceeding was competency of State Government to grant permission and not whether the permission was legal and correct or whether the permission was of any legal value, which were the questions substantially in issue in the subsequent suit. Ram Kumar v. Baldeo Prasad, ILR (1965) 1 All 579 : 1964 All W R (HC) 751 : 1965 All L J 88 : AIR 1965 All 572 (579, 580, 585, 586) (Pt B) (Prs 16, 18, 20, 37, 38, 39) (FB).

——Art. 226 — Headship of a clan in United Khasi Jaintia Hills District –Competency of executive committee of District Council to decide the matter — Question settled by competent Courts and decision operating as res judicata against parties — Question cannot be raised again in writ petition under Art. 226 — Petition must proceed on basis of its competency — Civil P. C. (1908), S. 11. ILR (1963) 15 Assam 366 : A I R 1963 Assam 186 (187, 188) (Pt A) (Pr 5) (DB).

——Arts. 226, 141 — In A. I. R. 1962 S. C. 486, Supreme Cour: holding clauses 1 and 2 of Notification dated 11th June, 1958 issued by Government of Bombay under S. 5 of the Minimum Wages Act (1948) Intra vires—Subsequently clauses challenged by petitioner in a petition under Arts. 226 and 227 of the Constitution — Petitioner not party to the case which went up to the Supreme Court – Grounds on which clauses were challenged in the present petition neither considered nor even raised in the earlier case before the Supreme Court – High Court cannot shut out the petitioner on a preliminary ground that in the previous decision clauses 1 and 2 were held to be intra vires of the Act by the Supreme Court and could not at all be challenged in the High Court. 1963 Mah L J 793 : 65 Bom L R 726 : 1963 (7) Fac L R 373 : (1963) 2 Lab L J 548 : ILR (1963) Bom 672 : A I R 1964 Bom 51 (53) (Pt A) (Pr 7) (DB).

——Art. 226—Other remedy—Issue of writ.

The petitioner claimed certain orders of the Assistant Commissioner, Sales-Tax, to be quashed. In a previous petition between the same parties in the very matter the High Court had ordered that the petitioner must exhaust his remedies against the impugned order under S. 22, Sales-tax Act.

Held, that the previous decision was a judgment inter partes and was binding on the petitioner; that the matter was no longer res integra and that the petitioner could not be heard to urge that the remedy was not an equally efficacious remedy. 1959 Nag L J (Notes) 72.

——Art. 226 — Successive writ applications — First application dismissed summarily on hearing petitioner — Second application on same grounds and for same reliefs is barred — Principle of res judicata applies. A I R 1961 S C 1457, Expl. and Foll. 66 Cal W N 1074 : A I R 1963 Cal 6 (7, 8) (Pt A) (Prs 6, 7, 8) (DB).

——Art. 226 — Civil P. C. (1908). S. 11 — Award of Industrial Tribunal — Applicability of principle of res judicata — Industrial Disputes Act (1947), S. 19— Assumption of jurisdiction — Previous award of Tribunal deciding that issue cannot be held to be res judicata barring the constitutional remedy by High Court. See Civil P. C. (1908), S. 11. A I R 1958 Cal 465.

——Art. 226 — Procedure — Res judicata—Previous application to quash notification under S. 4 of Land Acquisition Act — Question about interpretation of S. 40 (1) (b), considered incidentally or collaterally and not directly or substantially — Subsequent petition to quash notification under S. 6 — Earlier decision, held, would not operate as res judicata.

A previous writ application was filed for quashing a notification under S. 4 of the Land Acquisition Act issued in land acquisition proceedings for acquisition of lands for the purpose of manufacturing injections and medicines for a chemical company. It was filed and decided before the issue of final notification under S. 6. It was the view of Gujarat High Court at that time that if the product was useful to the public it was sufficient compliance with the section. This was clearly a decision on the collateral or incidental question whether the consequential relief of injunction against issuing notification under S. 6, and further proceeding with the acquisition should be granted or not after it was held that the notification under S. 4, could not be challenged. The notification under S. 6, was not and could not then be challenged as it was not even issued. The decision arrived at in the first petition was on the question whether an injunction should be issued or not, while in the subsequent petition to quash notification under S 6, of Land Acquisition Act the question was whether the impugned notification could be issued under S. 6. These two questions at two different stages could not be said to be substantially the same and the subject matter for actual decision of the Court being different, there could be no bar of res judicata especially as in the earlier petition the question of interpretation of S. 40 (1) (b) was considered only incidentally or collaterally and was not directly or substantially in issue. Thus the earlier decision at the earlier stage of the acquisition would not operate as res judicata so as to preclude the land owners from challenging the notification under S. 6, on the ground that it was without jurisdiction. A I R 1964 S C 1013, Rel. on. (1965) 6 Guj L R 505 : A I R 1966 Guj 102 (104, 105, 106) (Pt B) (Pr 4) (DB).

——Arts 226 and 227 — Res judicata — Dismissal of municipal employee without previous approval of Government — Collector holding that the employee was a permanent employee setting aside dismissal

order on the ground that it was bad in the absence of Government approval — Municipality's writ application to quash Collector's order — High Court also holding in such proceedings that the employee was a permanent one — Municipality again passing resolution dismissing the employee without Government's previous approval — Held that in the proceedings to set aside the second order it was not open to the municipality to contend that the employee was a temporary one and hence no previous approval of Government was necessary. 1964 Jab L J 3 : 1964 M P L J 36.

——Art. 226 — Res judicata—Second petition on the same facts.

Petitioner, a Sub-Inspector of Police in the former State of Vindhya Pradesh was discharged from service by the Inspector-General of Police of the State after due enquiry. A petition challenging the order of discharge was dismissed in limine by a Division Bench of the High Court. A second petition was subsequently filed.

Held, that after the dismissal on merits of an application under Art. 226 of the Constitution, a second application on the same facts was not maintainable. AIR 1953 Cal 297; A I R 1958 Cal 219 and AIR 1959 All 589, Dist. 1960 M P L J (Notes) 221.

——Art. 226—Res judicata—Refusal to issue writ of prohibition — Subsequent petition to reconsider — Maintainability.

Where in the previous petition the petitioner had prayed for a writ of prohibition against the Government not to pass any order on the enquiry that was conducted against him by Collector, Indore, and that request was considered and rejected, it is not now open to the petitioner to make the same request, and thus ask the High Court to reconsider the earlier decision. 1959 Jab L J 370 : 1959 M P C 463 : 1959 M P L J 1168 : AIR 1959 Madh Pra 295 (297) (Pt D) (Pr 13) (DB).

——Art. 226 — Civil P. C. (1908), S. 11—Application under Art. 226, Constitution of India, dismissed on ground of availability of remedy by way of suit — Observations that provisions of Art. 311 were observed — Remarks that merits of case not entered into — Decision is not res judicata in subsequent suit. See Civil Procedure Code (5 of 1908), S. 11. AIR 1958 M P 326.

——Art. 226—Res judicata—Principle of — Applicability of,

Precisely on the very facts that were being alleged in the second petition, the petitioner filed a writ petition on 9th July, 1954, which was dismissed on 14th January, 1957 by a Division Bench of the High Court. The only new addition in the second petition was that he now challenged the vires of Ordinance No. 56 of 1949.

Held, that although S. 11, Civil P. C. (Res judicata) did not apply in terms to cases of writ, the principle contained in it should be applied. 1957 M P C 770 : 1957 Jab L J 1039 : 1958 M P L J 184 : A I R 1958 Madh Pra 82 (82) (Pt A) (Pr 2).

——Arts. 32 and 226 — Principle of res judicata — Its applicability to decisions under Arts. 32 and 226.

A decision between the parties, which stands, not having been appealed from, binds them and it would not be open to either of the parties to challenge its correctness by initiating fresh proceedings. This rule is firmly rooted and it applies irrespective of the nature of the proceeding, in which the decision is rendered. A writ proceeding, whether under Art. 32 or Art. 226, is just as much a proceeding in a civil Court, and there is no virtue in enabling party or a suitor to get out of an adverse decision against him by permitting him to seek the refuse of writs. But all the same, the entire body of the doctrine of res judicata as embodied in the provisions of S. 11 of the Civil P. C. or under what may be called the general principles of res judicata which are founded on grounds of public policy to avoid multiplicity of proceedings need not be pressed into service to delimit the scope of writ proceedings, particularly in cases where there is a complaint of infringement of fundamental rights. It is, of course, true that if a fundamental right is put in issue once and decided upon, the party cannot call in question that decision, as if he has a fundamental right to complain till a decision is rendered in his favour. A I R 1964 S C 922 and AIR 1964 S C 1013, Rel. on. I L R (1964) 1 Mad 954 : (1964) 54 I T R 151 : 1963 I T J (Sup) 111 : AIR 1965 Mad 68 (73, 74) (Pt C) (Pr 12) (DB).

——Art. 226 — Court of competent jurisdiction — Writ petition to High Court — Decision of Industrial Appellate Tribunal held to be correct — Plea of res judicata must be rested on decision of Appellate Tribunal and not that of High Court. See Civil P. C. (1908), S. 11. AIR 1957 Mad 60.

——Art. 226—Powers of High Court — Prior application for writ of certiorari dismissed — Another application for writ of prohibition or mandamus—(Stamp Act (1899), S. 57).

Where an application for a writ of prohibition or for such other appropriate order to restrain the Revenue Board from enforcing the stamp duty and penalty was dismissed, on the ground that the dismissal of a prior application for certiorari should be deemed to have decided that the stamp duty imposed was correct :

Held, that the result of the dismissal of the prior application could not have the effect of an adjudication as to the correctness of the stamp duty. Though the order of the Revenue Board may not be quashed by a writ of certiorari it was certainly open to the High Court to have directed the Revenue Board by issuing a writ in the nature of mandamus to make a reference to this Court under S. 57 of the Indian Stamp Act. A I R 1950 S C 218, Rel. on. (1955) 1 Mad L J 8 : 1954 Mad W N 902 : 67 Mad L W 1067 : I L R (1955) Mad 1037 : A I R 1955 Mad 304 (304) (Prs 1, 2) (DB).

——Art. 226—Res judicata.

The decision in a writ application proceeds on certain admitted facts. The question in such an application is whether the High Court in the exercise of its extraordinary jurisdiction will issue a direction to a subordinate authority. If the High Court refused to exercise its discretion to issue such a direction, the dismissal of the application will not amount to a decree in a suit within the meaning of S. 11, Civil P. C. and such a decision cannot be said to have the effect of res judicata in a subsequent suit between the parties. A I R 1961 Manipur 1 (3, 4) (Pt A) (Pr 10).

——Art. 226—Judgment in writ proceedings is binding on parties. See Civil P. C. (1908), S. 11. A I R 1960 Orissa 46 (DB).

● ——Art. 226—Principles of res judicata — Previous writ petition—Question of vires of Act not raised — Subsequent suit raising this question is barred. See Civil P. C. (1908), S. 11. AIR 1964 Pat 174 (FB).

——Art. 226—Decision in writ petition—Operation as res judicata in subsequent suit. See Civil P. C. (1908) S. 11. AIR 1965 Punj 342 (DB).

——Art. 226—Res judicata — Writ petition challenging acquisition of land, under Land Acquisition Act, for public purposes — Order refusing writ for want

of evidence—Order does not operate as res judicata in subsequent regular suit raising same question. See Civil P. C. (1908), S. 11. **AIR 1965 Punj 50.**

——Arts. 226 and 227 — Certiorari — Petition dismissed in limine — Petitioner has no right to make another application for same relief on identical facts in the same Court.

Where a petition under Arts. 226 and 227 was dismissed in limine by a Division Bench of the High Court, the petitioner moved the High Court again before another Bench of concurrent jurisdiction, for the same relief on identical facts in another petition under Arts. 226 and 227 and contended that the order of dismissal in previous petition not being a 'speaking order' was not a dismissal on the merits of the case.

Held that the petitioner had no continuous right to make applications under Arts. 226 and 227 till delivery of a judgment amounting to a speaking order and that no writ of certiorari could lie within same Court after it had once been dismissed. Case law d scused.

A final order or judgment can be challenged either by way of appeal or review and not by presentation of another similar petition. No further appeal lies so far as the High Court is concerned from any order passed by a Division Bench of the High Court either in limine or on merits. The petitioner could have moved the High Court for a review of the order under its inherent powers but that was not a petition for review.

As a matter of principle there could be no successive applications for writs of certiorari in the High Court.

It is a matter in each case to determine for the Court which chooses to pass an order of dismissal to adjust to the reasons which actuated it in so doing or content itself by simply dismissing it. **('65) 67 Pun L R 862 : 1965 Cur L J 852 : ILR (1966) 1 Punj 218 (DB).**

——Art. 226—Scope of writ petition and regular civil suit — Judgment delivered in writ petition cannot operate as res judicata in civil suit. **('63) 65 Pun L R 945.**

——Art. 226—Civil P. C. (1908), O. 23, R. 1—Previous writ petition not pressed and dismissed—Nothing to show that it was withdrawn with liberty to file fresh petition—Held bar might be created under O. 23, R. 1 to the filing of fresh writ petition. See Civil P. C. (1908), O. 23, R. 1. **(1962) 64 Pun L R 1116.**

——Art. 226 - Dismissal of petition in limine—Order not on merits — Another petition for same cause of action by different parties not barred.

If a writ petition is dismissed in limine and an order is pronounced in that behalf whether or not the dismissal would constitute a bar to another petition for the same cause of action by another party would depend upon the nature of the order. If the order is on merits, it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy, it would not be a bar except in certain cases. If the petition is dismissed in limine without passing a speaking order, then such dismissal cannot be treated as creating a bar of res judicata. In such a case considerations of propriety would not be infringed by affording relief to a petition if he is entitled to it under the law. A I R 1961 S C 1457, Rel. on. **1962 Cur L J 264 : 64 Pun L R 547 : ILR (1962) 2 Punj 583 : A I R 1962 Punj 498 (500, 501) (Pt A) (Pr 7) (DB).**

——Art. 226—Res judicata — Successive applications for certiorari or mandamus on same facts and grounds —Not maintainable—Principles of res judicata apply —A I R 1956 Pat 182, Rel. on. **A I R 1949 E P 67**, Disting. **ILR (1960) 2 Punj 660 : A I R 1960 Punj 602 (603) (Prs 5, 7).**

——Art. 226—Res judicata—Railway servant — Dismissal in contravention of Art. 311 (1)— Civil suit— Decree declaring dismissal illegal — Reinstatement and second order of dismissal by same officer after fresh inquiry - Application under Art. 226 — Bar of Res judicata—(Civil P. C. (1908), S. 11).

The petitioner, a temporary railway clerk brought a suit for declaration that the order of dismissal passed against him was illegal on the ground that he had been appointed by the General Manager and could not be dismissed by the Divisional Personnel Officer in contravention of Art. 311 (1), Constitution of India. The suit was decreed and confirmed on appeal. The petitioner was reinstated but about a month after a fresh ex parte inquiry was held by the Divisional Personnel Officer who ordered his removal from service.

Held in a petition under Art. 226 (i) that the decision of the civil Court was binding on the parties in proceedings under Art. 226 till it was set aside in accordance with law.

A decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be reagitated. The rule of res judicata is intended not only to prevent a new and possibly conflicting decision but also to prevent a new investigation so that a person may not be harassed over and over again to estabiish the same fact or right. This attitude towards the decision of the civil Courts by a public authority is improper. 1957 S C J 28 : A I R 1957 S C 38, Rel. on. (ii) that the petitioner was within his rights to avail of the remedy under Art. 226 which was cheaper and much more expeditious than the remedy of filing a second suit in civil Court. (iii) that the dismissal of the petitioner contravened the provisions of Art. 311 (1) and was therefore invalid. **I L R (1957) Punj 1833 : AIR 1959 Punj 37 (38, 39) (Prs 3, 6).**

——Art. 226 — Principle of res judicata — Dismissal of previous petition in limine on merits—Facts within knowledge of petitioner — Second petition with addition of such facts—Held, barred by res judicata—Civil P. C. (1908), S. 11. **I L R (1963) 13 Raj 703 : 1963 Raj L W 408 : A I R 1964 Raj 64 (64, 65, 66) (Pr 1) (DB).**

——Art. 226 — Petition for writ of certiorari — Maintainability—Prior dismissal of revision petition by High Court.

The dismissal of a revision petition by tha High Court of Udaipur, while it had no jurisdiction to interfere cannot be a bar to a subsequent petition for a writ of certiorari in respect of the same matter. Laksmi Lal v. Bhagwat Singh. **ILR (1951) 1 Raj 570 : 1951 Raj L W 484 : A I R 1952 Raj 22 (26, 27) (Pt I) (Pr 25) (FB).**

——Art. 226 — Res judicata in writ proceedings — Civil P. C. (1908), S. 11.

The decision in previous writ proceeding between the same parties that the petitioner company was an industry within the meaning of the Industrial Disputes Act would be binding and cannot be reagitated in subsequent writ proceeding. **A I R 1964 Tripura 32 (34, 35) (Pt E) Pr 11).**

106. Retrospective effect.

See also Ibid, Preamble.

——Art. 226— Retrospective operation — Departmental inquiry — Order of dismissal — Proceeding

violating natural justice —Appeal against order dismissed before Constitution – Revision dismissed after Constitution —Writ petition, if maintainable.

The Constitution is prospective in its application and has no retrospective operation except where the contrary has been expressly provided for. Art. 226 and Art. 227 have no retrospective operation and transactions which are past and closed and the rights and liabilities which have accrued and vested would remain unaffected.

Where the order of dismissal is passed before the Constitution and rights accrue to the State and liabilities attach to the servant before the Constitution came into force, the subsequent conferment of jurisdiction and powers on the High Court by the Constitution under Art. 226 can have no retrospective operation on such rights and liabilities. Even if the order of dismissal be a nullity on the ground that it was passed by disregarding the rules of natural justice, the High Court cannot properly be asked to exercise its newly acquired jurisdiction and powers under Art. 226.

Bose, J. (Contra) :— Save in exceptional cases, the Courts will not interfere under Art. 226 until all normal remedies available to a petitioner have been exhausted. The position would not be any different because he has done before the Constitution exactly what he would have been expected, and in the ordinary course bound to do after. It is true that if the final order had been passed before the Constitution came into force on 26th January, 1950, the petitioner would have had no remedy in the Courts. But the Constitution breathed fresh life into this land and conferred precious rights and privileges that were not there before. They should not be viewed narrowly. The State of U. P. v. Mohammad Nooh, **1958 S C J 242 : I L R (1957) 2 All 422 : 1958 S C A 73 : 1958 Mad L J (Cr) 197 : 1958 SCR 595 : AIR 1958 S C 86 (94, 95, 96) (Pt C) (Prs 12, 13, 19, 20, 21).**

■ ——**Art. 226**— Firman issued by Nizam prior to Constitution— Right to possession destroyed—Right if revived after Constitution – Writ of mandamus. See Ibid, Art. 13. **AIR 1956 S C 60.**

■ ——**Art. 32 (2).—Retrospective operation.**

The provisions of the Articles were not intended to operate retrospectively and therefore, something which was legally good on 25-1-1950, cannot be held to have become bad on 26-1-1950. Where therefore, the judgment of the H. C. affirming the convictions and sentences of the petitioners had acquired finality in the fullest sense of the term before the 26-1-1950, no one could question the validity of the convictions at the date when the Constitution came into force. Janardhan Reddy v. State of Hyderabad, **1951 S C J 320 : 52 Cri L J 736 : 1951 S C R 344 : 1951 All L J (S C) 94 : 1951 Mad W N 613 (2) : 1951 Mad W N (Cri) 189 (2) : 64 Mad L W 406 : AIR 1951 S C 217 (225) (Pt G) (Pr 27).**

——**Art. 226**— Retrospectivity. See Land Acquisition Act (1894), S. 16. **AIR 1954 Ajmer 71.**

——**Art. 226**– Notices for acquisition of petitioner's land issued before coming into force of the Constitution —Writ petition after Constitution was enforced— Neither award under S. 11, prepared nor possession taken by Government under S. 16 of Land Acquisition Act — Petition, held, not liable to be dismissed on ground that the injury complained of had already occurred before Constitution was enforced.

Where the notices regarding acquisition of the petitioner's land were issued before the Constitution was enforced but neither the award had been prepared under S. 11 of the Land Acquision Act nor the Government had taken possession of the disputed land, the writ petition was not liable to be dismissed on the ground that the injury complained of had already occurred before the Constitution was enforced.

Under the provisions of S. 16 of the Land Acquisition Act, the petitioner could be divested of his right in the land in dispute only after the award had been made under S. 11 and possession taken under S. 16. As that stage had not reached and no award had been prepared, the petitioner did not stand divested of his rights and dispossession if allowed to take place could only occur in the post-Constitution period : AIR 1952 S C 339 and AIR 1962 S C 92, Disting. **ILR (1965) 1 All 329.**

——**Art. 226 – Invalid order of requisition enforced after coming into force of Constitution — It can be adjudicated upon under article – U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 3.**

If an invalid order of requisition is being enforced even after the coming into force of the Constitution and by such enforcement a citizen is deprived of his property such an order can be looked into and adjudicated upon under Art. 226. **1965 All L J 681 : 1963 All W R (H C) 485.**

——**Art. 226 — Order passed before Constitution — No writ can be issued.**

The Constitution of India is not retrospective. Hence, no writ or direction can be issued in respect of an order passed or action taken before the enforcement of the Constitution. **ILR (1961) 1 All 940 : AIR 1963 All 358 (360) (Pt B) (Pr 8).**

——**Art. 226—Retrospective operation — Assessment order becoming final before Constitution cannot be quashed under Art. 226.**

Where the income-tax assessment order was made and had become final before the comming into force of the Constitution, the order is a judicial order and cannot be quashed on the ground of want of jurisdiction, under Art. 226, after the coming into force of the Constitution. AIR 1953 Punj 16 and AIR 1951 S C 217 and AIR 1954 S C 545, Rel. on. The Court cannot treat the order as nullity, and restrain action being taken in pursuance of it : AIR 1961 S C 217 and AIR 1955 All 435 (FB), Rel. on. **(1960) 39 ITR 497 : AIR 1961 All 133 (134, 135) (Pt A) (Prs 2, 3) (DB).**

——**Art. 226 — Retrospective effect — Exercise of powers under Art. 226 in respect of orders passed before Constitution —Writ of certiorari and mandamus —Distinction.**

In cases where a writ of certiorari is sought, the High Court in exercise of its powers under Art. 226 of the Constitution, has to examine the validity of a judicial or quasi-judicial order and if that judicial or quasi-judicial order had attained finality before the Constitution of India came into force, the High Court would not be entitled to exercise the powers which are exercised to issue a writ in the nature of certiorari. On the other hand, in the case of a writ of mandumus the High Court only issues direction to a public servant either to act according to law or to refrain from acting against law. Such an order can be passed by the High Court whenever occasion arises and makes it necessary that such a direction be issued. If the occasion for the issue of such a direction arises after the Constitution came into force, the powers can certainly be exercised under Art. 226 of the Constitution. The occasion may arise when the order, having been passed before the Constitution came into force, is sought to be enforced after the commencement of the Constitution. If the order is not a legal and valid order, the act of enforcing it after the commencement of the Constitution would be an act of public servant against the provisions of law and such an act sought to be committed after the commencement of the Constitution can be restrained by issue of a writ, in

the nature of mandamus under Art. 228 of the Constitution.

The U. P., Government in exercise of its powers under S. 3, U. P. Industrial Disputes Act, 1947, passed an executive order on 3rd December, 1949, directing that the petitioner should comply with the direction given in it within six months of the Notification. The order had not acquired finality when the Constitution came into force. Subsequently time for compliance was further extended so that the order was not complied with at least, upto 17th August, 1950 when the petitioner filed an application under Art. 226 challenging that order.

Held, that the order could be challenged under Art. 226 on the ground that it was not warranted by law when passed and that the opposite parties were threatening to take action against the petitioner for non-compliance of that order even after the commencement of the Constitution. A I R 1951 S C 217, Dist. Civil Misc. Writ Case No. 315 of 1950, D/- 30 4-1952, (All) and AIR 1952 Cal 891, Rel. on. Case-law Referred. **AIR 1954 All 705 (710) (Pt C) (Pr 6).**

[Overruled on another point in AIR 1961 S C 420.]

——Art. 228—Court of Wards assuming superintendence of Ward's estate by virtue of declaration made by Government under S. 8 (1) (b), U. P. Court of Wards Act long before Constitution — Validity. See Ibid, Art. 13 (1). **AIR 1954 All 608 (DB).**

——Art. 228—Scheme under S. 63, M. H. R. E. Act for administration of Math and its endowments given effect to prior to Constitution coming in force—Operation of Constitution — Whether retrospective—No question of violation of fundamental rights of previous head of math arises — Scheme providing that Executive Officer shall be in charge of day-to-day administration of math — Appointment of executive officer is tantamount to giving effect to scheme. See Madras Hindu Religious Endowment Act (2 of 1927), S. 63. **I L R (1962) Andh Pra 221,**

——Art. 228 — Object and scope of—Order recognising partition from particular date — Effect of — Retrospective operation of statute — Analogy applies to order — Order, dated 30-6-1962, held to be made on 2-11-46 —Relief open under Art. 228. See Income Tax Act (1922), S. 25-A. **(1962) 1 Andh W R 344.**

——Art. 226 — Court Fees Act (1870), S. 1 — Applicability of the Act to writ petition — Retrospective operation — Question of vested rights. See Court fees Act (1870), S. 1. **AIR 1958 Andh Pra 267.**

——Arts. 226 and 309 — Retrospective operation — Petitioner a Civil servant in Assam working as Labour Commissioner for certain period prior to enactment of Constitution — Claim that the post was of senior I. A. S. Scale and that petitioner was paid less for the period he worked as Labour Commissioner—Claim finally disallowed by Assam Government Order No. G. L. R. 373-A16/1, dated 15 9 1960—Claim held related to a matter prior to Constitution—No remedy under Art. 226 was therefore available — Order of Government was an administrative order—Certiorari cannot be issued. AIR 1958 S C 86 Rel. on. **I L R (1962) 14 Assam 515 : A I R 1962 Assam 118 (119, 120) (Pr 8) (DB).**

——Art. 226 — Operation of — Rights under ordinary laws violated before Constitution—Remedy under Art. 226 is available when no violation of rights given under Constitution is alleged.

Per Sarjoo Prosad C. J.: That the Constitution is not retrospective in operation, only means that rights created or principles introduced for the first time by the Constitution itself could not be claimed in respect of facts or circumstances existing prior to the Constitution, and on the basis of which the rights and liabilities of the parties had to be adjudged, but that will have no application to a procedural provision made by the Constitution.

Where the case of the petitioner is that he was illegally discharged from service, inasmuch as the Government did not follow the law then in force, that the order of discharge had not become final, in the sense that he could still challenge the order of discharge under the ordinary laws and his right to file a suit for declaration under the ordinary law, that he still continued in service, was not barred at the time, he can avail himself of the new and speedier remedy under Art. 226, which had come into force in the mean time. The remedy under Art. 226 of the Constitution is available to the petitioner against an illegal act or order which happened before the Constitution, where the petitioner does not claim that any substantive right created for the first time by the Constitution has been violated, but what he does claim is that the order challenged could not have been passed even under the existing laws and rules governing the conditions of service of the petitioner, which laws and rules as they existed prior to the Constitution are not questioned by the petitioner on any such ground of inconsistency with the fundamental rights guaranteed to him under the Constitution. Case law Ref.

Per Ram Labhaya J.: Where the basis of the proceeding under Art. 226 is an infringement of a fundamental right, Art. 226 has no retrospective operation. The reason is obvious. There were no fundamental rights before the Constitution came into force. Contravention of fundamental rights may be cured if that takes place after the commencement of the Constitution. But the enforcement of fundamental rights does not exhaust the scope of Art. 226. It could be utilised for other purposes as well. 'Other purposes' have been held to include enforcement of legal rights not necessarily fundamental. Now in regard to the enforcement of the fundamental rights, the Article has admittedly no retrospective effect. The fundamental rights did not exist before 26 1 1950.

In regard to other rights, it requires that there should be a claim under some pre-existing law and there should be an assertion of that claim under that pre-existing law after the Constitution came into force. These conditions would not be satisfied if matters have been finally determined under the laws which were in force immediately before the Constitution or they constitute the subject-matter of pending judicial proceedings.

Where a person has a claim under a pre-existing law and decides to enforce it by invoking the extraordinary jurisdiction of the High Court under Art. 226 for the first time after the Constitution comes into force, there would be no impediment in his way. The pursuit of the remedy under these circumstances would not touch existing rights. If it does not the remedy may be pursued without objection, Art. 226 not being part of the substantive law.

Per Deka J.: (Contra): The petitioner's right if any to continue in service had been denied by 31-8-1948 at the latest. Nothing would remain for the petitioner to contend if the order of 21-4-1948 be left intact or uninterfered with and his remedy therefore does not lie under Art. 226 which has no retrospective operation. Hiranmoy v. State of Assam, **AIR 1954 Assam 224 (233, 234, 235, 244, 245, 246) (Pt C) [Prs 10, 38, 43, 44, 45, 47) (FB).**

——Art. 226—Retrospective effect.

The enforcement of the Constitution did not affect pending proceedings even though there was a violation of fundamental rights. Pending proceedings could be affected only if the Constitution or any part of it was given in express terms or by necessary intendment any retrospective effect.

Even Art. 226 cannot be given any retrospective operation even though there may be an infringement of a fundamental right, for there were no fundamental rights before the Constitution came into force. AIR 1951 S C 128 and AIR 1952 S C 235 and AIR 1953 Assam 25, Rel. on and AIR 1951 Nag 443 (FB), Ref. **AIR 1954 Assam 152 (154) (Pt A) (Prs 6, 7) (DB).**

■ **——Art 226 – Order in violation of fundamental rights passed before passing of Constitution — Interference after passing of Constitution — S. 6, General Clauses Act, it operates as bar — General Clauses Act (1897), S. 6.**

Per Full Bench. — The saving of an order made prior to the commencement of the Constitution under S. 6, General Clauses Act, does not mean that the State is entitled, after 26th January 1950, to deprive a citizen of a fundamental right which is guaranteed to him. Therefore, even though the order may have been saved by S. 6, if the order is in violation of the fundamental rights, which have come into existence after 26th January 1950, the Court is entitled to interfere. In such a case, there is no question of applying S. 6, General Clauses Act. Jeshingbhai v. Emperor, 52 Bom L R 544 : ILR (1950) Bom 539 : 52 Cri L J 120 : AIR 1950 Bom 363 (366) (Pt B) (Pr 5) (FB).

——Art. 226 – Retrospective effect — Act done prior to Constitution – Application under Article upon the act producing result after Constitution — Power of High Court to issue writ.

Article 226 is a provision of a procedural character and its scope is limited to making certain forms of remedy available to the citizens of India not only for the purpose of enforcement of the fundamental rights, but also for any other purpose. So far as Calcutta High Court is concerned, even those remedies are not new, because it had under its Letters Patent, the right to issue all the writs of which Art 226 speaks. There is therefore absolutely no reason why, if a particular wrong, committed prior to the commencement of the Constitution, is brought to the notice of the Court on account of some present result which it is causing after the Constitution, Art. 226 cannot be invoked for appropriate relief or why the remedy provided for by the Article cannot reach back to the point of time when a wrong was committed. ILR (1959) 1 Cal 175 : AIR 1957 Cal 578 (582) (Pt C) (Pr 12) (DB).

——Art. 226—Retrospective effect.

That the Constitution is not retrospective in operation only means that, in the absence of an express provision, rights created or principles introduced for the first time by the Constitution itself cannot be claimed in respect of or applied to facts, situated in time before the Constitution, when rights and liabilities arising out of such facts fall to be adjudged. That principle cannot apply to a mere procedural provision made by the Constitution, unless such provision itself involves substantive rights. Article 226 merely enables High Courts to exercise their powers of revision and correction in a new form and in a new type of proceeding and so far as Calcutta High Court is concerned, the power is not even a wholly new power as regards matters arising within the ordinary original civil jurisdiction. The Article has created no substantive right, but only provided a new form of remedy through the High Courts which might well have been done by an Act of the appropriate legislature or legislatures. It follows that where the right asserted or the liability denied is one under the ordinary laws of the country and not one arising out of the Constitution, and an assertion or denial has taken place after the Constitution has come into force, it cannot be said that the application of Art. 226 is excluded by the fact that such right or liability originated before the commencement of the Constitution. The demand made was one under the Sea Customs Act and the accrual of the right on which it was based or the ground on which it was challenged depended in no way on the Constitution. The demand was sought to be enforced after the Constitution had come into force and when the applicant which was resisting, it, invoked Art. 226 for protection and relief and asked the basis of the demand to be examined, it was not asking for application of the Constitution with retrospective effect or even if it was, the application of anything more than mere procedure was not involved. At least, so far as the applicant was asking for a direction on the Customs authorities to forbear from giving effect to the Demand Notices, it was not at all asking for an application of Art. 226 with retrospective effect. Further there being an assertion of a claim after the Constitution and the claim being not one under a right created for the first time by the Constitution itself, but being one under some other pre existing law, Art. 226 empowered the High Court to deal with it by means of appropriate writs or directions although the claim might have originated before the commencement of the Constitution. 58 Cal W N 209 : AIR 1954 Cal 151 (154) (Pt A) (Pr 7) (DB).

——Art. 226—Retrospective effect — Article not retrospective.

Article 226 is not retrospective in operation and so recourse cannot be had to the Article for challenging the validity of the Notifications which were issued before the Constitution came into force. AIR 1952 Cal 907 (911) (Pt F) (Pr 35).

——Art. 226 – Applicability – Notification issued by Government under statute prior to Constitution – Validity of, if can be challenged.

Where a notification issued by Government under S. 6 of the West Bengal Land Development and Planning Act is ultra vires, any step taken to enforce such notification or any action taken pursuant to such notification can be challenged under Art. 226 of the Constitution, although the notification was made before the Constitution came into force. Being an ultra vires notification, it gives a recurring cause of action to the petitioner. AIR 1952 Cal 891 (892, 893) (Prs 12, 13).

——Art. 226 — Applicability — Notification issued under statute prior to Constitution – Validity of, if can be challenged.

A notification issued by Government under the West Bengal Land Development and Planning Act can be challenged as ultra vires under Art. 226 of the Constitution, even though such notification was issued before the Constitution came into force. If a particular act is ultra vires, it furnishes a recurring cause of action to the party aggrieved by such act and the aggrieved person can have recourse to Art. 226 for impugning the validity of such act. **A I R 1952 Cal 857 (859) (Pt C) (Pr 5).**

——Art. 226—Retrospective operation—Application to quash proceedings under Land Acquisition Act — Maintainability—Declaration under S. 6 of Act made before commencement of Constitution — Letters Patent, Cls. 4 and 21—Specific Relief Act, S. 45.

An application under Art. 226 of the Constitution to quash proceedings under the Land Acquisition Act is maintainable although the declaration under S. 6 of that Act was made before the commencement of the Constitution, where the proceedings are not yet complete and the applicant was not served with any formal notice of the acquisition until after the commencement of the Constitution. Where the complaint of the applicant is that the declaration and all the subsequent proceedings are ultra vires and void and

therefore no rights could be acquired under them, there is no reason why recourse to Art. 226 cannot be had by him. Moreover before the Constitution came into force the High Court had power as it has now under Cls. 4 and 21 of the Charter to issue prerogative writs to interfere with the declaration and the acquisition proceedings complained of. S. 45 of the Specific Relief Act was also available in appropriate cases. AIR 1950 Madh B 46, Appl. 56 Cal W N 156: **AIR 1952 Cal 573 (576) (Pt B) (Pr 22).**

——Art. 226 – Applicability—Acts of executive committed before passing of Constitution.

Under Art. 226, Indian Constitution, powers have been given to the High Court to issue to any person in authority order or directions for enforcement of fundamental rights and there is no question of taking away rights which have already vested. The article can, therefore, be applied even to the acts of the executive which had been committed before the passing of the Indian Constitution. AIR 1950 Cal 512, Dist. **87 Cal L J 109 : (1951) 19 ITR 538 : AIR 1951 Cal 430 (434) (Pt C) (14).**

——Art. 226—Retrospective operation.

No question of retrospective application of the provisions of the Constitution arises when the act of the respondent on account of which relief as claimed by writ petitions continued to be committed even after the coming into force of the Constitution, and what the petitioners did by the petition was not so much the challenging the act of the respondent as the assertion of a fundamental right granted to them since 26th January. 1950. AIR 1953 Punj 16, Disting.; **A I R 1953 Him Pra 8, Foll. A I R 1953 Him Pra 95 (101) (Pt H) (Pr 22).**

——Art. 226 (1)—Infringement of fundamental right — Right non est before Constitution — Acquiescence in infringement—Retrospective operation of Art. 19—(Evidence Act (1872), S. 115). See Ibid, Art. 19 (1) (g). **AIR 1953 Him Pra 8.**

——Arts. 226 and 31—Retrospective operation — Acquisition proceedings started before Constitution — Attempt to take possession after Constitution—Application by petitioner can be entertained — Attempt to dispossess him can be challenged by praying for writ under Art. 226. See Ibid, Art. 31. **A I R 1955 Hyd 203 (DB).**

——Art. 226 — Applicability — Pre-Constitution order.

In respect of an order of resumption of leased land passed by Government long before the coming into force of the State Constitution and it being a pre-Constitution matter no writ of certiorari can be granted by the High Court to quash the same. Bhagat Rajinder Kumar Sawhney v. State of J. & K. **AIR 1960 J & K 50 (51) (Pt B) (Pr 3) (FB).**

——Art. 32 (2-A) — Scope — Breach of legal duty occurring prior to Constitution — Other remedy available — Application for writ — If maintainable. See Constitution of Jammu and Kashmir, S. 103. **AIR 1959 J & K 110 (DB).**

——Art. 226 — Constitution of Jammu & Kashmir (1957), S 103—Order passed prior to 26-1-1957 cannot be challenged under S. 103 See Constitution of J. & K, S. 103. **AIR 1959 J & K 98.**

——Art. 226 — Constitution of Jammu and Kashmir (1957), S. 103—Retrospective operation. See Constitution of Jammu and Kashmir (1957), S. 103. **AIR 1958 J & K 43.**

——Art. 226—Retrospective effect — As applied to Jammu and Kashmir State — Scope of — Order of premature retirement in 1953—Right to challenge not barred—Availability of remedy under S. 103, Constitution of Jammu and Kashmir. See Constitution of Jammu and Kashmir (1957), S. 103. **AIR 1958 J & K 11 (FB).**

——Art. 32 (2-A) (read with Constitution (Application to Jammu and Kashmir) Order (1954)) — Dismissal of Government servant prior to promulgation of the Order—Writ petition not competent — (Constitution of India, Preamble.)

Constitution cannot be applied retrospectively. Hence where a Government servant serving as a Ghat Munshi was dismissed by the Director of Food Control on 18th January 1952, which was much earlier than the promulgation of the Jammu and Kashmir Constitution (Application) Order, assuming that the dismissed servant has a cause of action a writ petition is not competent. **A I R 1957 J & K 25 (26) (Pt A) (Pr 1).**

——Art. 32 (2-A) — Constitution (Application to Jammu and Kashmir) Order (1954) — Result of examination withheld in 1951—Examinees informed of reason in 1955 – Issue of writ.

Where a Departmental Examination of Tehsildars and Naib Tahsildars was held in 1950 by the Central Examination Board, Revenue Department and the Board issued an order, dated 24th January 1951, which said that the result of such examinees had been withheld and it was only in the order issued in January 1955 that they were told that their result had been withheld in the sense that it had been cancelled because it had been found that they had used unfair means.

Held that under the circumstances the objection that no writ could be issued in respect of decision taken in the pre-Constitution period had no force. **AIR 1957 J & K 13 (14) (Pt A) (Pr 3) (DB).**

——Art. 226—Retrospective effect—Article not retrospective. **AIR 1960 Ker 138 (139) (Pr 2).**

——Art. 226 — Retrospective operation.

The vaildity of past transactions which took place before the commencement of the Constitution cannot be challenged under Art 226 of the Constitution, because the Article is not retrospective in its effect. **Madh B L R 1955 Civ 17 : Madh B L J 1954-H C R 1413 : A I R 1954 Madh B 198 (203) (Pt E) (Pr 23) (DB).**

——Art. 226—Order passed before Constitution came into force—High Court can be moved under Art. 226 to test vires of order. **ILR (1952) Madh B 231 : AIR 1950 Madh B 46 (51) (Pt F) (Pr 12) (DB).**

——Arts. 226, 311 — Railway Establishment Code R. 2046—Order of reduction passed prior to enforcement of Constitution—Power of High Court to issue writ cannot be invoked — Petitioner made to retire on attaining age of superannuation — Petitioner has no vested right to continue service further even though he be efficient— C. T. M. living in Bombay —No writ could be issued to him.

Held, that the order of reduction having been passed on 16-12-1949 before the Constitution came into force the petitioner was not entitled to invoke the special jurisdiction of the High Court to issue a writ. A I R 1956 S C 246, A I R 1961 S C 532 and AIR 1962 SC 1513, Relied on. Secondly the petitioner had no vested right under R. 2046 of the Railway Establishment Code to continue in service after attaining the age of 55 years. The petitioner therefore could not be allowed to urge that his retirement on attaining the age of 55 years could be made only after examining the question of his efficiency to continue on his post which he held. The observations in AIR 1961 S C 1346 which had been made in the contex

of Cl. (1) of R. 2046 of the Railway Establishment Code apply fully well to Cl. (2) (a) of the said Rule. Further that the authority finally confirming the order of retirement viz., Commercial Traffic Manager, being at Bombay and thus situate beyond the jurisdiction of this High Court; no writ could be issued to that authortty. AIR 1963 S C 1124, Rel. on. 1963 M P L J (Notes) 192.

——Art. 226 — Original order passed before commencement of Constitution—Reversing orders passed after its commencement — Art. 226 is applicable without giving it retrospective operation.

Where the original order, though passed before commencement of Constitution, was interrupted by the reversing orders passed after the commencement of the Constitution there could be no question of giving to Art. 226 any retrospective operation. Such a case is governed by the principle applicable to cases pending at the time of commencement of the Constitution which till then had not been prosecuted to final judgment. 1962 M P L J 281 : 1962 Jab L J 523 : ILR (1962) Madh Pra 788 : AIR 1962 Madh Pra 280 (283, 284) (Pt B) (Pr 7).

——Art. 226 — Pre-Constitution orders — Interference.

Where the order of the Sub Divisionnl Officer declining to confirm the sale, which was not interfered with by superior authorities was passed in the year 1949 though the final appellate order of the Board of Revenue was passed after the inauguration of the Constitution.

Held, that the appellate Tribunal did not do any thing more than dismiss the appeals. Therefore even if the said order was quashed, the High Court would not be in a position to quash the basic order which was passed before the Constitution came into force. 1958 M P L J (Notes) 174.

——Art. 226—Impugned order passed prior to commencement of Constitution — Exercise of power under Article.

Though the impugned order was passed prior to the commencement of the Constitution, if it interferes with a right in praesenti of the applicant and the order is in the eye of law no more than a piece of waste paper the High Court can exercise its power under Art. 226. 1955 Nag L J 145: AIR 1954 Nag 258 (260) (Pt E) (Pr 9) (DB).

——Art. 226—Retrospective effect.

Prayers relating to matters arising before the Constitution—Court is not competent to grant them. 1953 Nag L J 593: I L R (1953) Nag 522: A I R 1953 Nag 138 (140) (Pt A) (Pr 3) (DB).

——Art. 226 — Retrospectivity — Contract—Servant dismissed before the 26th January 1950 — Petition under Art. 226 does not lie.

Where the services of a contract servant of Government are terminated before the 26th January 1950 a petition challenging the termination, under Art. 226, Constitution of India is not tenable. 1952 Nag L J (Notes) 67 (DB).

——Arts. 226, 227—Retrospective operation,

Articles 226 and 227 do not relate to matters of procedure but confer a power upon High Courts to interfere in certain case. This power cannot be invoked by a person aggrieved by a decision of Court or a tribunal arrived at before these provisions came into force. Supreme Court Case No. 9 of 1950, Rel. on. Rajaram v. State, 1951 Nag L J 535: 1952 Cri L J 1 : I L R (1951) Nag 741 : A I R 1951 Nag 443 (443, 444) (Pt A) (Prs 7, 16) (FB).

——Art. 226—Right under—Act complained of anterior to Constitution—Application does not lie.

An applicant under Art. 226 is not entitled to ask for the exercise of powers under Art. 226 in respect of matters which arose and terminated before the Constitution came into iorce. S C C No. 11 of 1950 D/- 22-1-51, Rel. on.

Where the applicant was reduced from the post of Assistant Station Master to that of signaller by order of the D. T. M. on 16-12-49 and the order was confirmed by the C. T. M. on 11-3-50.

Held, that the cause of action arose on 16-12-49 i.e., before the Constitution and the application did not lie and that even assuming that the order dated 11-3-50 could furnish the applicant with a ground for making an application under Art. 226, the High Court would decline to exercise its discretion in favour of the applicant because it would be highly inconvenient and even injudicious to make a constitutional remedy available in respect of an act which was done before the Constitution came into force. 1951 Nag L J (Notes) 97 (DB).

——Art. 226 —Retrospective effect.

Article 226, being remedial and therefore procedural, will have retrospective effect so long as the right of the petitioner is covered under the phrase "for other purpose." So far as those rights which are not fundamental rights created by the Constitution are concerned, Art. 226, can have retrospective effect if those rights have been violated. If the order passed prior to the Constitution was invalid, then the aggrieved party can move the Court under Art. 226 to remedy the illegality.

Where the petitioner had the right to bring a suit against the State for wrongful dismissal prior to the coming into force of the Constitution of India, and that right had not become extinguished by passage of time, Art. 226 of the Constitution would have retrospective effect. AIR 1956 Pat 384 (389, 390, 393) (Pt A) (Prs 9, 11, 12, 19) (DB).

——Art. 226—Applicability — Retrospective effect — No retrospective effect — State becoming absolute owner of land under Patiala Land Acquisition Act before coming into force of Constitution in the State —Art. 226 does not apply — If acquisition was bad, remedy was by way of suit — (Patiala Land Acquisition Act (3 of 1995 BK), S. 18 (1)— (Pepsu Acquisition of Land Act (4 of 2006). AIR 1955 N U C (Pepsu) 2512.

——Art. 226 — Has no retrospeetive effect — Interference with orders made by authorities before accession of States.

No action can be taken under Art. 226 in respect of the orders made prior to 26th January, 1950, because the Constitution has no retrospective effect. Further, the Article does not give the High Courts in India the authority to interfere with the orders made by the authorities of the States before their accession to the Union. ILR (1953) Patiala 651 : AIR 1954 Pepsu 159 (159) (Pt A) (Pr 3)

——Art. 226 — Retrospective effect—Income-tax Act (1922), S. 35 (5) — Exercise of discretion (Interpretation of Statutes — Retrospective effect) — (Civil P. C. (1908), Pre.) See Income-tax Act (1922), S. 35 (5). AIR 1956 Punj 161.

——Art. 226 — Retrospective effect—Does not apply to order passed before the Constitution.

A person cannot, in a petition under Art. 226, contest the legality of an order passed before the 26th of January, 1950. ILR (1956) Punj 236 : AIR (1956) Punj 58: (70) (Pt M) (Pr 34) (DB)

——Art. 226 — Retrospective effect—Original order passed before coming into force of Constitution.

When a person files a petition under Art. 226 of the Constitution he seeks to challenge the original Order which affects him and it is this order which furnishes him with a cause for moving the High Court. It is that order which affects the petitioner adversely and it is that order which is either without jurisdiction or manifestly unjust. The order on appeal is not the order which he seeks to challenge. The rule which applies to civil appeals does not apply to applications for writs. The Constitution is not retroactive and is not applicable to a case where the cause of action arose before the coming into force of the Constitution. 57 Punj L R 490 : ILR (1956) Punj 55 : AIR 1956 Punj 10 (11) (Pt A) (Pr 5) (DB).

—— Art. 226 — Retrospective operation — Constitution is not retrospective — Petition to redress something done before 26th January, 1950 does not lie. AIR 1955 N U C (Punj) 4593.

—— Art. 226 — Does not affect orders passed before Constitution.

The provisions of Art. 226 of the Constitution have no retrospective effect and therefore it cannot affect an act which was done before the commencement of the Constitution. (1952) 22 ITR 296 : 55 Pun L R 53: ILR (1953) Punj 193 : AIR 1953 Punj 16 (16, 17) (Pt A) (Pr 3) (DB).

—— Art. 226 — Retrospective effect — Civil P. C. (1908), Pre.

(Quaere) Whether orders passed before 28-1-1950 under the Taxation on Income (Investigation Commission) Act (1947) which were shielded against interference by civil Courts under S. 5 (3) of that Act can be interfered with under Art. 226? 54 Cal W N 793 : AIR 1927 P C 242, Ref. 53 Pun L R 57 : 1951-20 ITR 77 : ILR (1951) Punj 165 : AIR 1951 Punj 74 (79) (Pt D) (Pr 28) (DB).

—— Art. 226 (1-A) — As added by Constitution Fifteenth Amendment Act, 1963 — Retrospective operation — Amendment being procedural in character has retrospective effect.

Article 226 of the Constitution does confer an authority on the High Court to issue writ, order or direction, but the amended clause (1-A) of this Article does not, in any manner, confer any additional power on the High Court as it already enjoyed such a power under the amended Article. The purpose and intent of the amendment of Art. 226 is to enlarge the jurisdiction of the High Courts to issue writ order or direction to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is not within the territorial jurisdiction of the Court and thus it only extends jurisdiction even beyond the boundaries of the State if the cause of action arises within its territory. Clause (1-A) of the Article is simply procedural in nature and it does not confer any vested right on the citizen of India. The amendment is therefore retrospective in effect so as to enable the High Court to exercise its powers under Art. 226 in respect of a cause of action arising before the amendment. AIR 1958 S C 915 and AIR 1961 S C 532 and AIR 1952 Bom 385 and AIR 1954 Bom 527, Rel. on. W. P. No. 638 of 1961, dated 11-11-1963 Andh Pra and W. P. No. 534 of 1962 Andh Pra, Diss. from 1964 Raj L W 387 : ILR (1964) 14 Raj 757 : AIR 1964 Raj 260 (265, 266, 267) (Pt A) (Prs 22, 25, 28) (DB).

—— Art. 226 — Retrospective operation — Pre-constitution invalid order, sought to be enforced after Constitution.

If the order which was passed before the Constitution was valid when it was passed, it would certainly not be open to the Court to hold to-day after the Constitution that it is invalid by a retrospective application of the provisions of the Constitution. But if the order was invalid even when it was passed and is being enforced now, it is open to the Court to hold it invalid on an application under Art. 226. 1954 Raj L W 543 : ILR (1954) 4 Raj 743: AIR 1954 Raj 200 (203) (P B) (Pr 10) (DB).

—— Art. 226 — Retrospective operation.

The provisions of the Constitution no doubt are not retrospective in the sense that anything done in accordance with law then in force cannot be regarded as illegal now after the coming into force of the Constitution simply because it is contrary to the provisions of the Constitution. But anything which was illegal before the coming into force of the Constitution remains illegal, and, a person, who is aggrieved against such an illegal act, cannot be deprived of his remedy under Art. 226 of the Constitution. Illegalities committed before the coming into force of the Constitution cannot be allowed to continue because of the coming into force of the Constitution. AIR 1951 S C 217, Rel. on. 1953 Raj L W 581 : I L R (1953) 3 Raj 336 : A I R 1953 Raj 185 (187) (Pt B) (Pr 7, (DB).

—— Art. 226 — Rajasthan Town Municipalities Act (23 of 1951), Preamble — Retrospective effect of Act — Dissolution of Municipal Board and appointment of ad hoc Committee — Application for writ of Quo Warranto against Committee — Right of member of dissolved board who has vacated office to relief — Maintainability of application after supersession of ad hoc Committee. See Municipalities — Rajasthan Town Municipalities Act (23 of 1951). Preamble. AIR 1953 Raj 73.

—— Art. 226 — Retrospective effect.

It is well settled that the articles of the Constitution have no retrospective effect unless otherwise expressly provided for in the Constitution itself. No relief under Art. 226 can therefore be granted where the acts complained of in the petition have taken place long before the Indian Constitution came into force. AIR 1951 S C 128; AIR 1951 Nag 443 (FB) and AIR 1952 Cal 907, Ref. A I R 1955 Trav-Co 46 (48) (Pt A) (Pr 3).

—— Art. 226 — Prerogative writs — Issue of — Power of Travancore-Cochin High Court — Apart from Constitution, it has power, as a Court of Record to issue appropriate prerogative writs. AIR 1955 Trav-Co 46 (48) (Pt B) (Pr 3).

—— Art. 223 — Applicability to cases arising before Constitution.

Although Art. 226 does not apply to cases arising before the Constitution came into force, the High Court has, as a Court of record, jurisdiction to issue prerogative writs in such cases. ILR (1954) Trav-Co 239 : 1954 Ker L T 952 : AIR 1954 Trav-Co 444 (445) (Pt A) (Pr 2) (DB).

107. Revenue matters.

See Notes 171 and 268.

108. Review.

—— Art 226 — Inherent power of High Court to review its order under Art. 226, of the Constitution. See Civil P. C. (1908), S. 151. AIR 1963 S C 1909.

—— Art. 228 — Order under Art. 226 of Constitution — Review maintainable under S. 151, Civil P. C. See Civil P. C. (1908), S. 114. AIR 1960 All 152

—— Art. 226 — Review — Orders in writ proceedings — Review lies — Provisions of Civil P. C. applicable — Civil P. C. (1908), S. 114 and O. 47, R. 1.

Art. 226 of the Constitution gives power to the High Court to issue writs and make orders in the same fashion as are made in the King's Bench Division in England. The procedure however has not been set out in the Constitution, and in Civil Cases the procedure will be such as is laid down in the Civil P. C., or the rules framed by the High Court. Therefore in a proper case an application for review would lie from an order passed in proceedings under Art. 226 of the Constitution. AIR 1959 Bom 468 and AIR 1953 Mad 39, Foll.; A I R 1955 Madh B 108, Not followed. AIR 1962 Cal 346 (348) (Pt A) (Pr 3).

—— Art. 226—Power to review.

High Prerogative Writs are issued under Art. 226 of the Constitution and there is no direction in the Article, which empowers the Court issuing it to recall its order with a view to cancel it, modify it, alter or vacate it. It being so, the only process known to law, by which orders are altered, modified or vacated is by way of review or appeal. The ground of review must be something which should exist at the date of the decree or order and the rule does not authorise the review of an order which was right when it was made but on the happening of some subsequent event it became bad. The power to review is not inherent in a Court. As there is no provision for the review of orders under Art. 226 in Indian law, it cannot be availed of as a remedy. The High Court therefore cannot review an order passed in a writ case. Case law discussed. Madh B L J 1954 H C R 300 : Madh B L R 1954 Civil 100 : AIR 1955 Madh B 103 (108, 109) (Prs 5, 6, 7, 9) (DB).

——Art. 226—Order under — High Court has power to review—Civil P. C. (1908), O. 47, R. 1.

High Court can review its own order passed under Art. 226. Since this power of review of an order passed under Art. 226 is the power inhering in the Court, it is not, for that reason, fettered by the words of O. 47, R. 1, Civil P. C., or any other analogous law. AIR 1963 S C 1909, followed; AIR 1955 Madh B 108, no longer good law.

But where a decision is arrived at on an erroneous assumption that the unamended rule continued to be in force, clearly there is an error apparent on the face of the record and the High Court, even without resorting to its plenary jurisdiction can review the case under O. 47 R. 1, Civil P. C. (1949) 1 Mad L J 222 : AIR 1949 P C 112 Rel. on. ILR (1962) Madh Pra 788 : 1962 M P L J 281 : 1962 Jab L J 523 : A I R 1962 Madh Pra 280 (282) (Pt A) (Prs 2, 3).

——Arts. 226 and 227 — Review — Order passed in accordance with law—Accepted view of law changing by new decision—Old order cannot be reviewed.

If the order was right according to the view of law prevailing when it was made and if a subsequent decision changes the accepted view of the law, then that subsequent decision cannot be made a ground for review of the order. 1960 M P L J (Notes) 2.

——Art. 226 — Power of review—Order can be recalled in exercise of inherent power—(Civil P. C. (1908), Ss. 114 and 151 and O. 47, R. 1)—(Tenancy Laws — Madras Estates Abolition and Conversion into Ryotwari Act (26 of 1948), S. 9—Madras Estates (Supplementary) Act (30 of 1956), Ss. 3 and 10).

When pending a civil suit in which one of the questions to be determined was whether the village in question was an estate at all, the landholder applied for stay of inquiry under S. 9 of the Madras Act 26 of 1948 before the Assistant Settlement Officer and on his refusal preferred a writ petition, the High Court issued a writ of mandamus for stay of that inquiry. The State which was a party respondent to the writ petition, presented a petition under O. 47, R. 1 and S. 114, Civil P. C. and under Art. 226 of the Constitution, for a review of the order directing issue of mandamus. On the question whether the writ of mandamus directed before should be recalled and set aside.

Held, (i) that it would not strictly be a case of review at all falling within the scope of O. 47, R. 1, Civil P. C., (ii) that in the writ petition what was in effect done was something of an interlocutory nature. The basis on which the order was passed had disappeared with the subsequent change in legislation. Similarly the bar imposed by statutory authority to the determination of the question whether the village was an estate could be removed in the exercise of the inherent jurisdiction vested in the High Court. However, this did not mean that any order passed in the exercise of the jurisdiction under Art. 226 of the Constitution can be set aside in exercise of the inherent powers of the High Court. 1959 Mad W N 726 : 73 Mad L W 16 : AIR 1960 Mad 177 (178) (Prs 8, 9).

——Art. 226—Order on application for issue of writ of certiorari—If subject to review for error apparent on the face of the record — Civil P. C. (5 of 1908), O. 47, R. 1—Applicability.

Where the civil jurisdiction of the High Court is invoked under Art. 226 of the Constitution the Civil P. C is applicable to the proceeding and if there is an error apparent on the face of the record in the order quashing proceedings under the Motor Vehicles Act, it can be set right under the powers of review.

Where while passing the order, the Court did not consider the question whether the Government acted without jurisdiction in exercising its powers under S. 64-A of the Motor Vehicles Act or whether the order of the Central Road Traffic Board, was one which could be called either illegal or irregular or improper to enable the State Government to interfere with that order, such omission would constitute an error apparent on the face of the record so as to warrant a review of the order. I L R (1952) Mad 1000 : 65 Mad L W 164 : (1952) 1 Mad L J 448 : A I R 1953 Mad 39 (40) (Pt A) (Pr 11) (DB).

——Arts. 226 and 137—Review—Power of — Orders under Art. 226—Review of—Maintainability—Civil Procedure Code—Applicability—(Civil P. C. (1908), Ss. 141, 151 and O. 47, R. 1).

No Court has an inherent power of review and that power like the power of appeal must be conferred on it by statute. The Constitution of India does not either specifically or by necessary implication confer any such power upon the High Courts in matters arising under Art. 226, though there is such a provision as regards the Supreme Court, namely, Art. 137.

The contention that writ petitions involving disputes of a civil nature are civil matters and would attract S. 141, Civil P. C., has some force but that section relates to matters merely procedural and cannot be interpreted to mean as applying all the provisions of the Civil P. C. or conferring a power of appeal or review in matters governed by special enactments. Hence, there being no provision anywhere in the Constitution for review of orders passed under Art. 226, the powers for the same provided under the Civil P. C. cannot be invoked. A I R 1953 Mad 39, Diss. from. A I R 1957 Manipur 39 (40) (Prs 4, 5).

109. Rights conferred by Part III of Constitution.

See also Note 12.

(a) Suspension of.

See Note 119 and Ibid, Arts. 358, 359.

109. Rights conferred by Part III of Constitution.

See also Note 12.

● ——Art. 226 — Patiala Recovery of State Dues Act — Contracting out of fundamental rights — Procedure laid down in the Act for settlement of disputes between Patiala State Bank and its customers — No infringement of Art 19 (1) (f) and (g). See Ibid, Art. 19 (1) (f). **A I R 1963 S C 222.**

● ——Art. 226—Infringement of fundamental rights.

In the Bihar Act (9 of 1947) there are various provisions laying down conditions which dealers must comply with or submit to. The provisions in the Act undoubtedly constitute restrictions on the fundamental right to carry on business which is guaranteed to every citizen of India by Art. 19 (1) (g) of the Constitution. If the Act is ultra vires the Constitution and consequently void these onerous conditions can never be justified as reasonable restrictions within the meaning of Cl. (6) of that Article. A I R 1953 Pat 87, Reversed. Bengal Immunity Co. Ltd. v. State of Bihar, **I L R 34 Pat 905 : (1955) 6 S T C 446 : (1955) 2 S C R 603 : 1955 S C J 672 : 1955 S C A 1140 : (1955) 2 Mad L J (S C) 168 : 1955 Andh W R (S C) 422 : A I R 1955 S C 661 (669, 726) (Pt U) (Prs 5, 145).**

——Art. 226—Rights conferred by Part III—Restrictions—Reasonableness — Justiciability — High Court can go into question of reasonableness of restriction. **1963 (2) Cri L J 241 : AIR 1963 All 408 (410) (Pt A) (Pr 9) (DB).**

——Arts. 226 and 19 — Certificate for profession of guide — Cancellation.

There is no rule or other law governing the grant of any certificate nor any provision under which it may be necessary for a person carrying on the profession of a guide to obtain a certificate from the authorities. A person can carry on this profession whether any certificate from the Superintendent of Police is held or not by him. The certificate is thus in the nature of a testimonial of good conduct granted to him by the authorities. No person can claim as of right that a certificate shall be granted to him or that any certificate once granted to him shall be continued. There is no right either with respect to it. It was not necessary for the Senior Superintendent of Police to have given an opportunity to the petitioner or to hear him before cancelling the certificate, more so because its cancellation in no way affected the right of the petitioner to carry on the profession of a guide. **A I R 1959 All 573 (Prs 4, 5).**

——Art. 226—Petition under—High Court must protect fundamental rights of petitioners. **(1965) 6 Guj L R 505 : A I R 1966 Guj 102 (105) (Pt C) (Pr 4) (DB).**

● ——Art. 32 (2-A) — (As added by Constitution) (Application to J. & K.) Order — Lessor and lessee—Breach of condition in lease — Forfeiture of lease—Lessee's fundamental right of possession thereafter. See Ibid, Art. 19. **A I R 1960 J & K 50 (FB).**

——Arts. 32 (2-A) (Jammu and Kashmir) and 14—Scope—Right to office or right to promotion—Complaint of erroneous application of service rules—Writ under.

Article 32 (2-A) would apply only when one of the fundamental rights vouchsafed by Part III of the Constitution is violated. The right to office or the right to promotion in Government service, does not involve any question of any fundamental right. It is not a case which properly involves any question of equality before the law or equal protection of laws. Nor is there any case of unconstitutional discrimination in such a case. Hence, there is no scope at all in the case, for the application of Art. 14. **A I R 1959 J & K 70 (70, 71) (Pt A) (Pr 4).**

● ——Art. 226—Scope.

Article 226 does not merely refer to the power of High Court but also confers a right on citizens of India to invoke that power when any of their rights conferred by Part III are being prejudiced by unlawful acts by the State or other authorities. Indo-Mercantile Bank, Ltd. v. Commr. Quilon Municipality, **1960 Ker L J 1135 : 1960 Ker L T 1091 : (1960) 2 Ker L R 464 : I L R (1960) Ker 1435 : A I R 1961 Ker 96 (97) (Pt A) (Pr 2) (FB).**

——Art. 226—Proclamation under S. 46-B of Bombay District Police Act by authority not authorised — Proclamation not in accordance with law — Fundamental rights sought to be restricted by order passed in pursuance of such proclamation—Action has to be taken under Art. 226. See Bombay District Police Act (4 of 1890), S. 46-B. **1954 Cri L J 770 : A I R 1954 Kutch 15.**

● ——Arts. 226 and 31—"Property"—Payments made to irregular forces (Shiledars, etc) by Scindia, are not property—Nature of payment—Government of Madhya Bharat can stop these payments—No infringement of fundamental right — No writ can issue. See Ibid, Art. 31. **A I R 1953 Madh B 257 (FB).**

——Arts. 226 and 19 (1) (f)—Property — Hereditary trusteeship—Scheme taking away right to management of temple and its properties—Infringement of right under Art. 19 (1) (f)—Issue of writ.

Hereditary trusteeship is 'property' within the meaning of Art. 19 (1) (f) of the Constitution and if there is an encroachment on the rights of the petitioners as hereditary trustees, they can be granted appropriate relief. A I R 1954 Mad 385, Rel. on.

Held, on a scrutiny of the scheme, framed by the H. R. E. Board and modified by the District Judge, for the administration of the temple and its properties, that the petitioners who were hereditary trustees of the temple, were shorn of all their rights and powers and dignities and they were reduced to the position of dummies, left only with the doubtful honour of describing themselves as trustees of the temple. Since all the provisions in the scheme formed one integrated whole and it was not possible to salvage any part of it the whole of it must be set aside. **(1955) 1 Mad L J 243 : 68 Mad L W 26 : A I R 1955 Mad 120 (121) (Pt A (Prs 3, 5).**

——Art. 226 — Hyderabad Agricultural Markets Act (1339 F.), S. 5—Rules under, R. 40 — Tax and fee — Distinction — Petitioners having oil mill at R. — Petitioners purchasing ground-nut from other places for their own use — Levy of fee on groundnut by Market committee of R — Legality — Levy of fee was interference with free trade and business and contravened Art. 19 (1) (g) — Could be challenged under Art. 226. See Hyderabad Agricultural Markets Act (2 of 1339F), S. 5. **AIR 1960 Mys 73.**

——Art. 226 — Suspension of license during prosecution — It is possible but not without findings as to contravention — D. M. suspending license without the finding — There is interference with fundamental right. See C. P. & Berar Rice Mills Licensing Order, Cl. 5. **1952 Nag L J (Notes) 4.**

——Art. 226 — Power of High Court under.

The power of the High Court under Art. 226 for enforcing fundamental rights is very wide and is not restricted to the issuing of only the well-known writs under the common law. Those writs may not prove adequate to deal with every infringement of a fundamental right. A fundamental right guaranteed by the Constitution may be put in jeopardy by an act of the executive. The Court has been empowered to issue to any person or authority, and in an appropriate case even to the Government, directions, orders, or writs for the enforcement of rights conferred by Part III of the Constitution. Misc. Petn. No. 5 of 1950, Rel. on. **ILR (1951) Nag 959 : AIR 1951 Nag 138 (140, 141) (Pt B) (Pr 19) (DB).**

——Arts. 226, 19 (1) (g) — Order issued under Cl. 10 of Punjab Coal Control Order (1955) being illegal and ultra vires and affecting fundamental right of a person to carry on his trade or business under Art. 19 (1) (g) — Held writ under Art. 226 should issue. 63 Punj L R 593 : ILR (1962) 2 Punj 595 : AIR 1962 Punj 32 (38) (Pt G) (Pr 12) (DB).

——Art. 226—General Clauses Act (1897), S. 23 (5)—Presumption under — Scope and effect—'Duly made' Meaning — High Court can examine and pronounce upon validity of rules under Art. 226 of the Constitution. See General Clauses Act (1897), S. 23 (5). AIR 1962 Raj 24 (DB).

● ——Art. 226 — Notifications by Rajasthan State withdrawing privileges granted by Ruler of Udaipur to Zamindars, to manufacture liquor for private consumption — Privilege held not right to property — No infringement of fundamental right. See Ibid, Art. 31. AIR 1954 Raj 85 (FB).

——Art. 226—Powers of High Court—Extent.

The power of High Court under Art. 226 for enforcing fundamental rights is very wide, and is not restricted to the issuing of the well-known writs under the Common Law. A fundamental right guaranteed by the Constitution may be put in jeopardy by the executive, and the Court has been empowered to issue to any person or authority and in an appropriate case even to the Government, directions, orders or writs for the enforcement of rights conferred by Part III of the Constitution. 1952 Raj L W 71 : ILR (1952) 1 Raj 853 : AIR 1952 Raj 137 (139) (Pt E) (Pr 8) (DB).

——Arts. 226, 19 (1) (g) — Bus stand fee — Fee and tax — Distinction — Bus stand fee is not same as license fee — Former does not fall under category of taxes—Levy of such fee is not unauthorised and does not amount to unreasonable restriction on freedom to carry on business — (Municipalities — Cochin Municipal Act (18 of 1113), S. 251). AIR 1955 NUC (Trav-Co) 4127.

——Art. 226 — Scope — Travancore-Cochin Paddy (Acquisition and Movement) Control Order, 1950 — Exercise of powers under — If infringe fundamental rights—Issue of writ — If called for. See Travancore-Cochin Paddy (Acquisition and Movement) Control Order, 1950. AIR 1952 Trav-Co 455 (DB).

——Art. 226—Petitioner granted India-Pakistan passport by Government of India — District Magistrate illegally cancelling and seizing same — Cancellation confirmed by Government of India — Confirmation cannot make unauthorized action of District Magistrate, an authorised one — Matter would be different if District Magistrate had been delegated the authority of cancellation — Confirmation by Government of India had only effect of revocation and impounding the passport — This right held could not be questioned, being one of the terms on which passport was issued — Even if passport was property within meaning of Art. 31, the revocation and impounding would be one by authority of law within meaning of Art. 31—Granting and revoking and cancelling of passport was within discretion of Government of India — It was not a fundamental right to have passport issued—Writ would not therefore be granted against the order of the District Magistrate since it would not be carried into effect. See Ibid, Art. 31. AIR 1962 Tripura 7.

——Art. 226 — Salary already earned by a Government servant is his property and a deduction not made in accordance with statutory rules infringes his fundamental right to property under Art. 19 and Art. 31 and relief must be granted under Art. 226. See Ibid, Art. 19. AIR 1955 Vin Pra 21.

——Art. 226 — Seizure of goods without authority of law— Infringement of fundamental rights both under Art. 19 and Art. 31 — Relief must be granted under Art. 226. See Ibid, Art. 19. 1955 Cri L J 747 : AIR 1955 Vin Pra 17.

109 (a), Suspension of.

See Note 119 and Ibid, Arts. 358, 359.

109A. Scire facias, writs of.

See Note 37 (b).

110. Statutory body, writ against.

See Notes 5 and 177.

111. Stay of proceedings.

● ——Art. 226—Writ petition—Power of High Court to grant interim stay Art. 226 does not expressly confer upon the High Court any power to grant interim stay during the hearing of the writ petition. Such power cannot also be inferred from any provision contained in it. Further, the power of issuing a direction or order is exactly similar to the power of issuing a writ. If no ex parte writ can be granted, no ex parte order of stay also can be granted in exercise of the powers under Art. 226. Moreover, a petitioner has no absolute right to an interim order of stay, ex parte or after hearing the other party. Gyan Chand Bhatia v. Rent Control and Eviction Officer, Lucknow. 1965 All L J 924 : 1965 All W R (H C) 676 : AIR 1966 All 57 (61) (Pr 16) (FB).

——Art. 226—Interim relief — Effect of — Writ petition against order of removal — Interim order of stay of proceedings passed — Order staying execution of order of removal but order of removal remained intact — Disqualification which was simultaneous with removal could not be stayed under interim order. 1964 All L J 1073 : AIR 1965 All 370 (371, 372) (Pt B) (Pr 5) (DB).

——Art. 226—Power of High Court — Order in writ petition declaring certain provisions of statute unconstitutional and quashing certain orders passed thereunder — Application for certificate for leave to appeal to Supreme Court pending — Power of High Court to grant interim relief in form of stay order. See Civil P. C (1908), O. 45, R. 13. AIR 1957 All 505 (DB).

——Art. 226 — Appeal — Stay — Application under Art. 226 for quashing order of election Tribunal—Balance of convenience has to be seen — Balance of convenience held lay in letting order of Election Commissioner take its own course. AIR 1955 N U C (All) 1758.

——Art. 226—Civil P. C. (1908), S. 151— High Court has inherent power to grant a stay of mandamus. See Civil P. C. (1908), S. 151. AIR 1953 Hyd 73.

——Arts. 226, 227—Decree for Rs. 52,000 — Pending appeal in High Court, stay of execution of decree granted by Single Judge on condition to deposit in Court Rs. 20,000 — Stay order was passed by competent Court and could not be challenged on ground that condition imposed was heavy. (1965) 2 Ker L R 440 : 1965 Ker L T 167 : 1965 Ker L J 194 : ILR (1966) 1 Ker 115 : AIR 1966 Ker 141 (142) (Pt B) (Pr 2) (DB).

● ——Art. 226—Order restraining Income-tax Officer from enforcing assessment — Order by Income-tax Officer passed on same day subsequent to High Court's order is without jurisdiction. Sarup Chand and Hukumchand v. Union of India, ILR (1952) Madh B 422 : (1953) 23 ITR 382 : AIR 1953 Madh B 65 (77) (Pt H) (Pr 31) (FB).

——Art. 226 — Municipal Election—Acceptance of nomination papers prima facie involving illegality

— Petition for writ of certiorari for quashing interim order of temporary injunction — Confirmation of — (Elections — M. B. Municipal Election Rules (1945), R. 26).

Where a petition for a writ of certiorari is admitted by the High Court against the order of an Election Officer, accepting nomination papers of candidates which were not signed by them at the time of presentation contrary to R. 26 of M. B. Municipal Election Rules, 1954, the acceptance of the nomination papers prima facie involves illegality and since the petition for writ has been admitted, the interim order of temporary injunction restraining the authorities concerned from proceeding with the municipal election, ought to be confirmed Madh B L J 1955 H C R 848: AIR 1955 Cal 83 and AIR 1955 Andh Pra 17, Rel. on.

The contention that a temporary stay may result in frustration has some force but in matters of this kind the question which ought to be considered is as to whether the election proceedings which prima facie appear to be not in order ought to be allowed to go on. The reason indicates that it is more in the fitness of things that they should be held up temporarily than allowed to proceed. 1958 Jab L J 85 : 1957 M P C 811.

——Art. 226 — Madras General Sales Tax (Turnover and Assesement) Rules (1939) R. 16 (1) — Assessment under — Petition under Art. 226 against—No stay of further proceedings—Assessment during pendency of writ petition is not illegal. ILR (1965) 2 Mad 294 : (1966) 1 Mad L J 166 : (1966) 18 S T C 60.

——Art. 226 — Interlocutory order—Stay of sale for realisation of income-tax — Jurisdiction of High Court under Art. 226 cannot be invoked — Income-tax Act (1922), S. 46.

Jurisdiction of the High Court under Art. 226 cannot be invoked for the sole purpose of obtaining an interlocutory order to stay the sale of properties in proceedings for realisation of Income-tax. AIR 1952 S C 12, Rel. on. (1960) 40 I T R 338 : (1961) 1 Mad L J 165 : AIR 1961 Mad 104 (105) (Pr 3).

——Art. 226 — Writ proceedings against order of assessment — Application for stay of recovery of tax already pending before Income-tax Officer — High Court will not grant stay of recovery of tax— (Income-tax Act (1922), S. 45). (1951) 20 ITR 51 (Cal) Not foll. AIR 1953 Punj 113, Rel. on. AIR 1957 Tripura 15 (18) (Pt D) (Pr 26).

112. Sub-judice question.
See Note 88.

113. Subsequent events.

——Arts. 226 and 311—Subseqent events—Power to take note of—(Municipalities—U. P. Municipalities Act (2 of 1916), S. 69-A).

The Court must take into account subsequent events that have happened and if they render any relief that the Court can give in the writ petition ineffective, it must refrain from granting it. A Court should not grant a relief that can be immediately rendered ineffective by a valid act of the party against whom it is granted. Where an illegal order of suspension is supplanted by another order of suspension, in the face of such order, whether legal or illegal or contemptuous or not, it would be useless for the Court to quash the earlier order of suspension, because the petitioner must remain under suspension under the second order of suspension. 1959 All L J 849 : AIR 1959 All 686 (688) (Pt B) (Pr 4).

——Art. 226—Subsequent events.

A petition was filed against the renewal of a temporary permit under the Motor Vehicles Act. On the date of petition the original permit had not expired. But there was the admission of the Government on record that they had been illegally renewing temporary permits, so as to make them run for a period in excess of four months allowed by the statute.

Held, that in these circumstances it was not a proper exercise of the discretion under Art. 226 of the Constitution to dismiss the writ petition on the technical ground that on the date of the petition the permit was valid and therefore it was not open to the Court to look into subsequent event namely that of the renewal of the permit after the petition had been filed, for the same purposes so as to exceed the statutory limitation of four months. 1957 All L J 818 : 1957 All W R (H C) 824.

——Art. 226—Subsequent events.

The Court is entitled to take notice of subsequent events for the purpose of giving effective and complete relief to the petitioner. AIR 1952 Cal 687 (688) (Pt C) (Pr 6).

——Art. 226 — Subsequent events—(Coorg Agricultural Income-tax Act (1 of 1951), S. 3).

The assessee, assessed to agricultural income-tax under the Coorg Agricultural Income-tax Act on income derived during the year ending 31-3-1951, applied under Art. 226 to have the order of assessment quashed contended that in considering the question relating to the authority of the Income-tax Officer to make the assessment, the Court was limited to the consideration of the law as it stood on the date of assessment and could not take into consideration the effect of subsequent amendment of the Act.

Held, that the contention was not correct. In dealing with a curative act, the test to be applied was whether the Income-tax Officer, if he were now making the assessment for the year 1951-52 would not have the authority to make it. AIR 1947 F C 48, Rel. on. AIR 1958 Mys 102 (112, 118) (Pt G) (Pr 42) (DB).

——Art. 226 — Powers of High Court — Scope of — It cannot convert itself into Court of appeal — Subsequent events—Power to take notice.

The control which the High Court exercises under Art. 226 through a writ of certiorari, over judicial or quasi-judicial tribunals or bodies, being not in an appellate but supervisory capacity, the High Court does not review, or reweigh, the evidence upon which the determination of the inferior tribunal purports to be based. In such circumstances, the High Court will issue a writ of certiorari only for correcting errors of jurisdiction. Decision, even if wrong, on facts or law cannot be corrected by a writ of certiorari. Consequently, the High Court in exercising jurisdiction under Art. 226 will not take notice of subsequent events or change in the law which may or may not invalidate the impugned order. 1956 BLJR 570 : ILR 35 Pat 730 : AIR 1957 Pat 725 (728) (Pt B) (Prs 18, 19, 20) (DB).

——Arts. 226 and 227 — Change in law during pendency of writ petition—Change is of no consequence and cannot be taken into consideration in deciding writ petition. 66 Pun L R 552 : AIR 1965 Punj 21 (22) (Pt B) (Pr 7).

——Art. 226 — Retrospective effect — Houses and Rents — Punjab Requisitioning of Immovable Property (Temporary Powers) Act (17 of 1947) — East Punjab Requisitioning of Immovable Property (Temporery Powers) Act (48 of 1948).

Where the requisitioning order was passed in December 1947, under the Act of 1947 the requisitioning order can be challenged under Art. 226 of the Constitution, since the amendment of the

Act of 1948 by Act 16 of 1949 virtually converted the order of requisitioning into one under the Act of 1948. ILR (1951) Punj 438 : 53 Pun L R 391 : AIR 1952 Punj 70 (77) (Pt F) (Pr 12) (DB).

——Art. 226 — Successive applications—Subsequent events—Change in law.

Where a previous application under Art. 226 for habeas corpus was dismissed by the Rajasthan High Court on the ground that it was not competent to revise a sentence passed against the petitioner by the Courts of the former Jaipur State which had long before become final, and this opinion of the Rajasthan High Court has since then been altered on account of the Full Bench decision, and now it was considered competent for the Rajasthan High Court to go into the question of the legality of the sentence passed by the Courts of the former Jaipur State, in spite of the fact that those orders had become final long before, the new circumstance which arose in the case supports the petitioner in making a second application under Art. 226 for the same relief: Case law ref. 1956 Raj L W 26 : ILR (1955) 5 Raj 872 : 1955 Cri L J 1390 : AIR 1955 Raj 161 (162) (Pt A) (Pr 8) (DB).

114. Successive applications.

See also Notes 105 and 216 and Civil P. C. (1908), S. 11.

(a) Mandamus.

114. Successive applications.

See also Notes 105 and 216 and Civil P. C. (1908), S. 11.

——Arts. 32, 19 and 31 — Khorposh grants to junior members of the family of Rulers of Native States first in the shape of lands but ultimately assuming share of money allowances payable at regular intervals—States merging in Dominion of India—Before coming into force of the Constitution, Government by their order stopping the grants—Junior members entering into prolonged correspondence with Government insisting upon their rights under the grants by the former Rulers—Only in 1957 such members realising that they had no hopes of any revision by Government of their policy—Held that every periodic deprivation of money allowance would give such members a right to approach the Supreme Court for relief under Art. 32 and it could not be held that rights guaranteed by the Constitution could not be founded upon in respect of action which arose before the Constitution. Promod Chandra Deb v. State of Orissa, (1963) 1 S C J 1 : 1962 Supp (1) S C R 405 : AIR 1962 S C 1288 (1295) (Pt A) (Pr 10).

——Arts. 226 and 32 — Rejection of application under Art. 226—Subsequent application under Art. 32 for same relief—If lies. See Supreme Court Advocates (Practice in High Courts) Act (18 of 1951), S. 2. **AIR 1952 S C 369.**

——Art. 226—Successive petitions—Maintainability—Bar of res judicata not applicable in terms—R. 7 of Ch. XXII of Rules of Court applies — Civil P. C. (1908), S. 11 — High Court Rules and Orders — (Allahabad) Rules of Court (1952), Ch. XXII, R. 7.

The rule of res judicata, as embodied in S. 11, Civil P. C., does not, in term, apply to the writ petitions under Art. 226. The granting of relief on writ petitions is purely a matter of discretion. The principle that discretion should not be exercised in favour of entertaining a second writ petition if an application on the same facts and points has been rejected, is well settled. In the rules of Court that principle has been embodied in R. 7 of Ch. XXII, which deals with direction, order or writ under Art. 226 of the Constitution.

Held, in the circumstances of the case that the ground taken in the previous writ petition which was rejected would not be allowed to be reagitated in the second petition. AIR 1956 All 100, Ref. 1961 All L J 606.

——Art. 226—Successive petitions by different persons—If barred—Suppression of fact of dismissal of prior petition—Effect.

The petitioner who was a member of a District Board filed a petition under Art. 226 praying for the issue of a writ of quo warranto commanding the respondent to show the legal authority under which he was holding the post of the Secretary of the Board. Prior to this, K one of the unsuccessful applicants for the post of the Secretary, had filed a petition under Art. 226 also praying for the issue of a writ of quo warranto against the respondent. That petition was dismissed not on merits but on the ground that A could not maintain it.

Held, that K's petition not having been dismissed on merits but on the ground that he could not maintain it, the dismissal of that petition could not be urged on the ground of suppression of the fact of prior dismissal as a bar to the entertainment of the present petition. **A I R 1959 All 589 (592) (Pt A) (Pr 6).**

[Overruled on another point in A I R 1964 All 169].

——Art. 226—Successive applications.

Relief claimed in petition under Art. 226 same as was claimed in earlier petition — In view of decision in earlier petition relief in subsequent petition cannot be granted. **1955 All L J 657 : A I R 1956 All 100 (102) (Pt D) (Pr 8).**

——Art. 226—Certiorari—Procedure—Second application if barred.

If the former application for the issue of a writ of 'certiorari' is not refused after hearing it on merits, but it is allowed to be withdrawn for want of sufficient materials to support the application, a second application is not barred. **A I R 1953 Cal 297 (299) (Pt D) (Pr 10).**

——Art. 226 — Successive applications — Maintainability.

When an application for prerogative writ has been made, argued and refused on the grounds of defects in the case, it is not competent for the applicant to make a second application for the same writ on amended affidavits containing fresh materials. **1957 M P C 770 : 1957 Jab L J 1039 : 1958 M P L J 184 : A I R 1958 Madh Pra 82 (82, 83) (Pt C) (Pr 2).**

——Art. 226 — Writ for quashing list of successful candidates—Ground of attack not taken by petitioner in prior writ petition by him — He cannot raise it in subsequent writ petition — Applicant held had no cause of action. See Ibid, Art. 16 (4). **A I R 1963 Mys 303 (DB).**

——Art. 226—Successive applications — Principle of res judicata — Applicability — (Civil P. C. (1908), S. 11).

Even if one were to agree that the provisions of res judicata, as incorporated in S. 11, Civil P. C. may not strictly apply to successive writ application, the general principle of res judicata, apart from S. 11, Civil P. C., can be made applicable to writ applications also. **1956 B L J R 727 : 1956 Pat L R 16 : AIR 1956 Pat 182 (186) (Pt E) (Pr 12) (DB).**

——Arts. 226 and 227 — Successive applications — Maintainability.

When a petition for a writ is dismissed on the ground that it is premature, another petition can be filed when the circumstances which necessitated it have come into existence. Apart from the mere question of principle, where the petition was dismissed

as withdrawn with approval of the High Court, and with at least its implied consent that a fresh petition on more or less the same grounds would be entertained the petitioner can come to the Court with his petition when the anticipated circumstances have arisen. The principles contained in O. 23, R. 1, Civil P. C., relating to suits cannot be strictly applied to applications for the exercise of the Court's extraordinary jurisdiction under Arts. 226 and 227 of the Constitution. **A I R 1956 Punj 157 (158) (Pt A) (Prs 9, 10, 11).**

——Art. 226 (1-A) — **Successive applications for writ — Continuing wrong — What is — Impugned order giving rise to continuing cause of action passed by authority situate beyond jurisdiction of High Court —Writ against, not maintainable prior to addition of Sub-Art. (1-A)—Fresh petition is maintainable when jurisdiction of High Court is extended by Art. 226 (1-A) even assuming that it is not retrospective.**

A sale of evacuee property in favour of the petitioner was cancelled by an order passed by the Deputy Chief Settlement Commissioner whose residence was beyond the jurisdiction of the High Court and the property was ordered to be resold by public auction. The petitioner filed a writ application before the Rajasthan High Court prior to the amendment of Art. 226 by addition of cl. (1-A) by the Constitution Fifteenth Amendment Act. The question was whether a second writ petition could be maintained after the coming into force of the Constitution (Fifteenth Amendment) Act, 1963, even assuming that it was not retrospective in effect.

Held, that as the impugned order had not yet been implemented, the danger of the encroachment on the petitioner's right to hold the possession of the property still continued and that a continuing cause of action had accrued to the petitioner after the impugned order was passed which entitled him to invoke the jurisdiction of the High Court by filing a fresh writ to challenge the impugned order after the jurisdiction of the High Court was extended by means of Art. 226 (1-A).

If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. A I R 1959 S C 798, Foll. **I L R (1964) 14 Raj 757 : 1961 Raj L W 387 : A I R 1964 Raj 260 (267) (Pt B) (Prs 31, 32) (DB).**

——Art. 226 — **Second application — Withdrawal of prayer in first application under misapprehension of fact—Second application is maintainable.**

Generally speaking, a second application for a writ under Art. 226 will not lie if the first application for a similar relief has been dismissed. But where the first application has been withdrawn on the ground that the materials were insufficient, a second application may be made. (1892) 2 Q B 21, Rel. on.

Similarly where in the previous application the prayer was never refused, but was withdrawn by the applicant under misapprehension of facts, a second application for the relief, upon discovery of the mistake of fact would be maintainable. **1954 Raj L W 543 : I L R (1954) 4 Raj 743 : A I R 1954 Raj 200 (202) (Pt A) (Pr 8) (DB).**

114(a). Mandamus.

——Art. 226—**Successive application.**

Where an application for a writ of mandamus is once rejected on the ground that no prior demand for justice was made, no second application is entertained in any circumstances, even though, since the rejection of the first application, a demand for justice may have been made. This rule has been applied by English Judges inexorably. (1845) 6 Q B 721 and (1892) 2 Q B 21, Rel. on.

However, this rule is not followed in practice in the High Court of Calcutta. **I L R (1959) 1 Cal 91 : AIR 1958 Cal 219 (226) (Pt E) (Pr 26) (DB).**

115. Suo motu interference.

——Art. 226 —**Jurisdiction of High Court—Power of, to issue suitable writ suo motu.**

The High Court has jurisdiction under Art. 226 of the Constitution to grant the relief as against the defendant, even though the matter has not come in its writ jurisdiction on an application under Art. 226, and is before the High Court in an appeal from an order. **1959 All L J 704 : I L R (1959) 2 All 92 : AIR 1959 All 675 (681) (Pt I) (Pr 27) (DB).**

——**Arts. 226 and 227 — Powers of High Court to quash orders suo motu — Order awarding compensation under S. 11, U. P. Act 26 of 1948 unconstitutional—Order set aside on review by Land Acquisition Officer without jurisdiction — Quashing of orders.**

The Land Acquisition Officer had passed an order under S. 11, U. P. Act 26 of 1948 awarding compensation in contravention of the provisions of the Constitution as it stood amended after the coming into force of the Constitution (Fourth Amendment) Act, 1955. The State Government made an application for review of the order as soon as they become aware of the Constitution (Fourth Amendment) Act and then followed it up by an application for reference of the matter to the Court. There was undoubted delay in making the two applications. The Land Acquisition Officer though he had no jurisdiction to review his previous order, set it aside by another order. Whereupon the applicant applied under Art. 226 for quashing the second order.

Held, that in the circumstances of the case both the orders should be quashed, with the result that the Land Acquisition Officer should now proceed to determine compensation according to law. The words of Art. 226 are wide enough to authorise the High Court to quash an order suo motu. In any case, the High Court has power under Art. 227 of the Constitution to set aside that order. **I L R (1957) 2 All 88 : A I R 1958 All 154 (158) (Pt G) (Prs 17, 18) (DB).**

——Art. 226—U. P. Panchayat Raj Act (1947), S. 85—Power to act suo motu when a revision is found to be defective. See U. P. Panchayat Raj Act (26 of 1947), S. 85. **AIR 1954 All 340.**

——Art 226—**Powers under — Conditions necessary for exercise of.**

It is certainly not the province of the High Court to interfere suo motu or at the instance of any person whenever there is any disregard or violation of any of the provisions of the Constitution. The High Court's power under Art. 226 of the Constitution can only be invoked at the instance of a person who has a personal grievance against any act of the State in its executive capacity which inflicts a legal injury on him. The right which is the foundation of a petition under Art. 226 of the Constitution is a personal and individual right. The nomination of a member to the Madras Legislative Council by His Excellency the Governor of Madras in pursuance of Art. 171. Cl. 3(e) and (5) of the Constitution of India does not infringe the personal right of any elected member even in an indirect manner so as to entitle him to sustain an application for the issue of a writ of certiorari to quash the order of His Excellency the Governor. It cannot

be said that it is incumbent on the Court to interfere suo motu in the matter and issue a writ of certiorari. (1952) 2 Mad L J 671 : A I R 1953 Mad 94 (95, 96) (Pt A) (Prs 3, 4, 5) (DB).

116. Suppression of material facts.
See Note 11.

117. Supreme Court, appeal to.
See Note 10.

118. Supreme Court, power to issue.
See Notes 12 and 13.

119. Suspension of writ jurisdiction.
See also Notes 12 and 217 and Ibid, Arts. 358, 359.

● —Art. 226—Interpretation of Art. 359—Article is capable of only one construction—Scope of Art. 358 compared with that of Art. 359 — Effect of Presidential Order—Right to move High Court under Art. 226 falls within mischief of Art. 359(1) — Nature of proceedings that are barred by Presidential Order under Art. 359(1) 'Any Court' in Art. 359(1) mean any Court of competent jurisdiction—Vires of Defence of India Act and Rules on ground of violation of fundamental rights in issue in proceedings under S. 491(1)(b), Criminal P. C. — Proceedings fall within mischief of Art. 359(1), and the Presidential Order — Validity of Defence of India Act and Rules thereunder cannot be questioned on ground of violation of fundamental rights under Arts. 14, 21 and 22 for period of operation of Presidential Order under Art. 359. See Ibid, Art. 359. 1964 (1) Cri L J 269: AIR 1964 S C 381.

● —Art. 226 — Applicability — Detention under Defence of India Act and Rules — Presidential order suspending enforcement of fundamental rights under Arts. 14, 21 and 22 during operation of order—Detention can be challenged on grounds of infringement of rights other than those specified in the order. See Ibid, Art. 359(1). 1964 (1) Cri L J 269 : A I R 1964 S C 381.

● —Arts. 226 (1), 32 (1), 359 (1)—Criminal P. C. (1898), S. 491 (1) (b)—Detention under Defence of India Act not open to challenge by virtue of Presidential Order under Art. 359 (1)—Detenu cannot get mere declaration that Defence of India Act is invalid.

What Art. 359 (1) purports to do is to empower the President to make an Order by which the right of the detenu to move the Court to challenge the validity of his detention on the ground that any of his fundamental rights specified in the Order have been contravened, is suspended, and so, it would be unreasonable to suggest that what the detenu cannot do in order to secure his release, he should be allowed to do merely for the purpose of obtaining an academic declaration that the Defence of India Act and the Rules are invalid. A proceeding taken under S. 491 (1) (b), Criminal P. C., like a petition filed under Art. 226 (1) or Art. 32 (1) is intended to obtain relief, and the relief in such cases means the order for the release of the detenu. If the detenu is prohibited from asking for an order of release on the ground that the challenge to the validity of his order of detention cannot be made during the pendency of the Presidential Order it would not be open to the same detenu to claim a mere declaration either under S. 491, Criminal P. C. or Art. 226 (1) or Art. 32 (1) of the Constitution. It is not open to the High Court to consider the validity of the impugned Act without relation to the prayer made by the detenu in his petition. The proceedings commenced by the detenu by means of his petition under S. 491 (1) (b) constitute one proceeding and if the sole relief which the detenu seeks to obtain cannot be claimed by him by virtue of the Presidential Order, it would be unreasonable to hold that he can claim a different relief, viz., a mere declaration. Such a relief is clearly outside the purview of the proceedings under S. 491 (1) (b), Criminal P. C and Arts. 226 (1) and 32 (1). Makhan Singh Tarsikka v. State of Punjab. (1964) 1 Cri L J 269 : (1964) 2 SCA 663 : AIR 1964 S C 381 (403) (Pt F) (Pr 45).

——Art. 32—President ordering suspension of right to move Court for enforcing rights under Arts. 21 and 22—Effect of the order—Person detained under R. 30 of D. I. Rules — Petition to Supreme Court under Art. 32 for issue of writ of habeas corpus—Petitioner held had no locus standi to enforce the right Validity of Defence of India Ordinance, 1962 challenged —Petition not maintainable. See Ibid, Art. 359 (1). 1964 (1) Cri L J 132 : AIR 1964 S C 173.

● —Art. 32—Person detained under R. 30 of D. I. Rules—Repeal of Defence of India, Ordinances — Effect of Repeal—Section 8 of General Clauses Act, 1897—Applies to President's order under Art. 359 (1) —Defence has no right to challenge vires of D.I. Act or Rules. See Defence of India Act (1962), S. 48. 1964 (1) Cri L J 132 : AIR 1964 S C 173.

——Arts. 226, 352, 358 and 359 — Proclamation of emergency and suspension of fundamental rights — High Court's power to issue writs or direction under Art. 226—How far affected — Order of detention under Defence of India Act—Interference by High Court — Defence of India Act (1962), S. 45—Powers of High Court under Art. 226 not affected—Defence of India Act (1962), S. 45.

Article 226 confers upon all the High Courts new and very wide powers subject alone to the two limitations of territorial jurisdiction, and the availability of the person or authority upon whom the writ issues, within such territory. Its power cannot be taken away or curtailed by any legislation short of an amendment of the Constitution. Any law which seeks to take away and restrict the jurisdiction of the High Court under Art. 226 must be held to be void and the High Court will be clearly entitled to exercise its powers under Art. 226 free from the fetters imposed directly or indirectly. But it does not follow from this that the High Court will issue a writ regardless of the scheme of the particular Act and the nature of the orders passed thereunder. If the scheme of the Act is that the decision of the executive should be final and no justiciable right is created, Art. 226 cannot be invoked for converting an executive act into a judicial or quasi-judical act thereby defeating the object of the enactment ; AIR 1958 S C 956; AIR 1953 Mad 392 and AIR 1953 Mad 972, Rel. on. Under Art. 359 (1) of the Constitution, the President has power to suspend the enforcement of any of the rights conferred by Part III during the Emergency, and for the period. In exercise of this power, on 3rd November, 1962 a Notification was issued by the President (G.S.R. 1462) declaring that the right of any person to move any Court for the enforcement of the rights conferred by Arts. 14, 21 and 22 of the Constitution shall remain suspended for the period of the Emergency 'if such person has been deprived of any such right under the Defence of India Ordinance, 1962, or any rule or order made thereunder.' The Defence of India Rules, 1962, were promulgated on 5th November, 1962. Under S. 3 (2), (15) (i) of the Defence of India Act, 1962 the State has power to direct the apprehension and detention in custody of any person whom the relevant authority suspects, on grounds appearing to that authority to be reasonable, of being of hostile, origin or having acted, being about to act or being likely to act in a manner prejudicial to the defence of India and civil defence, the security of the State.

To the extent to which certain Fundamental rights have been suspended by the aforesaid provisions, they cannot be agitated in Courts. For instance, no Court could pronounce a legislation, subsequent to the Emergency, as in violation of Art. 19 and therefore void. No Court could permit the enforcement of rights, by any affected subject, under Arts. 14, 21, 22 with regard to any state of facts arising after the Emergency, and related to the action of authorities under the Defence of India Ordinance or Act. But, subject to these limitations the powers of the Courts have not been taken away and Art. 226 of the Constitution is available to the subject for redress, within its proper scope. In addition to the two factors upon which the Court could nevertheless interfere with regard to orders of detention or orders imposing restrictions upon detenus under the Defence of India Act, namely, acts outside the statutory powers or acts lacking bona fides, the High Court would have the power of interference upon principles of writ jurisdiction, but within the limits of those principles alone. For instance the High Court could interfere, in certiorari, where the order is an error of law apparent on the face of the record; it could interfere, by the issue of an appropriate writ, where a principle of natural justice has been flagrantly violated. But the exercise of writ jurisdiction is always within the limits of the proper recognition by the High Court of factors relevant to powers delegated to the executive by the Legislature. Where, for instance, the compulsory disclosure of information by the State even to Court, might imperial security, the High Court will not exercise the writ jurisdiction in a mode that necessitates such a disclosure. But, where the High Court is satisfied that, on the principles of writ jurisdiction, a particular order has to be set aside or a particular direction given to the executive, it will not hesitate to do so, because, S. 45 (1) of the Defence of India Act, 1962, cannot override the powers of the High Court under Art. 226 of the Constitution. ILR (1964) 1 Mad 327 : AIR 1965 Mad 225 (228, 229, 234, 246) (Pt B) (Prs 4, 7, 23, 24, 66) (DB).

120. Territorial jurisdiction of High Court.

(a) Habeas Corpus.
See Note 218.

(b) Authority becoming extinct or functus officio.

(c) Original and appellate authorities, duty in different States.

(d) Person or authority must be within.

(e) Merger of order in appellate order.
See also Note 120 (d).

(f) Residence of applicant.

(g) Subject-matter.

(h) Union of India, writ against.

(i) Authority within jurisdiction acting on order of authority outside jurisdiction.

(j) Effect of amendment by Constitution (15th Amendment) Act.

120. Territorial jurisdiction of High Court.

■ ——Art. 226 — Territorial jurisdiction of High Courts—Two-fold limitation on jurisdiction— Application for grant of mining lease rejected by Orissa Government—Review petition also rejected by Central Government — Order rejecting application not amenable to jurisdiction of Orissa High Court under Art. 226 — Mineral Concession Rules (1949), Rr. 57, 59 and 60.

There is two-fold limitation on the power of the High Court to grant a writ under Art. 226. These limitations are firstly that the power is to be exercised throughout the territories in relation to which the High Court exercises jurisdiction, that is to say, the writs issued by the High Court cannot run beyond the territories subject to its jurisdiction, and secondly, that the person or authority to whom the High Court is empowered to issue such writs must be within those territories, which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories.

Where after the Orissa State Government had rejected the application of the appellant for grant of mining lease, the appellant went in review to the Central Government under R. 57 of the Mineral Concession Rules, 1949, and that review petition was also rejected, the order of the Central Government is clearly not amenable to the jurisdiction of the High Court of Orissa under Art. 226, in view of the fact that the Central Government is not located within the territories subject to the jurisdiction of the Orissa High Court.

Quite apart from the theoretical question of the merger of the State Government's order with the Central Government's order, the terms of R. 60 makes it perfectly clear that whenever the matter is brought to the Central Government under R. 59 it is the order of the Central Government which is effective and final. In those circumstances the Orissa High Court has no jurisdiction to issue a writ under Art. 226 as the final order in the case was that of the Central Government which was not situate within the territories over which the High Court has jurisdiction. AIR 1953 S C 210; A I R 1961 S C 532 and A I R 1956 S C 246, Rel. on; A I R 1958 S C 86, Expl. and Disting.; A I R 1960 S C 606, Disting.; I L R (1960) Cut 685, Affirmed. Madan Gopal Rungta v. Secretary to the Government of Orissa, 1962 S C D 778 : 28 Cut L T 498 : (1963) 1 S C A 343 : (1962) Supp 3 S C R 906 : A I R 1962 S C 1513 (1515, 1516) (Prs 4, 6).

■ ——Art. 226 — Jurisdictian to issue writ of certiorari—Existence of person or authority.

The scope of Art. 226 is firstly that it confers on the High Courts power to issue writs and directions, and secondly, it defines the limits of that power. This latter it does by enacting that it can be exercised over any person or authority within the territories in relation to which it exercises its jurisdiction. The emphasis is on the words "within the territory", and their significance is that the jurisdiction to issue writ is co-extensive with the territorial jurisdiction of the Court. The reference is not to the nature and composition of the Court or tribunal but to the area within which the power could be exercised. Hari Vishnu v. Ahmad Ishaque, 1955 Mad W N 449 : 1955-1 Mad L J (SC) 157 : 1955 S C J 267 : 1955 Andh W R (SC) 157 : 1955 All W R 339 : 1955 S C R 1104 : 1955 Nag L J 1 : 1955 S C A 105 : AIR 1955 S C 233 (241) (Pt E) (Pr 14).

■ ——Art. 226 — Jurisdiction of Punjab High Court to issue writ to Investigation Commission at Delhi investigating case of assessees in State of U. P.— (Taxation of Income (Investigation Commission) Act (33 of 1947), S. 5). AIR 1951 Punj 74, Reversed.

While Art. 225 of the Constitution preserves to the existing High Courts the powers and jurisdictions which they had previously, Article 226 confers on all the High Courts new and very wide powers in the matter of issuing writs which they never possessed before. There are only two limitations placed

upon the exercise of these powers by a High Court under Art. 226 of the Constitution; one is that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories" and this implies that they must be amenable to its jurisdiction either by residence or location within those territories. It is with reference to these two conditions thus mentioned that the jurisdiction of the High Courts to issue writs under Art. 226 of the Constitution is to be determined.

The Punjab High Court has jurisdiction to issue writ to the Investigation Commission in Delhi investigating under S. 5 of the Act 30 of 1947, the case of the petitioners, who were the assessees within the U. P. State and whose original assessment were made by the Income-tax authorities of that State, even though subsequent proceedings, which would have to be taken in pursuance of the report of the Investigation Commission would have to be taken by the Income tax authorities in the U. P., and if a case would have to be stated, it would have to be stated to the High Court at Allahabad. A I R 1954 S C 210, Rel. on; A I R 1943 P C 164, Expl. and Disting.; AIR 1951 Punj 74, **Reversed.** Rashid, K. S. v. Income-tax Investigation Commission, **1954 S C J 264 : 1954 S C A 264 : 1954 S C R 738 : (1954) 25 I T R 167 : A I R 1954 S C 207 (209, 210) (Pt A) (Prs 2, 3).**

——Art. 226 — Territorial jurisdiction of High Court. See Representation of the People Act (1951), S. 116-A. **AIR 1958 All 137.**

——Art. 226 — Jurisdiction and powers of High Court — (Administration of Evacuee Property Act (1950), S. 27—Power of Custodian-General),

Under S. 27, Administration of Evacuee Property Act, the powers of the Custodian-General are very wide and for all practical purposes are indistinguishable from those of an appellate authority under the Act. Upon the general principle that the order of a Court merges in that of an appellate authority, the order of the Assistant Custodian merges in the order of the Additional Custodian and that order in its turn merges in the order passed by the Custodian-General. Wide as are the powers conferred under Art. 226 of the Constitution, a two-fold limitation is placed upon the powers of the High Court. In the first place, the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction'. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be 'within those territories'. The office of the Custodian-General is located in New Delhi where he himself ordinarily resides. The High Court has therefore no power to summon the records of any case in the custody of the office of the Custodian-General or to quash any order made by him. **1954 All W R (HC) 135 : 1954 All L J 114 : AIR 1954 All 433 (434) (Prs 7, 8, 9) (DB).**

——Art. 226 — Jurisdiction of Calcutta High Court over Chandernagore — (Chandernagore (Application of Laws) Order, 1950).

The High Court at Calcutta has no jurisdiction to interfere with a notice of demand of patrol duty issued by the appropriate authority in Chandernagore, in exercise of its powers under Art. 226.

Under the Chandernagore (Application of Laws) Order of 1950 the High Court has been given only a limited jurisdiction. The jurisdiction under Art. 226 which is a very special jurisdiction, does not seem to have been extended to Chandernagore. **57 Cal W N 255 : AIR 1953 Cal 363 (364) (Pr 7).**

——Art. 226 — Art. 32 (2-A) (Jammu and Kashmir)—Territorial jurisdiction—Writ against Government — Limitations of territorial jurisdiction apply — AIR 1953 All 477 (FB), Diss. from. **AIR 1955 NUC (J & K) 1550 (DB).**

■ **——Art. 226—Jurisdiction of High Court—Test to determine.**

If an authority sought to be bound is permanently located or normally carries on its activities elsewhere, the High Court cannot possess jurisdiction over it, even though the parties to the case reside and the cause of action arises within the High Courts's jurisdiction. On the contrary, if the cause of action arises elsewhere and the parties also reside outside the jurisdiction of the High Court, jurisdiction to bind the authority would be existing if the authority is permanently located or is normally carrying on its activities within the jurisdiction of the High Court. The Tribunal may have become functus officio; even then if the record is legally within the custody of some one within the jurisdiction of the High Court, the record can be called up and certiorari can issue against the record: If an authority employs an agent within the jurisdiction of the High Court and the agent acts independently under law, though under the general supervision of the outside authority, the action of the agent can be interfered with by the High Court if it is opposed to fundamental rights or is contrary to law or the course of natural justice. If a special tribunal situated outside the jurisdiction of the State deals with an order of an inferior tribunal within the jurisdiction of the State and the order of the inferior tribunal can be said to merge in that of the superior tribunal, the High Court cannot of necessity deal with the order of the inferior tribunal, if it cannot deal with the order of the superior tribunal. Surajmal Arjundas v. State of Madhya Pradesh. **1957 M P C 680 : ILR (1957) Madh Pra 507: 1957 M P L J 788: 1957 Jab L J 1011 : AIR 1958 Madh Pra 103 (112) (Pt C) (Pr 31) (FB).**

——Art. 226—Scope of jurisdiction to issue writs.

The jurisdiction to issue a writ does not depend upon the mere location of a tribunal but depends upon the subject-matter and the parties to the dispute in regard to which such a tribunal purports to exercise jurisdiction. To put in other words, though the tribunal is situated outside the territorial jurisdiction of the High Court if it purports to exercise jurisdiction in regard to the parties or the subject-matter which are within the territorial jurisdiction of the High Court the tribunal must be deemed to have functioned within the jurisdiction of the High Court. The jurisdiction conferred by Art. 226 of the Constitution is to protect the fundamental and other rights of parties within the territorial jurisdiction of the High Court. The Article does not expressly say that the authority or tribunal interfering with such rights should reside physically within the territorial jurisdiction. If a tribunal or authority exercises jurisdiction within the territories affecting such rights it may reasonably be construed that the authority or the tribunal functioned within the territorial jurisdiction of the High Court and, therefore, is amenable to its jurisdiction. Further the labour appellate tribunal under the Industrial Disputes (Appellate Tribunal) Act (1950) though it has its headquarters at Bombay is an intinerant body functioning in different part of the country and where in a case it functioned during some part of the enquiry at any rate within the territorial jurisdiction of the Madras High Court the High Court has jurisdiction to issue a writ of certiorari against the order of the Labour

Appellate Tribunal. I L R (1944) Mad 457, Rel. on. 1952 Mad W N 519 : (1952) 1 Lab L J 772 : (1952-53) 4 F J R 77 : 1952-2 Mad L J 805 : A I R 1952 Mad 659 (663) (Pt B) (Pr 3).

● ——Arts. 226, 32 — **Power of High Court to issue writs in matters outside its original jurisdiction.**

The High Court has both the power and jurisdiction to issue the writs specified in Art. 226. The Madras High Court therefore has power to issue writs in matters outside its Ordinary Original Jurisdiction after the commencement of the Constitution. AIR 1950 Madh B 60 (FB), Diss. Srinivasa Bhat v. State of Madras. 64 Mad L W 82 : (1951) 1 Mad L J 115 : AIR 1951 Mad 70 (73) (Pt A) (Pr 3) (SB).

——Art. 226—Jurisdiction of High Court—Limits of.

Article 226 contemplates, for purposes of jurisdiction, the following two conditions, viz., that

(i) the power to issue writs, etc., extends only to the territories in relation to which the High Court exercises jurisdiction ; and

(ii) the writs, etc., can be issued only to the person, authority or Government within those territories and these are the only two conditions which govern the question of the High Court's jurisdiction.

Merely because a tribunal or authority permanently located and normally carrying on its activities elsewhere exercises jurisdiction within the territorial limits of the High Court so as to affect the rights of the parties therein such tribunal or authority cannot be regarded as functioning within the territorial limits of the High Court and being therefore amenable to its jurisdiction under Art. 226. The same limitations apply to the case of Government. A I R 1953 S C 210, Rel. on; A I R 1952 Bom 449 and A I R 1952 Mad 659, doubted. I L R (1954) Nag 286 : 1954 Nag L J 478 : AIR 1954 Nag 161 (163) (Pt A) (Prs 5, 6) (DB).

——Art. 226 (1) — **High Court issuing direction, order or writ under Article — High Court acts in personam.**

Under article 226 of the Constitution, a High Court has power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, within those territories directions, orders or writs. Clearly, therefore, the person or authority to whom a direction, or order or writ can be issued must be normally resident within the jurisdiction of the High Court. A High Court when it issues a direction, order or writ under article 226 acts in personam. A I R 1952 Punj 1 and AIR 1952 Punj 9, Expln. I L R (1952) Nag 331 : 1954 Nag L J 327 : AIR 1952 Nag 301 (301, 302) (Pt A) (Pr 3) (DB).

——Art. 266—Territorial jurisdiction of High Court.

It is clear from the language of Art. 226 that there are two limitations imposed upon the jurisdiction of the High Court in the matter of issuing a writ. In the first place, the power of the High Court is to be exercised "throughout the territories in relation to which it exercises jurisdiction"; in other words, the writ issued by the High Court cannot run beyond the territorial limits of its jurisdiction. In the second place, the person or authority to whom the High Court issues the writ must be "within those territories", which means by necessary implication that the person or authority must be amenable to the jurisdiction of the High Court either by residence or by location within those territories.

The test of the jurisdiction of the High Court under Art. 226 is not whether the cause of action has accrued within the territorial limits of the High Court. The language of Art. 226 makes no express reference to any cause of action or where the cause of action arises. There is nothing in the language of Art. 226 to suggest that the cause of action has any relevance in determining the jurisdiction of the Court to issue a writ. On the other hand, the express limitation imposed by Art. 226 is that the person or authority to whom writ is issued must be within the territorial limits of the High Court.

Hence, the High Court at Patna has no jurisdiction to issue a writ under Art. 226 of the Constitution against the Chief Medical Officer, Eastern Railway, whose permanent office is located at Calcutta. AIR 1953 S C 210; AIR 1954 S C 207, Foll. ILR 33 Pat 501 : AIR 1955 Pat 76 (77, 78) (Pt A) (Prs 3, 5) (DB).

——Art. 226—Territorial jurisdiction of High Court. AIR 1954 Raj 214 and AIR 1954 Raj 189, Dissented from.

For purposes of jurisdiction Art. 226 contemplates the following two conditions, (1) the power to issue writs, etc., extends only to the territories in relation to which High Court exercises jurisdiction and (2) the writs, etc., can be issued only to the person, authority or Government within those territories. These are the only two conditions which govern the question of High Court's jurisdiction. The writs, orders or directions cannot travel beyond the territorial limits of the High Court's jurisdiction and the person, authority, or Government to whom they are to be issued must reside or be located within the territories in relation to which the High Court exercises jurisdiction. If either of these conditions is not fulfilled, the High Court will obviously be left without jurisdiction to issue such writs, etc.

Where the office of the revisional authority, i. e, Assistant Custodian General who passed the final orders under the Administration of Evacuee Property Act, 1950, in the cases was located at Delhi which place was undoubtedly beyond the territorial limits of the Pepsu Court, merely because the Assistant Custodian-General carrying on his activities at Delhi exercised jurisdiction within the territorial limits of the High Court affecting the rights of the parties therein he could not be regarded as functioning within the territorial limits of the Pepsu High Court and thus was not amenable to its jurisdiction under Art. 226, of the Constitution. Orders of the Assistant Custodian-General passed in revision superseded those of the local tribunal and those really were the orders in dispute before the High Court. It could not be held that where a revision was dismissed the Assistant-Custodian General did not confirm the order of the local tribunal but merely declined to interfere and it was therefore the order of the local tribunal which was in dispute and the High Court had jurisdiction to issue writs: Case-law discussed. AIR 1954 Raj 214; AIR 1954 Raj 189, Diss. from. I L R (1955) Patiala 603 : AIR 1955 Pepsu 91 (93, 94, 95, 96) (Prs 10, 14, 15) (DB).

——Art. 226—Jurisdiction of High Court.

There are two classes of cases where the respondent, a head of a department, against whom relief under Art. 226 is sought, is resident outside the jurisdiction of a particular High Court. One where the particular order is passed by an officer resident or having office within the jurisdiction of the High Court, and the superior officer residing outside the jurisdiction, only purports to confirm the order and to dismiss the appeal or revision made by the person affected by the order. The other, where the superior officer residing outside the jurisdiction of the High Court purports to set aside the order of the subordinate officer and substitutes his own order for the same. This would include also a modification of the order passed by the subordinate officer. In the first class of

cases what the petitioner wants is that the order of the subordinate officer should be set aside, and he only makes the superior officer a party because he avails of the remedy provided by the rules of the law of approaching the superior officer. In the second class of cases the prayer of the petitioner would directly involve a direction to the superior officer not resident within the jurisdiction.

The petitioner who was the Head Travelling Ticket Examiner, on his periodical eye-sight examination, was ordered by the Chief Traffic Inspector, Bandikui, to rejoin as Head Ticket Collector. The petitioner filed an appeal to the D. T. S., Bandikui, T. S. Ajmer, C. T. M. Bombay and General Manager, Bombay. As a result of these representations, he was asked to appear again before the Chief Medical Officer, Bombay. The C. M. O. maintained his earlier opinion, and nothing came out of the petitioner's representations.

He then applied under Art. 226 on the ground that it involved reduction in rank without an opportunity being given to him to show cause against the reduction. Union of India and the General Manager, Western Railway, Bombay were made respondents. On objection that the General Manager had his office outside the jurisdiction of the High Court of Rajasthan.

Held, that the original order of posting of the petitioner as Head Ticket Collector was passed by the C. T. I. Bandikui, and it was that order which was under question in this petition; it was immaterial that the petitioner's efforts in setting aside that order right up to the General Manager proved fruitless. The High Court therefore had jurisdiction to entertain the application and that although the C. T. I, Bandikui, was not made a party, since the order had been upheld by the General Manager, and the General Manager appeared in the case to defend that order, the defect was immaterial, AIR 1953 S C 210, Ref. **I L R (1954) 4 Raj 639 : AIR 1954 Raj 189 (190) (Pt A) (Pr 3) (DB).**

120 (a). Habeas corpus.

See Note 218.

120 (b). Authority becoming extinct or functus officio.

——Art. 226—Election tribunals.

An election tribunal appointed by the Election Commission ceases to exist on the completion of its task. The argument that till the election petition has been disposed of in accordance with the law, the tribunal continues to exist even though it may be dormant cannot be accepted for if that were so the tribunal would continue to exist till all remediable processes had either been availed of or had become barred by time.

Nor does an order of the High Court vacating the order of the tribunal revive the tribunal automatically. It can be revived or re-appointed only by the Election Commission. Therefore it is not permissible to issue a direction that the tribunal should dispose of the election petition in accordance with directions given by the Court while vacating its order because there would be no one who could carry out the direction.

Further if any writ is issued by the Court it will affect the actions of the Election Commissioner which is not situated within the territorial jurisdiction of the Court and hence not subject to the writ process of the Court. If the writ is to be respected the Election Commission would be compelled to follow a course of conduct other than the one it would choose. If the Election Commission chooses to ignore the writ, then the Court will have no authority to enforce it. It would be wrong not only in principle but also against the practice of the Courts to issue such directions. **1954 A M L J 1 : AIR 1954 Ajmer 33 (36, 37) (Pt D) (Prs 19, 21).**

——Art. 226—Jurisdiction of High Court—Order of extinct Tribunal—Writ of certiorari to quash.

The High Court has no power to issue a writ of certiorari for quashing the order of a Tribunal which has become extinct and the record of the proceedings, in which the impugned order was passed, was lodged outside the territorial jurisdiction of the High Court. But where the order of the Tribunal is absolutely null and void, it could be ignored and the authority who intended to enforce the order could be restrained by the High Court by appropriate direction from enforcing the said order if he were resident within the territorial jurisdiction of the High Court. AIR 1956 All 684 and AIR 1958 All 80, Rel. on. **1960 All L J 274 : (1960) 1 Lab L J 756 : AIR 1960 All 444 (445) (Pt A) (Prs 5, 7) (DB).**

——Art. 226 — Certiorari— Issue of—Tribunal abolished and its record removed out of jurisdiction—Effect — Existence of copy of decision with State Government — Effect — Industrial Disputes (Appellate Tribunal) Act (1950), Ss. 9 (9) and 16 — (Industrial Disputes—U. P. Industrial Disputes Act (28 of 1948), S. 6 (1)).

Where in proceedings for a writ of certiorari there is a clear assertion that the Labour Appellate Tribunal of Lucknow Bench has been abolished and the records of the case in which the decision of the Appellate Tribunal was given, has gone to Bombay; outside the jurisdiction of the High Court, no writ of certiorari can be issued to quash that decision of the Labour Appellate Tribunal or the award given by the Adjudicator.

The existence of the copy of the decision of the Appellate Tribunal which might have been received by the State Government under S. 9 (9) of the Industrial Disputes (Appellate Tribunal) Act, 1951 cannot be said to be the record in which the decision was given and against which alone a writ of certiorari can be directed. **I L R (1958) 1 All 434 : AIR 1958 All 80 (83, 84) (Pt B) (Prs 5, 6) (DB).**

——Art. 226—Certiorari—Territorial jurisdiction of High Court.

If a tribunal has been abolished or become functus officio but the record is within the territorial limits of the High Court, it can obtain it from the person who has custody or possession of it, because he being within the territorial limits, is subject to its jurisdiction and bound to comply with its order. A writ of certiorari goes to the record and not to the tribunal that has prepared it. The High Court cannot issue an order to a person outside its territorial jurisdiction directing him to submit any record to it. AIR 1955 S C 233, Foll. **I L R (1957) 2 All 511 : 1957 All L J 727 : 1957 All W R (H C) 716 : (1958) 1 Lab L J 195 : AIR 1957 All 650 (651, 652) (Pt A) (Prs 3, 4) (DB).**

——Art. 226 — Jurisdiction of High Court — Territorial jurisdiction — Record of Labour Appellate Tribunal at Allahabad sent to Calcutta Bench — Third Lucknow Bench taking place of Allahabad Bench — Allahabad High Court's jurisdiction over Calcutta Tribunal.

A writ of certiorari is issued to an officer who is in lawful charge of the record of a case decided by a judicial or quasi-judicial tribunal so that the record may be sent for and if it is found that any order has been passed which was without jurisdiction or on the face of it erroneous in law, it may be quashed. The jurisdiction of the High Court to issue a writ, therefore, is to be determined by the residence of the per

son in whose lawful custody the record is. The custody of an agent will be construed as the custody of the principal, and therefore where the record is in the custody of an agent who is beyond the jurisdiction of the Court but the principal is within the jurisdiction the principal may be compelled to get the record from the agent and the writ can be issued concerning any order in that record.

The Labour Appellate Tribunal exercises jurisdiction over the whole of India through several benches at Calcutta, Bombay and Lucknow. Where a case was decided by a former Bench at Allahabad which had been abolished and its place had been taken by the third Lucknow Bench, but on the abolition of the Allahabad Bench the record was sent to Calcutta and it was in the lawful custody of the Calcutta Bench.

Held, that it could not be said that the Calcutta Bench held the record as an agent of the Lucknow Bench. **1956 All L J 898 : (1956-57) 11 F J R 359 : (1957) 1 Lab L J 439 : A I R 1957 All 252 (254) (Prs 9, 10) (DB).**

120 (c). Original and appellate authorities, duty in different States.

● **——Art. 226 — Jurisdiction of High Court—Order of appellate authority dismissing appeal and confirming order under appeal — Appellate authority outside jurisdiction of High Court — Writ cannot be issued even against original order.**

On principle when once an order of an original authority is taken in appeal to the appellate authority which is located beyond the territorial jurisdiction of the High Court it is the order of the latter authority which is the operative order after the appeal is disposed of and as the High Court cannot issue a writ against the appellate authority for want of territorial jurisdiction it would not be open to it to issue a writ to the original authority which may be within its territorial jurisdiction once the appeal is disposed of, though it may be that the appellate authority has merely confirmed the order of the original authority and dismissed the appeal. A I R 1960 Cal 1, **Reversed**; A I R 1962 S C 1513 and A I R 1958 S C 86, Disting. A I R 1958 S C 246 and A I R 1958 SC 868, Rel. on.

When an appeal is made, the appellate authority can do one of three things, namely: (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. In all these three cases after the appellate authority has disposed of the appeal, the operative order is the order of the appellate authority whether it has reversed the original order or modified it or confirmed it.

In law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification. In effect, by issuing a writ to the original authority setting aside its order, the High Court would be interfering with the order of the appellate authority which had confirmed the order of the original authority even though it has no territorial jurisdiction to issue any writ to the appellate authority.

The principle, viz, that the appellate order is the operative order after the appeal is disposed of, is the basis of the rule that the decree of the lower Court merges in the decree of the appellate Court. On the same principle it would not be incorrect to say that the order of the original authority is merged in the order of the appellate authority whatsoever its decision—whether of reversal or modification or mere confirmation. Collector of Customs, Calcutta v. East India Commercial Co., Ltd., Calcutta, **(1963) 1 S C A 348 : (1963) 2 S C R 563 : (1963) 2 S C J 230 : A I R 1963 S C 1124 (1126, 1127) (Prs 4, 5).**

——Art. 226 (1-A) (as amended by Constitution Fifteenth Amendment Act 1963)—Order of dismissal of Government servant passed by Central Government authority situate within jurisdiction of Rajasthan High Court — Appeal against order dismissed by another authority situate outside jurisdiction —Order of dismissal provides a subsequent cause of action to the appellants—High Court has jurisdiction to entertain the writ application and set aside the order passed by the appellate authority although it was situate outside its territorial jurisdiction. A I R 1964 All 379 (381) (Pt B) (Pr 8).

——Art. 226—Territorial jurisdiction of High Court —Order discharging railway servant—Nature of.

An order discharging a railway employee from service, being an administrative order, does not merge in the order passed on appeal by the Appellate Authority: AIR 1954 All 433, Expl. and disting.; AIR 1958 S C 86, Rel. on. Where the original authority passing the order of removal and the appellate authority are situated in different States and the employee files a writ petition for quashing the order of removal and the order of the appellate authority dismissing his appeal against the order in the High Court within whose jurisdiction the original authority is situated there is no bar to issuing any writ or direction quashing the order passed by the original authority which is within the jurisdiction of the High Court. The inability of the High Court to issue any writ or other direction to the appellate authority cannot render the remedy granted against the order of his removal ineffective. **1960 All L J 727 : (1961) 1 Lab L J 424 : A I R 1961 All 338 (340, 341) (Pt C) (Pr 9) (DB).**

——Arts. 226 and 311 — Certiorari—Territorial jurisdiction—Executive orders—Dismissal of Government servant confirmed in appeal — Doctrine of merger not applicable — Punishing authority amenable to territorial jurisdiction of High Court while appellate authority functioning and residing, outside the jurisdiction — Original order of dismissal can be examined — Civil P. C. (1908), S. 96 — Executive orders—Appeal — Effect—Doctrine of merger—Applicability to executive orders.

The doctrine of merger is confined to judicial or quasi-judicial proceedings but does not extend to order of dismissal which is confirmed in appeal. In case of a departmental enquiry against a Government servant resulting in his dismissal the proceedings before the inquiry officer may be quasi-judicial but the dismissal order is an executive order. The Government servant has a right of appeal against it but no question of merger of order of punishing authority into that of the appellate authority arises. Where, therefore an order of dismissal passed by punishing authority functioning within the territorial jurisdiction of the High Court is upheld by appellate authority functioning and residing outside the jurisdiction of the High Court, a writ petition is maintainable against that order because, in order to give effective relief to the aggrieved Government servant it is not necessary for High Court to interfere with appellate order. The original order of dismissal can be examined : 1960 All L J 727; AIR 1958 S C 86 and AIR 1960 Cal 1, Rel. on. **(1962) 1 Lab L J 7 : (1961) 3 Fac L R 25 (All).**

——Art. 226—Territorial jurisdiction.

A High Court cannot issue a writ to an authority which has its office outside its jurisdiction.

Thus where an employee in Central Excise is dismissed by the Collector and that order has been confirmed by the Board of Central Excise, Delhi, the office of which is outside the jurisdiction of the High Court, the High Court cannot in a writ petition filed under Art. 226 against the Collector, interfere with the order of dismissal of the petitioner. AIR 1954

All 433 and AIR 1955 Pepsu 91, Rel. on.; AIR 1954 Raj 214, Diss. from. 1960 All L J 288: (1960) 1 Fac L R 477 : (1960) 2 Lab L J 148 : AIR 1960 All 551 (555) (Pt B) (Pr 25).

——Art. 226—Territorial jurisdiction of High Court — Authority to whom writ is issued must be within jurisdiction—AIR 1954 Raj 145 and 189 and AIR 1954 Trav-Co 131 (FB) Diss. from.

The Board of Revenue (Andhra) which is situated in the City of Madras is not within the area of the Andhra State, over which the High Court of Andhra has jurisdiction. Hence no writ under Art. 226 can be issued to it. A I R 1955 Andhra 23; AIR 1953 S C 210; AIR 1954 S C 207, Foll.

It is difficult to appreciate the distinction between a reversing order and a confirming order of an appellate authority, so far as the exercise of jurisdiction under Art. 226 is concerned. Once there is an appeal to the Board of Revenue the final order is that of the Board of Revenue because the appeal destroys the finality of the order of the District Collector who is in Andhra. If so, the order sought to be quashed must be deemed to be that of the Board of Revenue which is situated outside the territorial jurisdiction of the High Court, and when a writ is sought to be issued it makes no difference whether the Order of the Board of Revenue is merely an affirming one or an order of reversal. A I R 1954 Raj 145 and 189; AIR 1954 Trav-Co 131 (FB), Dissented from. 1955 Andh L T (Civil) 117 : 1955 Andh W R 175 : AIR 1955 Andhra 178 (178, 179, 180) (Pt A) (Prs 2, 11, 13).

——Art. 226—Territorial jurisdiction of High Court —Order of dismissal by A. G., Maharashtra State — Appeal against such order to Comptroller and Auditor-General of India dismissad — Petition against order of dismissal under Art 226—No relief asked against Comptroller and Auditor-General of India and Union of India though made respondents — Petition in the High Court at Bombay held maintainable.

Held, on facts that though the petitioner, an upper division clerk being dismissed by the Accountant-General of Maharashtra State had impleaded the Comptroller and Auditor-General and the Union of India as parties to this petition, the petitioner had not asked for any relief against any of them directly. So long as an effective order of the disciplinary authority could be reached by the High Court to give relief to petitioner, there was no impediment in the High Court in the exercise of its jurisdiction under Art. 226 of the Constitution on the mere fact that an appellate order which was not impugned was passed by an authority which might not be within the territorial jurisdiction of the High Court. The petition was entitled to be considered on merits and decided. AIR 1962 S C 513, Disting. AIR 1958 S C 86 and AIR 1958 S C 1036 and Misc. Petn. No. 219 of 1961, D/- 18-3-1962 (Bom) and AIR 1960 Cal 1 (FB) and A I R 1962 Madh Pra 112 and AIR 1961 Madh Pra 148 and AIR 1954 Raj 214, Rel. on. 65 Bom L R 65 : ILR (1962) Bom 664 : 1963 Mah L J 205 : (1963) 1 Lab L J 428 : AIR 1963 Bom 121 (130, 131) (Pt A) (Prs 37, 42) (DB).

——Art. 226—Jurisdiction of High Court.

Order of General Manager — Appeal to Railway Board — Railway Board not within jurisdiction of High Court—But Railway Board not considering and not passing any order on a portion of General Manager's order — High Court is competent to deal with such portion. 62 Cal W N 921 : AIR 1960 Cal 209 (212) (Pt B) (Pr 3).

[Held Overruled on another point by AIR 1962 S C 1704 as interpreted by AIR 1966 S C 1197].

■ ——Art. 226 — Territorial jurisdiction—Order of Tribunal situated within territorial limits of High Court, confirmed by Appellate Tribunal situated outside jurisdiction—Writ can issue on Tribunal within jurisdiction — Original order exists—(Sea Customs Act (1878), Ss. 167 (8), 37, 188 and 189).

The Calcutta High Court has no jurisdiction to issue a writ or order under Art. 226 of the Constitution to the Central Board of Revenue, situated outside the jurisdiction of the High Court. Where the Collector of Customs within the jurisdiction of the Calcutta High Court passes an order under the Sea Customs Act, against the petitioner and the order is confirmed by the appellate authority, namely the Central Board of Revenue, located outside the jurisdiction, the original order made by the Collector of Customs is the order continuing to be operative of its own force after the appeal has been dismissed. AIR 1958 S C 86, Foll. After the appeal is dismissed and the original order is confirmed the Calcutta High Court can give appropriate relief under Art. 226 of the Constitution in respect of this original order if the merits of the case justify. East India Commercial, Ltd. v Collector of Customs, 64 Cal W N 256 : AIR 1960 Cal 1 (2, 5, 6) (Prs 4, 14, 15, 16) (SB).

[Reversed in AIR 1963 S C 1124.]

——Art. 226—Petition for writ—Territorial jurisdiction — Appellate authority outside the State — Effect.

The High Court at Hyderabad is not competent to issue a writ against the Custodian General of the Evacuee Property whose office is at Delhi. The fact that the original order is of the Custodian at Hyderabad and it is merely confirmed by the Custodian General does not make any difference in respect of the jurisdiction. The e is no difference between the case where the order of the local custodian is merely confirmed and the case where it is modified by the Custodian General. As a matter of principle, when an order of a lower Court or an officer is merged in the order of the higher tribunal or the superior officer, as the case may be, it would be the order of the superior Court which will be under consideration and not the order of the lower Court. AIR 1954 Hyd 33, Rel. on. AIR 1954 Raj 214, Diss. from. ILR (1956) Hyd 272 : AIR 1956 Hyd 64 (64) (Prs 2, 4) (DB).

——Arts. 226 and 227 — Territorial jurisdiction — Order by tribunal within jurisdiction confirmed in appeal and revision by tribunals outside jurisdiction — Principle of merger — Writ quashing lower tribunal's order—Issue of.

When an order of an inferior tribunal is carried up in appeal or revision to a superior tribunal outside the High Court's jurisdiction and the superior tribunal passes an order confirming modifying or reversing the order of the inferior tribunal, a writ cannot issue from the High Court to the superior tribunal, because it is not situated within the territorial jurisdiction of the Court; in such a case no writ can equally issue against the inferior tribunal that is situated within the jurisdiction of the Court. The principle of merger applies to the case and the order of the inferior tribunal within the jurisdiction having become merged in the orders of the appellate and revisional authorities functioning outside the State, cannot be quashed as such, under Art. 226 or 227 of the Constitution. AIR 1955 All 435 (FB) and AIR 1955 Nag 148 and AIR 1955 Pepsu 91 and AIR 1956 S C 246, Rel. on. AIR 1954 Trav-Co 131 (FB), Disting. 1958 Ker L J 198 : 1958 Ker L T 130 : ILR (1958) Ker 319 : AIR 1958 Ker 357 (364, 365) (Pt B) (Prs 56, 58) (DB).

——Art. 226—Territorial jurisdiction of High Court — Original and appellate authorities situated in

different States—Order against petitioner for contravention of R. 151, Central Excise Rules, by Assistant Collector, Central Excise Jabalpur (M. P.) — Appeal by petitioner — Appeal dismissedd and order confirmed without any modification by the Collector, Central Excise, Nagpur (Maharashtra) — Held there was no merger of original order and therefore jurisdiction of M. P. High Court to issue writ remained unaffected. AIR 1961 Madh Pra 148 and AIR 1958 S C 1036, Rel. on. **1961 M P C 727 : 1961 Jab L J 1185 : I L R (1962) Madh Pra 197 : 1961 M P L J 1314 : AIR 1962 Madh Pra 112 (114) (Pt B) (Pr 6) (DB).**

——Art. 226— Order passed by subordinate executive officer does not merge in appellate or revisional order—Writ petition against such order lies in High Court even if revisional authority is outside its jurisdiction.

There is no merger of the orders of demand made by an Inspector of Central Excises under Rule 9 (2) of the Central Excises Rules and of the appellate authority under S. 35 (1) in an order made by the Central Government in revision under S. 36. An order passed by the Inspector, Central Excises, levying excise duty on the appellant is an administrative or executive order and the order passed by the appellate authority and the revisional authority are orders of administrative authorities exercising at the most quasi-judicial functions. The theory of merger of orders cannot, therefore, be applied to these orders and even if it were to be applied, they would not in any way affect the operation of the order of the original authority even if affirmed in appeal or revision. AIR 1958 S C 86 and AIR 1958 S C 1036, Foll.

Hence a writ petition under Art. 226 of the Constitution can lie in the High Court against the orders of the Inspector or the appellate authority when he or it functions within its jurisdiction, even if the Central Government functions outside the jurisdiction of the High Court. **1960 M P C 747 : I L R (1960) Madh Pra 805 : 1961 Jab L J 59 : 1961 M P L J 195: AIR 1961 Madh Pra 148 (150, 151, 152) (Prs 4, 5, 8) (DB).**

——Art. 226 — Administration of Evacuee Property Act (1950), S. 28 —Orders of department tribunals—**Principle of merger not applicable —** No interfering order by appellate tribunal—Finality of lower tribunal's order not affected—Effect on territorial jurisdiction of High Court—See Administration of Evacuee Property Act (1950), S. 28. **AIR 1959 Madh Pra 256.**

● **——Art. 226—Jurisdiction of High Court — Case under Mineral Concession Rules—Central Government declining to review order by State Government — Issue of writ to Central Government—(Mineral Concession Rules (1949), R. 60).**

An application for a mining lease having been dismissed by the State Government, the applicant applied to the Central Government for a revision of the order under Ch. VI of the Mineral Concession Rules. The Central Government rejected the application and the result was communicated to the applicant. The applicant having moved a petion under Art. 226 for quashing the two orders.

Held, that a writ could not be issued to bind the Central Government because, (a) the Central Government could not be deemed to be permanently located or normally carrying on its business within the jurisdiction of the High Court; (b) the record of the case which the Central Government decided was not before the High Court and could not be made available from any legal custody within the State; (c) the order of the State Government must be deemed to have merged in that of the Central Government; (d) the order of the State Government could not be touched unless the order of the Central Government could be brought before the High Court and quashed. Surajmal Arjundas v State of Madhya Pradesh, **1957 M P C 680 : I L R (1957) Madh Pra 507 : 1957 M P L J 788 : 1957 Jab L J 1011 : AIR 1958 Madh Pra 103 (115) (Pt A) (Pr 42) (FB).**

——Art. 226—Writ of mandamus—Jurisdiction to issue—Principle of merger of original order in the final order — Scope—Joint Chief Controller of Imports, Madras passing an order in consultation with Chief Controller of Imports, New Delhi—Nature of.

If the appellant had applied for a writ of certiorari to quash the order of the joint Chief Controller of Imports, Madras, the High Court would, ordinarily speaking, have no jurisdiction over the matter, as such order should be deemed to have been merged in the final order of the Chief Controller, New Delhi over whom the High Court will have no jurisdiction. This principle has been laid down by the Supreme Court in AIR 1958 S C 868. This rule will not be different even in regard to the application for the issue of writ of mandamus.

There can be little doubt that the decision of a judicial or quasi-judicial authority given under the direction of, or after consultation with some other person, even if that person be a superior authority will be invalid as being in violation of the rules of natural justice.

Where the officer entrusted with the duty of deciding about the issue of licence (as in the instant case) did not do so himself but merely carried out the directions of his superior, such an order would obviously be void: AIR 1958 SC 887, followed. **(1963) 2 Mad L J 207 : 76 Mad L W 76 : I L R (1963) Mad 252.**

——Art. 226—Jurisdiction — Original authority and appellate authority situated in different States — Jurisdiction of High Court to issue writ — (See Customs Act (1878), Ss. 167 (8), 182 and 183).

The general rule is that when an order of an inferior tribunal is carried up in appeal or revision to a superior tribunal and the superior tribunal passes an order confirming, modifying or reversing the order of the inferior tribunal and a writ cannot issue from the High Court to the superior tribunal because it is not situated within the territorial jurisdiction of that court, in such a case no writ can equally issue against an inferior tribunal though situate within the jurisdiction of the High Court : A I R 1956 S C 246, Foll. When an order of an inferior tribunal is a nullity, the order on appeal therefrom cannot be of greater validity.

Thus, where an order of confiscation or penalty passed by the Collector of Customs, situated within the territorial jurisdiction of the Madras High Court, was a nullity in that the procedure dictated by natural justice was not followed, the fact that there was an appeal to the Central Board of Revenue, which was situated outside the territorial jurisdiction of the High Court and which refused to interfere, would not prevent the High Court from quashing the order of the Collector: AIR 1956 S C 246, Disting; (1927) 1 K B 491 and (1953) 2 Q B 18, Rel. on. The doctrine of merger can have no application where the appeal to the Central Board of Revenue was rejected in limine: A I R 1914 P C 66, Rel. on. **I L R (1957) Mad 642 : 1957 Mad W N 256 : 70 Mad L W 328 : (1957) Mad L J (Cr) 283 : (1957) 2 Mad L J 41 : AIR 1957 Mad 496 (503, 504) (Pt B) (Prs 18, 22, 25) (DB).**

——Art. 226—Territorial jurisdiction —Whether writ can issue to Appellate Tribunal having seat outside jurisdiction —(Quaere). **AIR 1955 N U C (Mad) 3896.**

——Art. 226—Certiorari—Jurisdiction of Madras High Court to issue to Appellate Industrial Tribunal at Bombay when subject-matter of dispute is within

jurisdiction. See Industrial Disputes (Appellate Tribunal) Act (48 of 1950), S. 7 (a). **AIR 1952 Mad 659.**

——Art. 226—Certiorari—Jurisdiction.

Where the Labour Appellate Tribunal, whose office is located in the Fort area at Bombay, has passed an order in appeal against an order of the Industrial Tribunal, Bangalore, the High Court of Mysore can issue a writ of certiorari against the Labour Appellate Tribunal for quashing its order. **ILR (1953) Mys 287 : AIR 1953 Mys 52 (59) (Pt A) (Pr 2) (DB).**

——Art. 226 — Order of dismissal passed by Chief Commissioner — Confirmation of order by Union Government in appeal—Former order does not merge in appellate order —Court of Judicial Commissioner can issue writ to Chief Commissioner to direct him to cancel order of dismissal and refrain from giving effect to it.

Where an order of dismissal from service passed against the petitioner by the Chief Commissioner was merely confirmed by the appellate order passed by Union Government at Delhi no question of merger of the former order in the appellate order arises and hence the Judicial Commissioner's Court of Manipur has jurisdiction to quash the Chief Commissioner's order of dismissal and to command him not to put the order into effect. The theory of merger would not apply to orders passed in departmental enquiries. No doubt, where in an appeal, the order of the subordinate tribunal is varied or altered or modified the said order is no longer in force and the grievance of the party concerned would be against the appellate order and if the appellate authority is outside the jurisdiction of the High Court, the High Court cannot entertain a writ against the appellate authority. But where it is a case of dismissal of the appeal and confirmation of the order of the subordinate authority, the appellate order has no special efficiency about it and it is the original order of the subordinate authority, which is in force. In such a case if the subordinate authority which passed the original order is within the jurisdiction of the High Court, the High Court has certainly the power to issue directions to that authority. AIR 1958 SC 86 and AIR 1958 SC 1036, Rel. on. Obiter in AIR 1956 S C 246, Not followed. **A I R 1963 Guj 6, Diss. from. AIR 1964 Manipur 46 (51, 53) (Pt B) (Prs 9, 17).**

——Art. 226 — Territorial jurisdiction — Mines and Minerals (Regulation and Development) Act (1957) — Mineral Concession Rules (1949), Rr. 60, 23 (1-A) Proviso, 57 (2), 59 — Application to State Government for grant of mining lease not disposed of within statutory period deemed to be rejected—Review to Central Government rejected — Order of Central Government is final and cannot be challenged before Orissa High Court by writ petition under Art. 226 of the Constitution. The offices of the Government of India being located at Delhi are clearly outside the jurisdiction of the Orissa High Court which cannot quash the order of the Central Government however erroneous or illegal it might be. AIR 1958 M P 103; **A I R 1960 S C 806**, Rel. on. **(1960) 2 O J D 460 : I L R (1960) Cut 673.**

——Art. 226 — Territorial jurisdiction — Grant of mining lease by State of Bihar — Cancellation by Union Government on review — Writ Petition — Maintainability — (Mineral Concession Rules (1949), Rr. 59 and 60).

Where a writ petition was made to the High Court of Patna, for quashing the order of the Union Government passed on review against the order of the State of Bihar granting a mining lease in favour of the petitioner.

Held, that the petition was not maintainable because it was not open to the High Court to examine the validity of the order of the Union Government or to grant any writ against it. The order of the State Government granting the lease, and the order of the Union Government cancelling that lease were in the nature of quasi judicial orders and there was a merger of the order of the State Government in the order of the Union Government which was a superior authority and which was located outside the territorial jurisdiction of the High Court. AIR 1953 S C 210 and AIR 1954 S C 207 and AIR 1955 All 435 (FB) and and AIR 1955 Nag 148 and AIR 1958 Madh Pra 103, Rel. on. AIR 1956 S C 246 and AIR 1955 All 435 (FB) and AIR 1955 Nag 148 and AIR 1955 Pepsu 91, Disting. **1958 Pat L R 399 : 1958 B L J R 820 : I L R 38 Pat 18 : A I R 1959 Pat 61 (63, 64, 65) (Prs 4, 6, 7) (DB).**

——Art. 226 — Territorial jurisdiction of High Court — Authority residing outside jurisdiction — Issue of writ to —Writ cannot be issued — Lower authority functioning within jurisdiction—Appellate or revisional authority functioning outside jurisdiction —Interference by authority in revision — Interference found illegal — Order in revision can be ignored and writ issued against lower authority.

A writ issued by the High Court under Art. 226 cannot run beyond the territories subject to the jurisdiction. The person or authority to whom the High Court is empowered to issue such a writ must be amenable to its jurisdiction either by residence or location within those territories. This jurisdiction to issue a writ does not depend on the place where the cause of action accrues. AIR 1953 S C 210 and A I R 1954 S C 207, Rel. on. Where the superior tribunal has no jurisdiction to entertain an appeal or revision against an order of the inferior authority and its order passed on appeal or revision is, therefore, a nullity, the order of the inferior tribunal cannot be considered to have merged in the order of the appellate authority, for there can be no merger into nothing. A I R 1960 Raj 177, Rel. on. In such a case it is open to the High Court to look into the order of the appellate or revisional authority for the purpose of ascertaining whether it is with or without jurisdiction. A I R 1956 S C 246, Rel. on. Partumal v. Managing Officer, **1962 Raj L W 1 : ILR (1961) 11 Raj 1121 : A I R 1962 Raj 112 (115, 116, 118) (Pt A) (Prs 8, 10, 17) (FB).**

[Overruled on another point in AIR 1964 S C 1536].

——Art. 226 — Territorial jurisdiction — Merger of order of original authority into that of appellate authority located outside jurisdiction —Exception— —Appellate authority acting without jurisdiction— Writ to prohibit original authority from taking further activities—High Court has jurisdiction to issue.

The doctrine of merger of an order of an inferior authority into that of an appellate authority must be subject to an exception that when the superior tribunal had no jurisdiction to entertain an appeal or revision against an order of the inferior authority and its order was a nullity for all purposes, it cannot be said that order of the original authority merged in the order of the appellate authority. On this principle it is open to a High Court to look at the order of the appellate authority for the purpose of ascertaining whether it was with or without jurisdiction and if it comes to the conclusion that it had no jurisdiction to entertain an appeal or revision the High Court can ignore that order and issue an appropriate writ to the authority within its jurisdiction prohibiting its activities under cover of that order so as to prevent the infringement of the rights of the citizens and the commission of any mischief thereunder. **(1960) 10 Raj 594 : 1960 Raj L W 541 : A I R 1960 Raj 177 (182) (Pt A) (Pr 18) (DB).**

——Arts. 226 and 311 – Case arising under Art. 311—Jurisdiction of High Court—Superior officer residing outside jurisdiction — If order passed under Art. 311 by subordinate officer within jurisdiction is confirmed in appeal High Court has jurisdiction under Art. 226 —If he sets aside order and substitutes his own in appeal there is no jurisdiction. **AIR 1955 N U C (Raj) 4351 (DB).**

——Art. 226 –Territorial jurisdiction—Writ against Custodian General, New Delhi – Assistant Custodian's order — Merging of, in Custodian General's order in revision —Petition against Assistant Custodian's order.

The Saurashtra High Court has no jurisdiction to entertain a writ petition against the Custodian General who resides and has his office located at New Delhi, outside the territorial jurisdiction of the Court. Even where the revisional authority dismisses the revision it does so because it affirms the order of the appellate authority and in that sense the order is the order of the revisional authority. The order is final and it is that order which operates. This is true even where the revision application is dismissed in limine. Where therefore, the Assistant Custodian's order has been confirmed on appeal by the Custodian of Saurashtra and the revision application filed against the latter's order has been dismissed by the Custodian-General in limine, the order of the Assistant Custodian merges in the order of the Custodian-General, and since no writ can issue against the Custodian-General he being not amenable to the jurisdiction of the High Court a petition against the Assistant Custodian is not maintainable and is liable to be dismissed. AIR 1954 Raj 189 and AIR 1954 Raj 214 Diss. from. AIR 1954 All 433 and AIR 1955 Hepsu 91, Rel on. **AIR 1956 Sau 47 (49, 50) (Pt B) (Prs 3, 4, 5) (DB).**

——Art. 226—Jurisdiction—Territorial jurisdiction.

Order dismissing class I servant passed by Chief Commissioner, Tripura —On appeal, Central Government (President) modifying that order to one of removal from service—Writ petition filed before Judicial Commissioner, Tripura — Central Government held was not within territories under jurisdiction of Judicial Commissioner's Court — Appellate power in such matter having been retained by the President for himself final authority here was Central Government and not Chief Commissioner — (General Clauses Act (1897), S. 3 (8)). AIR 1958 Madh Pra 103 and A I R 1954 S C 207, Rel. on.; A I R 1956 S C 246 and A I R 1956 All 684 and A I R 1953 S C 210, Disting. and Expl. **AIR 1959 Tripura 7 (8) (Pr 12).**

120 (d). **Person or authority must be within.**

● ——Art. 226—Jurisdiction—Territoral jurisdiction —Determination of—Test—Art. 32 (2A)—Location or seat of Central Government determines jurisdiction.

Per Majority (Sinha C. J., Kapur, Gajendragadkar. Wanchoo and J. C., Shah JJ.)

It is not permissible to read in Art. 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. It would be wrong to introduce in Art. 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Art. 226. What Art. 226 requires is residence or location as a fact and if therefore there is a seat from which the Government functions as a fact even though that seat is not mentioned in the Constitution the High Court within whose territories that seat is located will be the High Court having jurisdiction under Art. 226 so far as the orders of the Government as such are concerned. The seat of the Government of India is in New Delhi and the Government as such is located in New Delhi. Therefore, the view taken in A I R 1953 S C 210 and A I R 1954 S C 207, that there is two-fold limitation on the power of the High Court to issue writs, etc. under Art. 226 namely: (i) the power is to be exercised 'throughout the territories in relation to which it exercises jurisdiction,' that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction and (ii) the person or authority to whom the High Court is empowered to issue such writs must be 'within those territories which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories is the correct one. A I R 1953 S C 210 and A I R 1954 S C 207, Reconsidered and affirmed : A I R 1953 All 477 (FB), Overruled. AIR 1943 P C 164, Expl. and Disting.

A person who is a citizen of India and is residing in the State of Kashmir, cannot enforce his fundamental right under Art. 32 (2 A) by filing an application for an appropriate writ in the High Court of Jammu and Kashmir if his right is infringed by an order of the Union Government.

Per Subba Rao J., (Contra). The Union Government has no constitutional situs in a particular place. but it exercises its executive powers in respect of matters to which Parliament has power to make laws and the power in this regard is exercisable throughout India, the Union Government must therefore be deemed in law to have functional existence throughout India. When by exercise of its powers the Union Government makes an order infringing the legal right or interest of a person residing within the territories in relation to which a particular High Court exercises jurisdiction that High Court can issue a writ to the Union Government, for in law it must be deemed to be 'within' that State also.

Per K. C. Das Gupta J. (Contra). — While the Government of India is within the territories of every High Court in India the only High Court which has jurisdiction to issue a writ or order or directions under Art. 226 or Art. 32 (2 A) against it is the one within the territories under which the act or omission against which relief was sought took place. Khajoor Singh v. Union of India, (1961) 2 S C R 828 : (1961) 2 Andh W R (SC) 46 : (1961) 2 S C J 235 : (1961) 2 Mad L J (SC) 46 : 1961 Mad L J (Cr) 498 : (1961) 1 S C A 173 : AIR 1961 S C 532 (535, 538 to 540, 547, 548, 551, 552) (Pt B) (Prs 3, 13, 14, 16, 18, 40, 57, 60).

● ——Art 226—Jurisdiction of High Court—Income-tax Investigation Commission having its office in New Delhi appointing authorised official to work in Travancore under S. 6 of Travancore Taxation on Income (Investigation Commission) Act (14 of 1124 M.E.)—Authorised official acting contrary to law—Travancore-Cochin High Court – Jurisdiction to issue writ against him under Art. 226 — (Contract Act (1872), S. 182)—(Principal and agent)—(Tort).

The jurisdiction under Art. 226 is exercised by the High Court when it finds that any person within its territories is guilty of doing an act which is not authorised by law or is violative of the fundamental rights of the citizen. The only conditions of its exercise of that jurisdiction are firstly that the writs cannot run beyond the territories subject to its jurisdiction and, secondly, the person or authority to whom the High Court is empowered to issue such writs must be "within those territories' which clearly implies that they must be amenable to its jurisdiction by residence or location within those territories.

The authorised official appointed under S. 6 of the Travancore Taxation on Income (Investigation Commission) Act (14 of 1124, M.E.) by the Indian Income-tax Investigation Commission, even though he can be called an authorised agent of the Commission, per-

forms the various functions assigned to him on his own initiative and in the exercise of his jurisdiction. If, therefore, he does anything in the discharge of his functions as authorised official which is not authorised by law or is violative of the fundamental rights of the petitioner, he would be amenable to the jurisdiction of the High Court under Art. 226. It cannot be contended that as he is acting under the direction of the Commission as its authorised agent no writ can issue against him because the principal who directs the activities would be liable.

Hence the Travancore-Cochin High Court has jurisdiction to issue a writ under Art. 226 against the authorised official appointed to work in Travancore under S. 6 of the Act by the Indian Income-tax Investigation Commission having its office at New Delhi if the authorised official acts contrary to law in the discharge of his duties. A. Thangal Kunju v. M. Venkatachalam Potti, **1956 S C J 323 : (1955) 2 S C R 1196 : (1956) 29 ITR 349 : 1956 S C A 259 : AIR 1956 S C 246 (254, 255, 256) (Pt A) (Prs 28, 29, 30, 31).**

● **——Art. 226—Jurisdiction of High Court — (Decision of High Court reversed).**

The High Court of Madras cannot issue any writ under Art. 226 to Election Commission having its officers permanently located at New Delhi, AIR 1943 P C 164, Distinguished. Election Commission, India v. Saka Venkata Rao, **1954 Mad W N 427 : 1953 S C J 293 : (1953) 1 Mad L J 702 : 66 Mad L W 378 : 1953 S C A 203 : 1953 S C R 1144 : AIR 1953 S C 210 (212, 213, 214, 215) (Pt B) (Prs 6, 7, 8, 17).**

——Art. 226—Territorial jurisdiction.

The Secretary, Ministry of Communications, New Delhi, is not within the territories subject to the jurisdiction of the Judicial Commissioner's Court at Ajmer either by residence or location and is therefore not amenable to the jurisdiction of that Court. Hence, the Court has no jurisdiction to issue a writ against him. AIR 1953 S C 210, AIR 1954 S C 207, Ref. to. **1955 A M L J 40 : AIR 1955 Ajmer 39 (40) (Pt A) (Pr 3).**

——Art. 226—Territorial jurisdiction—High Court of Allahabad cannot issue writ to Union of India or Election Commission, their principal seat of business being in New Delhi outside territorial jurisdiction of High Court. AIR 1953 S C 210 and AIR 1954 S C 207, **Foll. AIR 1963 All 363 (364) (Pt A) (Pr 5).**

——Art. 226—Jurisdiction—Origin of case in Meerut area—Final order by authority functioning at Lucknow—Writ petition before Lucknow Bench—Competency. See U. P. High Courts (Amalgamation) Order (1948), Cl. 14. **AIR 1959 All 722.**

● **——Art. 226—Mandamus — Order of Custodian General, New Delhi, under S. 27, Administration of Evacuee Property Act (1950)—Allahabad High Court cannot issue writ of mandamus to Custodian of Evacuee Property, U. P, commanding him to treat that order as nullity — (Administration of Evacuee Property Act (1950), S. 27).**

No High Court can issue a writ to an official who resides beyond the jurisdiction of that Court. Hence Allahabad High Court cannot issue a writ of 'mandamus' to the Custodian of Evacuee Property, U. P., commanding him to treat as a nullity an order made by the Custodian General in New Delhi in the exercise of his revisional powers under S. 27 of the Administration of Evacuee Property Act, 1950, so long as that order is valid and subsisting order. AIR 1953 S C 210 and AIR 1954 S C 207, Rel. on. AIR 1954 Trav-Co. 131, Explained. AIR 1954 Raj 189 and AIR 1954 Raj 214, Disting. Azmat Ullah v. The Custodian, Evacuee Property, U. P. Lucknow, **ILR (1955) 2 All 65 : 1955 All L J 521 : 1955 All W R 450 : AIR 1955 All 435 (436, 437, 438) (Prs 5, 8, 14) (FB).**

——Arts. 226 and 132 — Jurisdiction — Allahabad High Court cannot quash notification issued by Ministry of Food, Government of India, enforceable throughout India — Certificate under Art. 132, granted.

The power under Art. 226 is to be exercised throughout the territories in relation to which a High Court exercises jurisdiction. The person or authority to whom the writ is issued must be amenable to its jurisdiction either by location or residence within those territories. AIR 1954 S C 207, Foll.

The Ministry of Food and Agriculture, Government of India, cannot be said to have its location within the territories of U. P. subject to the jurisdiction of the Allahabad High Court. From the mere fact that the notifications issued by it are to be enforced and can be enforced, in all parts of India, it cannot be said that it is located within the State of U. P. Consequently the Allahabad High Court cannot quash the notifications issued by the Ministry of Food and Agriculture, Government of India, New Delhi.

It may be possible to hold (though no final opinion was expressed on the point) that a writ in the nature of a writ of mandamus can be issued to an authority within the jurisdiction of the High Court, but a writ for quashing a notification issued by a Ministry of the Union Government which is situate at New Delhi can be filed only in a Court having territorial jurisdiction there. AIR 1953 All 477. (FB)) Ref.

(There were other difficulties also in granting the petition. (1) Since the notifications applied to the large number of States and there might be difference of opinion amongst the various High Courts the granting of the petition might lead to confusion. (2) Interim stay could not also be granted since the petition was filed on the last day when the Court was about to rise for vacation and no notice could be issued on the opposite party. In such circumstances granting of interim stay would mean virtually granting the petition).

Since the question involved an important question relating to the interpretation of the Constitution, certificate under Art. 132 was granted. **1954 All L J 447 : AIR 1954 All 726 (727, 728) (Prs 3, 5, 6, 8, 10) (DB).**

——Art. 226—Writ of mandamus—Territorial jurisdiction.

Where the order sought to be challenged by a petition for a writ of mandamus is an order passed at New Delhi by the Deputy Secretary to the Government of India, the High Court of Allahabad has no jurisdiction to entertain the petition. Civil Misc. Writ Petn. No. 449 of 1952, D/- 9-10-1953 (All), Rel. on. **1954 All L J 264 : AIR 1954 All 522 (523) (Pt A) (Pr 2).**

——Art. 226—Jurisdiction of High Court — Nature of—Extraordinary original jurisdiction—Territorial limits of Andhra Pradesh High Court—Appellate Income-tax Tribunal in Telangana—Writ against — If can issue.

The jurisdiction of the High Court under Article 226 may be conveniently described as Extraordinary Original jurisdiction as distinguished from the Ordinary Original Civil Jurisdiction of a High Court. The High Court of Andhra Pradesh, therefore in exercise of its jurisdiction under Art. 226, can issue writs against tribunals situated or persons resident in any part of the State of Andhra Pradesh. The High Court can issue a writ against the Appellate Income-tax Tribunal situated in the Telangana area (Hyderabad) which is now a part of Andhra Pradesh since 1st November, 1956. **(1957) 1 Andh W R 360 : 1957 Andh L T 403 : ILR (1957) Andh Pra 229: AIR 1957 Andh Pra 123 (125) (Pt A) (Prs 3, 4) (DB).**

——Art. 226—Territorial jurisdiction—Authority to whom writ to be issued located at Madras—Petition filed in the High Court of Andhra—Maintainability—Waiver (Civil P. C. (1908), S. 9).

A petition under Art. 226 filed in the High Court of Andhra to call for the records on the file of the Commissioner for Workmen's Compensation of Andhra at Madras is not maintainable as Madras is outside the territorial jurisdiction of the High Court of Andhra. AIR 1953 S C 210; AIR 1955 Andhra 23, Foll.

The fact that the office is temporarily located at Madras does not make any difference, for it is the location within its territorial limits that gives jurisdiction to the High Court and so long as the office is located outside the territorial jurisdiction of the High Court, it is immaterial whether that location is temporary or permanent. AIR 1953 S C 210, Rel. on.

Further, although the Government represented that they were willing to waive the objection as to jurisdiction it could not be waived and the High Court could not exercise its jurisdiction by consent of parties; for, there is an essential distinction between cases where there is a total want of jurisdiction and cases where there is merely an irregular exercise or assumption of jurisdiction. The latter may be waived but the doctrine cannot be invoked in the former case. ILR 11 Mad 26, Rel. on. **1955 Andh L T (civil) 20 : 1955 Andh W R 122 : AIR 1955 Andhra 175 (176) (Prs 2, 3, 7, 10).**

——Art. 226—Territorial jurisdiction — Jurisdiction of Andhra High Court over Andhra Board of Revenue sitting in Madras.

As the Board of Revenue (Andhra) is not within the Andhra State, over which the High Court has jurisdiction, no writ under Art. 226 can be issued to it. The legal position may lead to many anomalies. The Andhra High Court may issue a writ against Tribunals subordinate to the Revenue Board, whereas the Madras High Court may issue writs against the Revenue Board. There may be conflicts in orders and jurisdiction. AIR 1953 S C 210, Foll.

Further the situation of the Revenue Board at Madras will lead to the anomaly of one of the institutions of the Andhra State being subject to the superintendence of the High Court of another State.

It is for the Andhra Government to consider whether it is advisable to avoid this anomaly by shifting the Board of Revenue as early as possible to a place within the territorial jurisdiction of the Andhra High Court. **ILR (1954) Andh Pra 54 : 1954 Andh L T (Civil) 31 : (1954) 2 Mad L J (Andhra) 73 : AIR 1955 Andhra 23 (24) (Prs 3, 4, 5, 6).**

——Art. 226—Jurisdiction of High Court to issue writ.

Where the territory in which the silver and gold were seized by the Deputy Collector under the Sea Customs Act is outside the jurisdiction of the High Court, merely because the Deputy Collector has been living in Shillong and is a Collector for Shillong under the Sea Customs Act, the High Court is not competent to issue a writ of certiorari to him. **I L R (1952) 4 Assam 214 : 56 Cal W N 143 : A I R 1952 Assam 91 (91, 92) (Prs 2, 3) (DB).**

——Art. 226—Jurisdiction of High Court—Writ cannot be issued against authority not residing within High Court's jurisdiction. 63 Bom L R 1 : A I R 1961 Bom 244 (249, 250) (Pt C) (Pr 16) (DB).

[Overruled on another point in AIR 1966 S C 478].

——Art. 226—Territorial jurisdiction—Parties — Petition challenging validity of order imposing penalty under S. 167, item 8, Sea Customs Act, passed by Additional Collector of Customs, Bombay and also order of Central Board of Revenue, New Delhi on appeal—Rule nisi granted only against Additional Collector of Customs.

Held, that the petition must fail firstly because Bombay High Court had no jurisdiction to proceed against second respondent and secondly because second respondent not being party to rule nisi, relief for setting aside its decision could not be granted in its absence. 61 Bom L R 1633 : A I R 1960 Bom 329 (333) (Pt C) (Pr 25).

——Art. 226 - Territorial jurisdiction of High Court —Order under S. 5 (4), Cinematograph Act by Ministry of Information and Broadcasting, New Delhi, served on petitioner in Bombay—Bombay High Court has no jurisdiction to entertain petition under Art. 226—(Cinematograph Act (1952), S. 5 (4)].

A director of a company in Bombay was served with an order emanating from the Ministry of Information and Broad-casting, New Delhi, and signed by the Under-Secretary to the Government of India exercising powers under S. 5 (4) of the Cinematograph Act (1952) on behalf of the Central Government. The order was served in Bombay and directed the director that certain parts of a film should be excised from all copies of the film. The director filed a petition under Art. 226 in the Bombay High Court against the Union of India for an appropriate writ for setting aside the said order and restraining the Union of India from giving effect to the said order ;

Held, that the Bombay High Court had no jurisdiction to entertain the petition. A I R 1953 S C 210 and AIR 1954 SC 207, Rel. on. 57 Bom L R 753 : ILR (1955) Bom 346 : AIR 1955 Bom 381 (387) (Pt B) (Pr 12).

——Art. 226 — Writs by High Court against State other than its own.

Obiter : — It may be that the jurisdiction of the High Court to issue writs against other Governments may be of a more limited character than the jurisdiction of the High Court to issue writs against the Government of the State in which it is situated. It is only from this point of view that the qualification introduced by words "in approprirte cases" must be understood and construed. **54 Bom L R 681 : A I R 1952 Bom 468 (474, 475) (Pt C) (Pr 11) (DB).**

——Arts. 226, 311—Territorial jurisdiction — Petitioner, an employee of Durgapur Steel Project under Hindustan Steel Limited, dismissed without assigning any cause — Petition under Art. 226 for violation of Art. 311 and rule of natural justice—Union of India represented by Secretary, Ministry of Iron and Steel, New Delhi, Secretary, Hindustan Steel, Limited of Ranchi, and General Manager, Durgapur Steel Project made respondents — First two respondents being outside jurisdiction of Calcutta High Court, petition is not maintainable in Calcutta High Court—Fact that third respondent is within jurisdiction does not help the petitioner. A I R 1961 S C 532 Rel. on., (1963) 6 Fac L R 378 : (1962) 2 Lab L J 569 : A I R 1963 Cal 421 (423) (Pt A) (Pr 6).

——Art. 226—Territorial jurisdiction — Writ against Election Commission cannot be issued by Calcutta High Court. AIR 1953 S C 210, Foll. A I R 1961 Cal 289 (293, 294) (Pt B) (Pr 4).

——Art. 226—Calcutta High Court's jurisdiction to issue writ against Director-General of observatories, New Delhi, and Government of India.

The Director General of Observatories, New Delhi, cannot be said to be carrying on his normal activities within the State of West Bengal and, as such he would not be amenable to the jurisdiction of the Calcutta High Court which cannot therefore issue a writ under

Art. 226 against him, nor can it issue such a writ against the Government of India. A I R 1953 S C 210 and Matter No 38 of 1952, D/ 29-5-1953 (Cal.), AIR 1953 All 477 (FB), Not foll. I L R (1955) 1 Cal 392 : AIR 1953 Cal 767 (769) (Pt A) (Prs 15, 16).

——Art. 226 — Calcutta High Court has no jurisdiction over Chandernagore — Under Chandernagore (Application of Laws) Order of 1950, High Court has been given only a limited jurisdiction — The jurisdiction under Art. 226 which is very special, does not seem to have been extended to Chandernagore. 57 Cal W N 255 : AIR 1953 Cal 363 (364) (Pr 7).

——Art. 226—Power to issue writs outside jurisdiction — Retrospective effect — Other remedy open—States Merger (West Bengal) Order (1949).

The petitioner was posted as Station Master at Dinhata which was in the State of Cooch-Behar prior to the 1st January 1950 when Cooch-Behar was absorbed into the State of West Bengal. In January 1949 while the petitioner was posted at Dinhata Station he was charged with offences of serious misconduct involving the offence of forgery. On the 14th February 1949 the petitioner sent a reply to the charge sheet. On the 18th March 1949 the petitioner was summoned to the office of the Deputy Chief Transportation Superintendent, Assam Railway who held a departmental enquiry into the conduct of the petitioner. By an order dated the 19th August 1949 which was communicated to the petitioner on the 1st of September 1949, the Deputy Chief Transportation Superintendent who had his office at Pandu in Assam, passed an order at that place reverting permanently the petitioner to the post of Signaller. The petitioner on the 20th October 1949 preferred an appeal to the Chief Administrative Officer of the Assam Railway, and on the 1st December 1950 he dismissed the appeal.

Held, that (i) that the High Court at Calcutta could not issue any writ to an authority or person in Behar in respect of an order passed or action taken in Behar. Therefore the High Court had no power to issue Writs quashing the orders which were made outside the territorial jurisdiction of the Court against persons whose obedience could not be enforced by the High Court in case they did not condescend to comply with the directions issued by the Court. If a person wants to get any redress against persons or authorities outside the jurisdiction of the High Court, in other words, outside the State of West Bengal in respect of action taken or order passed outside the said jurisdiction, such person must approach the proper forum which can grant relief in respect of these matters.

(ii) The order of reduction also took effect at a place which was outside the State of West Bengal at the time when the order of reduction was passed i. e., on the 19th August 1949, 'before the Constitution came into force,

(iii) the order of reduction dated the 19th August 1949 being passed before the Constitution came into force the High Court could not in the exercise of its jurisdiction under Article 226 interfere with this order inasmuch as the Constitution had no retrospective operation. The petitioner could not get complete relief by merely getting rid of the appellate order. He had also to get rid of the original order of reduction which was passed on the 19th August 1949. Unless it could be shown that the order of the 19th August 1949 was an ultra vires order, the High Court would not have any jurisdiction to interfere with that order.

(iv) It was not a case where the facts were admitted and the only question to be decided was a question of law. One of the submissions was that the orders were passed mala fide. This was a question which could be more conveniently disposed of in a suit than in an application under Art. 226. Case law discussed. 56 Cal W N 539 : AIR 1952 Cal 757 (758, 759) (Prs 3, 6, 7, 8)

●——Art. 226 — Procedure—Bombay Reorganisation Act (1960), Ss. 61, 64, 81, 82 — Civil servant serving in Bombay State at Rajkot illegally dismissed in violation of Art. 311 (2)—Reorganization of Bombay State — Effect of dismissal — Applicability of Ss. 61 and 81 of Bombay Reorganisation Act — Rajkot forming part of Gujarat, upon reorganisation—Writ petition against dismissal—Petition does not lie in Gujarat High Court. See Ibid, Art. 311 (2). AIR 1964 Guj 1 (FB).

——Art. 226 — Territorial jurisdiction of High Court.

A person or an authority against which a writ under Art. 226 is sought to be directed must be within the territories as a condition of the High Court being empowered to issue such a writ Where, therefore, several of the respondents against whom writs are sought to be issued are residing outside the territorial limits of the High Court it has no jurisdiction to issue writs against them. AIR 1953 S C 210 : AIR 1954 S C 207 and AIR 1956 S C 246, Foll. ILR (1956) Hyd 658 : AIR 1956 Hyd 186 (188) (Pt A) (Prs 8, 9) (DB).

——Art. 226—Territorial jurisdiction—Authority to whom writ is issued must be within jurisdiction.

The residence of the person whose rights were affected or accrual of the cause of action or the injury resulting from act or order complained of being within the jurisdiction is not the determining factor but the location of the tribunal against whom the writ is to be issued. For the remedy by issue of a writ is in the nature of action in personam and cannot be issued against the authority who is not amenable to the jurisdiction of the High Court. AIR 1953 S C 210; AIR 1954 S C 207; AIR 1954 Hyd 33 and AIR 1954 All 522, Rel. on. ILR 1955) Hyd 780 : AIR 1955 Hyd 269 (271) (Pt B) (Pr 4) (DB).

——Art. 226—Certiorari—Extra-territorial jurisdiction—Exercise of—Not permissible.

The High Court cannot in proceedings for a writ consider the validity or otherwise of on order passed by an authority situated outside the territorial limits of the High Court's jurisdiction.

Held, that the High Court at Kerala could not consider the validity of the assessment orders passed before the Constitution came into force by the Income-tax Officer, Delhi, against a resident of the then Travancore-Cochin State in writ proceedings. 1961 Ker L J 948 : ILR (1961) Ker 244.

——Art 226 — Territorial jurisdiction — Petition against Life Insurance Corporation—Forum.

Held, on facts that there was no provision in the Life Insurance Corporation Act, 1956, or rules or Regulations, authorising a Divisional Manager to represent the Corporation in any Court Therefore, the Corporation was not represented in the petition. Secondly that the Corporation being situate outside the territorial jurisdiction of the Court, could not be affected by any writ which might be issued. Civil Writ No. 360 of 1958 (Punj) and Civ. Writ No. 1134 of 1958 (Punj), Rel. on. 1960 Ker L T 59 : 1960 Ker L J 119 : (1960) 1 Ker L R 237 : AIR 1960 Kes 251 (253) (Pr 3).

——Art. 226 — Jurisdiction — Writ to Tribunal sitting outside jurisdiction (Industrial Disputes (Appellate Tribunal) Act (1950), Ss. 9 and 16).

Writ cannot issue against an order of a subordi-

nate tribunal within the jurisdiction of the High Court when that order has become merged in the orders of outside authorities who are not amenable to the High Court's jurisdiction. Where an award by the Industrial Tribunal situated within the jurisdiction of the High Court is confirmed in appeal by the Labour Appellate Tribunal situated outside jurisdiction no writ can issue against the order of the Industrial Tribunal.

The mere sending of a copy of the decision to the Industrial Tribunal and to the Government by an Appellate Tribunal situated outside the jurisdiction of the Court will not give jurisdiction to the High Court to interfere with the appellate order.

When the award has been confirmed in toto, S. 16 has no application. **1958 Ker L T 613 : AIR 1959 Ker 65** (66, 67) (Pt A) (Prs 5, 8, 9) (DB).

——**Art. 226—Jurisdiction—Territorial jurisdiction.**

High Court has no jurisdiction to issue a writ quashing order of assessment passed by an officer who is out of territorial jurisdiction of High Court. **1957 Ker L T 649 : 1957 Ker L J 662 : ILR (1957) Ker 694 : (1957) 32 I T R 582 : AIR 1957 Ker 190 (191) (Pt A) (Pr 2) (DB).**

——**Art. 226 — Territorial jurisdiction — Authority situated beyond jurisdiction of High Court — No certiorari.**

The petitioner was employed as a nurse in the Central Railway Hospital, Bina and prayed for a writ of certiorari quashing an order of the Divisional Superintendent, Central Railways, Jhansi, discharging her from service.

Held, that the Divisional Superintendent Jhansi was not within the jurisdiction of the High Court and consequently no direction of any kind should be made by it against him under Art. 226 of the Constitution. **1961 M P L J (Notes) 75.**

——**Art. 226 — Jurisdiction — Notice on assessee in Raigarh by I. T. O. in Nagpur under S. 34 (1-A), I. T. Act, 1922, on 5th August 1954 in respect of assessment years 1941-42 to 1947-48 — M. P. High Court cannot issue writ to quash the same —S. 59 (4) States Reorganisation Act does not apply.** A I R 1953 S C 210; AIR 1957 Madh Pra 37, Foll. **(1960) 39 I T R 429 : 1960 M P C 780 : 1960 Jab L J 1195 : 1961 M P L J 111.**

——**Art. 226—Jurisdiction — Authority located permanently beyond jurisdiction of High Court — Impugned order at a place within jurisdiction of High Court—Issue of writ.**

Petitioner, a displaced person, made a claim before competent authorities in respect of property left by him in Pakistan. Order in his case was passed by the Claims Officer, Bombay. Later, Additional Settlement Commissioner, New Delhi during his visit to Jabalpur took up the matter suo motu in revision and modified the order of the Claims Officer. The petitioner challenged the validity of the order passed by the Additional Settlement Commissioner.

Held, that the Additional Settlement Commissioner was an authority located and carrying on its activities outside the jurisdiction of the High Court. A writ binding on the Additional Settlement Commissioner, New Delhi could not be issued by the High Court. A I R 1958 Madh Pra 103 (FB), Foll. **1960 M P L J (Notes) 212.**

——**Art. 226—Jurisdiction of High Court—Office of Custodian General located outside High Court's jurisdiction — Issue of writ to Custodian General—(Administration of Evacuee Property Act (1950), S. 28).**

The High Court in the exercise of its powers under Art. 226 of the Constitution cannot indirectly reach the order of a tribunal whose office is normally situated outside the jurisdiction of that Court.

The effect of S. 28 of the Evacuee Property Act is to make the order of the Custodian General paramount, and necessarily the order of the inferior tribunal must be taken to have merged in it. The office of the Custodian General is located outside the territories of the M. P. High Court. It therefore follows that the writ of the M. P. High Court cannot run to the Custodian General and the High Court cannot by quashing an order of the Deputy Custodian confirmed by the Custodian General reach the same result. 58 Bom L R 344, Diss. from. **1957 M P C 676 : 1957 M P L J 780 : 1958 Jab L J 56 : A I R 1958 Madh Pra 68 (71) (Pt A) (Prs 9, 10) (DB).**

——**Arts. 226 and 227—Territorial jurisdiction—Inter-State permit issued by Mysore State —Writ petition—Territorial jurisdiction of Mysore High Court.** See Motor Vehicles Act (1939), S. 57 (3). **A I R 1964 Mys 26 (DB).**

——**Arts. 226, 227—Territorial jurisdiction — (Representation of the People Act (1951), S. 88).**

The main S. 88 and the proviso of the Representation of the People Act (1951) have to be read together and after they are so read, it is clear that the place of the trial must be situate within the State from which the election petition arises, and the High Court has jurisdiction to entertain petition under Art. 226 if the Tribunal is situate within the territorial jurisdiction of the High Court. (1897) A C 647 ; (1939) 4 All E R 464, Rel. on.

The person, authority or Government, to whom the writ is issued must be amenable to the High Court's jurisdiction either by residence or location within those territories. The power is not exercisable if the person, authority or Government functions, without physical location or residence, within the High Court's territorial jurisdiction. A I R 1952 Bom 449; A I R 1953 All 477 (FB) ; A I R 1952 Mad 659, held no longer good law after A I R 1953 S C 210, Hari Vishnu v. Ahmed Syed Isak, **I L R (1954) Nag 209 : A I R 1954 Nag 166 (182, 184) (Pt B) (Prs 76, 89) (FB).**

[Reversed on another point in A I R 1955 S C 233.]

——**Art. 226 (1) — Prime Minister of India not residing within jurisdiction of High Court — Issue of direction to.**

There is no law which makes the Prime Minister of India directly answerable (as Prime Minister) to the public in regard to the statements he may make. He cannot, therefore, be regarded an authority who is answerable also to the public. Since he is not answerable to the public he cannot be regarded as being present everywhere in India. No direction under Art. 226 can therefore be issued to the Prime Minister by a High Court within whose jurisdiction he does not normally reside. **I L R (1952) Nag 331 : 1954 Nag L J 327 : A I R 1952 Nag 301 (302) (Pt B) (Prs 6, 7) (DB).**

——**Art. 226—Territorial jurisdiction of High Courts —Nagpur High Court has no jurisdiction to issue writ against Labour Appellate Tribunal, Bombay—(Industrial Disputes (Appellate Tribunal) Act (1950), Ss. 15 and 16).**

Article 226 makes no reference to the cause of action or where it arises but insists that the presence of the person or authority should be within the territory in relation to which the High Court exercises the jurisdiction conferred by that article. Further, an authority or tribunal, though casually present within the territories of the High Court, cannot be said to be functioning there if its 'permanent and normal location' is outside the jurisdiction of the High Court.

Hence the Nagpur High Court has no jurisdiction to issue a writ of certiorari or mandamus under Art. 226 against Labour Appellate Tribunal, Bombay, even if the dispute related to matters which have arisen within the jurisdiction of the Nagpur High Court. A I R 1953 S C 210, Rel. on ; A I R 1952 Bom 449 and A I R 1952 Mad 659, held no longer good law. **I L R (1955) Nag 108 : (1955) 2 Lab L J 220 : (1955-56) 8 F J R 67 : A I R 1955 Nag 148 (152, 153) (Pt A) (Prs 24, 27) (DB).**

——Art. 226 — Jurisdiction — Writ against Election Commission.

Writ against Election Commission directing him to include petitioner's name in electoral roll or directing him to prepare new roll — Even if High Court of Orissa were to invoke its powers under Art. 226 (in spite of bar under Art. 329) the writ would be ineffective against Commission because Election Commission cannot be regarded as functioning within territorial limits of the High Court. A I R 1953 S C 210, Foll. **I L R (1953) Cut 659 : A I R 1954 Orissa 87 (92) (Pt F) (Pr 18) (DB).**

——Art. 226 — Parties — Persons holding posts in Employment Exchange under Central Government —Administration of Exchange transferred to State Government — Services terminated and employment under State Government on new terms suggested— Officers of Central Government not made parties— Maintainability of petition.

The petitioners held posts in quasi-permanent capacity in the National Employment Service under the Government of India and were served with notices that their services would be terminated and, if they were willing to accept employment they would be employed under the State Government. In the writ petition challenging those notices preliminary objection was taken that in the absence of the officers of the Government of India in the Ministry of Labour and in the absence of the Director General of the Resettlement and Employment no effective writ could be issued. The petitioners therefore made an application for adding these authorities as parties to the application.

Held, that the officers of the Government of India, were not amenable to the jurisdiction of the High Court by either residence or location, and, as such, the writ could not go beyond the territories subject to the jurisdiction of the High Court. A I R 1955 S C 233 and A I R 1956 S C 246, Disting. and Expl. **(1958) 2 Lab L J 438 : A I R 1957 Pat 555 (557) (Pt A) (Pr 4) (DB).**

——Art. 226—Territorial jurisdiction of High Court —Order of Controller of Grain Shops, Gorakhpur— Patna High Court cannot issue writ for quashing such order.

There is a two-fold limitation placed on the power of the High Court under Art. 226 of the Constitution. In the first place, the power is to be exercised throughout the territories in relation to which the High Court exercises jurisdiction, that is to say, the writs issued by the High Court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be within those territories, which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories. A I R 1953 S C 210, Rel. on.

The real test is what is the real order against which the petitioner is coming? What is the real order which the petitioner wishes to get rid of ? If that order was passed by an authority which is not amenable to the jurisdiction of the Court in which the application for a writ has been filed, then to ask the Court to issue a writ in respect of such an order is to invite the Court to do indirectly what the Court cannot do directly. A I R 1955 All 435, Rel. on.

Hence Patna High Court has no jurisdiction to issue a writ for quashing an order of the Controller of Grain Shops, Gorakhpur, as he resides outside the territorial jurisdiction of the Patna High Court and his office is also located outside the territorial jurisdiction of the Patna High Court. 1955 B L J R 661 : I L R 34 Pat 889 : A I R 1955 Pat 515 (516) (Prs 5, 7, 8) (DB).

——Art. 226—Jurisdiction — Tribunal appointed by Central Government functioning within State—Issue of writ to—Jurisdiction of State High Court.

Quaere: Whether the High Court of a State is competent and has jurisdiction to issue a writ under Art. 226 of the Constitution to an industrial tribunal functioning within that State, when that authority owes its appointment to the Central Government and not the State Government. A I R 1952 Cal 103; 1951 Raj 94, Ref. **(1952) 1 Lab L J 493 : AIR 1952 Pat 56 (61) (Pt D) (Pr 22) (DB).**

——Art. 226—Jurisdiction—Pepsu High Court cannot issue directions to authority in Himachal Pradesh— (Criminal P. C. (1898), S. 561A). A I R 1955 N U C (Pepsu) 3999.

—— Art. 226—Territorial jurisdiction.

Held, that a writ would not issue to the Punjab Government as it was not subject to the territorial jurisdiction of the Pepsu High Court nor did it reside within the jurisdiction of the Pepsu High Court. AIR 1953 S C 210, Foll. **I L R (1954) Patiala 807 : A I R 1954 Pepsu 174 (179, 180) (Pt F) (Pr 7).**

——Art. 226—Issue of writ beyond territorial jurisdiction.

The Pepsu High Court has no jurisdiction to issue any writ to the Assistant Custodian-General of Evacuee Property whose office is located at Delhi and thus is beyond the territorial jurisdiction of this Court.

The fact that the authorities exercising jurisdiction in the matter at the first instance are located within the jurisdiction of the High Court and the revisional authority, that is, the Assistant Custodian-General at Delhi, is located in Punjab State, will not confer jurisdiction. A I R 1954 S C 207; A I R 1953 S C 210, Rel. on. **I L R (1955) Patiala 136 : A I R 1954 Pepsu 156 (158, 159) (Pt A) (Prs 6, 7).**

——Art. 226—Liquidation of a bank under orders of Kerala High Court—Representative liquidator carrying out its orders in respect of Delhi branch—No writ petition lies against his actions in Punjab High Court. See Banking Companies Act (1949), S. 45-B. ('63) 65 Punj L R 1009.

—— Art. 226—Territorial jurisdiction.

The petitioner was an employee in the Amritsar branch of a commercial Bank having its head office at Kanpur. Inquiry was held in the petitioner's conduct by an Enquiry officer. At the conclusion of the inquiry the petitioner was informed that his services were terminated. Later he was informed that he was dismissed from service. On representation being made, the Regional Labour Commissioner directed further inquiry against the petitioner. The petitioner filed a writ petition in the Punjab High Court.

Held, that the Punjab High Court had no jurisdiction to issue any writs, orders or directions under Art. 226 to the Regional Labour Commissioner whose office was located at Kanpur. A I R 1953 S C 210, Rel. on. **(1961) 1 Lab L J 204 : (1960-61) 18 F J R 257 : AIR 1960 Punj 360 (362) (Pr 4).**

——Art. 226—Territorial jurisdiction of High Court.

In the application under Art. 226 the Punjab University, Solan, was impleaded to be respondent No. 1 and reliefs were sought against it.

Held, that as the Punjab University, Solan, was not within the territories in relation to which Punjab High Court exercised jurisdiction, the Punjab High Court was not competent to proceed with the application. AIR 1954 S C 207, Foll. 56 Punj L R 365 : AIR 1954 Punj 253 (254) (Pr 9) (DB).

——Art. 226 - Condition for exercise of jurisdiction—Against whom writs can be issued.

Under Art. 226 of the Constitution of India the sole condition upon which the jurisdiction of the Court depends is that the person or authority to whom orders, directions and writs are issued is within the territories in relation to which the High Court exercises jurisdiction and the conditions mentioned in S. 45 of the Specific Relief Act, 1877, or the charters establishing the Supreme Court at Madras and Calcutta cannot be read into that Article.

In exercising jurisdiction under Art. 226 the High Court acts in personam and looks to the fulfilment of its order to the person of the respondent. Hence the mere fact that the acts sought to be restrained under Art 226 are to be done by the respondent outside the territorial jurisdiction of the High Court cannot deprive the High Court of its jurisdiction to issue writ under Art. 226, when the respondent himself is within its territorial jurisdiction. Civil Misc. (Writ) No. 15 of 1951 D/- 24-5-1951, Rel. on.; AIR 1943 P C 164; A I R 1947 P C 90 and A I R 1949 P C 307, Ref. 22 Com Cas (Ins) 33 : I L R (1952) Punj 11 : A I R 1952 Punj 9 (12, 13, 23) (Pt A) (Prs 12, 16, 90) (DB).

—— Arts. 226, 227—Petition under — Jurisdiction to entertain—Constitution of India, Art. 225

Where the petitioner who was an assessee, belonged to U. P. and his assessment was under the Commissioner of Income-tax of that State, the mere fact that the location of the Investigation Commission is in Delhi within the jurisdiction of the Punjab High Court or any order or orders have been passed by the Commission at Delhi under the Taxation on Income (Investigation Commission) Act, 1947 would not confer jurisdiction on the Punjab High Court to entertain a petition under Arts. 226 and 227 against the orders passed by the Investigation Commission. AIR 1943 P C 164, Rel. on. 53 Punj L R 57 : 1951-20 I T R 77 : I L R (1951) Punj 165 : AIR 1951 Punj 74 (76, 77) (Pt A) (Prs 16, 19) (DB).

[Reversed in AIR 1954 S C 207.]

——Art. 226 — Jurisdiction — Allotment and transfer of property by Regional Settlement Commissioner at Ajmer—Appeal not competent — Order set aside and sale by auction directed by Chief Settlement Commissioner at Delhi — Order held without jurisdiction — Writ against Regional Settlement Commissioner, Ajmer —Rajasthan High Court held had jurisdiction to issue. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 10. AIR 1960 Raj 177 (DB).

——Art 226—Jurisdiction of High Court.

The Rajasthan High Court has no jurisdiction to pass any order against the Custodian General, New Delhi and where the order of the Deputy Custodian, Ganganagar, has been upheld and confirmed by the Custodian General, Delhi, in revision, the applicant cannot ask the High Court to issue a writ to the Deputy Custodian, Ganganagar as that would not be of any help to the applicant. AIR 1956 S C 246, Foll. AIR 1954 Raj 214 Held no good law. 1956 Raj L W 283 : I L R (1956) 6 Raj 939 : A I R 1956 Raj 163 (163) (Pr 3) (DB).

——Art. 226 — Jurisdiction — Decision of Election Tribunals.

The fact that the High Court (Rajasthan) cannot issue any writ, direction or order to the Election Commission at new Delhi is no reason why it should not be able to interfere with the order of the Election Tribunal at Bikaner, if such interference is otherwise warranted. If for example this Court were to come to the conclusion that the Bikaner Tribunal exceeded its jurisdiction it can, besides quashing the decision of the tribunal, direct the returning officer, who is within its jurisdiction not to hold a by-election in pursuance of the order of the Tribunal. AIR 1953 S C 210, Referred.

The fact that the returning officer is not yet appointed has nothing to do with the power of the High Court to pass appropriate orders in such petitions if the proper parties are before it.

There is no question in such a case of the High Court doing anything indirectly which it cannot do directly. 1954 Raj L W 192 : I L R (1953) Raj 891 : AIR 1954 Raj 145 (148, 149) (Pt B) (Pr 8) (DB).

● ——Art. 226—Extent of jurisdiction of High Court to issue writs.

Where one of the respondents to a petition for the issue of a writ under Art 226 is amenable to the jurisdiction of the High Court of Travancore by reason of his residence and the location of his office within the State and all the activities complained about are activities confined to the State the High Court would be competent to entertain an application under Art. 226 even if the other respondent is not so amenable to its jurisdiction particularly when a writ against the first respondent, if issued, is sufficient for stopping completely the mischief complained against. AIR 1953 S C 210 and (1953) I W L R 411, Ref. Thangalkunju Musaliar v. Venkitachalam Potti. 1954 Ker L T 23 : I L R (1953) Trav Co 1145: (1954) 25 I T R 120 A I R 1954 Trav-Co 131 (133) (Pt A) (Prs 9, 10) (FB).

——Arts 226, 13 (2)—Jurisdiction — Tripura J. C.'s Court has jurisdiction to issue writ in respect of Tripura Act passed by Parliament — Writ against Administrator in respect of enforcement of Tripura Land Revenue and Land Reforms Act (43 of 1960).

All laws for Tripura have to be enacted by Parliament as Tripura is a Union territory and the State referred to in Art. 13 (2) so far as Tripura is concerned is the Government of India. The Tripura J. C.'s Court has therefore a right to examine any law passed by the State for enforcement in Tripura and to see whether such law takes away or abridges the rights conferred by Part III of the Constitution. No doubt this Court cannot issue any order, direction or writ to any person or authority or Government who are outside the territories in relation to which it exercises jurisdiction. But if a law is to be enforced within the territory of Tripura by any person or authority residing or having location within the territory of Tripura, this Court can issue an order or writ or direction to such person or authority if the law is found void under Art. 13 (2) of the Constitution.

Thus as the Act 43 of 1960 (Tripura Land Revenue and Land Reforms Act) is to be enforced by the authority namely, the administrator, who is within the territory of Tripura over which this Court has jurisdiction, an order, direction or writ can be issued against the Administrator if it is found that any part of the law infringes Part III of the Constitution. AIR 1961 S C 532 and A I R 1956 S C 246, Rel. on. A I R 1963 Tripura 1 (5, 6) (Pt B) (Prs 13, 14).

120 (e). Merger of order in appellate order.
See also Note 120 (d).

——Art. 226—Merger of tribunal's order into appel-

late order — Tribunal's order a nullity—There is no merger — Commissioner's order removing petitioner from service—Appeal to President rejected—Gujarat High Court cannot issue writ against order of Commissioner, his order having merged in the President's order.

An original order of the inferior authority ceases to be an outstanding order once an appeal or revision therefrom is disposed of. The same result would follow whether the appellate Court confirms the original order or reverses it or modifies it. AIR 1956 S C 246, Foll ; AIR 1956 Raj 163 and AIR 1957 Mad 496 and 2 Bom H C R 101 and I L R 18 Bom 542 and ILR 19 Bom 258 and AIR 1914 P C 66 and AIR 1953 Bom 122, Rel. on ; A I R 1958 S C 86, Expl. and Disting ; AIR 1960 Cal 1 (SB), Explained, commented upon and dissented from.

Where the President as the appellate authority dismissed the appeal of the petitioner (an Income-tax Officer) from the order of the Commissioner of Income-tax, removing him from service under R. 13 (6) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the order of dismissal passed by the authority of the first instance, namely the Commissioner merges in the order of the President and that being so, the High Court would have no jurisdiction to issue a writ against the appellate authority. The High Court would not issue a writ against the Commissioner though he would be amenable to the jurisdiction of the Court. It would be infructuous to issue a writ in respect of an order which has merged in the order of the appellate authority.

Where, however, the order of the inferior tribunal was a nullity such an order would fall outside the scope of the rule of merger. The defect must be concerning either want of jurisdiction or excess of jurisdiction or a patent violation of the principles of natural justice, such as want of notice or inquiry. It is such a defect which would render an order null and void and which would take the case out of the principle of merger. But where an order is passed after due notice of charges and after an inquiry, where the delinquent has been given an opportunity to be heard and where he files a detailed statement, even if there is some defect in the course of the proceedings there would be no question of a nullity. (1889) 22 Q B D 345 and 1905 A C 78 and (1937) 2 K B 309 and (1953) 2 Q B 18 and A I R 1957 Mad 496, Rel. on.

Held, that there was no breach of R. 15 of the C. C. S (C. C. A.) Rules 1957, and that the order of the Commissioner was not a nulity. (1962) 3 Guj L R 856 : (1963) 1 Lab L J 648 : A I R 1963 Guj 6 (9, 11, 12, 15) (Prs 15, 17, 19, 26) (DB).

120 (f). Residence of applicant.

——Art. 226—Jurisdiction of High Court.

Ordinarily the jurisdiction of the High Court to pass an order for the issue of a writ of mandamus under Art. 226 is confined to acts to be done or forborne within its territorial limits, irrespective of whether the person against whom the order is passed resides or carries on business within or without those limits. The Himachal Pradesh (Legal Proceedings and Executive Authority) Order, 1949, covers all contingencies arising out of the location of the Himachal Pradesh Courts and authorities in Simla, and therefore the power with which it invested those Courts to pass orders included the power to pass an order requiring those authorities to do a certain act. Hence the Judicial Commissioner Himachal Pradesh will have the jurisdiction to issue the writ to the Provincial Transport Authority Himachal Pradesh at Simla. A I R 1951 Him Pra 36 (42, 43, 44) (Pt D) (Prs 17, 19, 22).

120 (g). Subject-matter.

——Art. 226—Jurisdiction of Bombay High Court to issue writ of Certiorari against order or Labour Appellate Tribunal—(Industrial Disputes—Appellate Tribunal — Writ against) — (Industrial Disputes Appellate Tribunal) Act (1950), S. 6).

Although the High Court of Bombay has got the power to issue writs not only within the town and island of Bombay but throughout the territory of the State that power can only be exercised provided it has jurisdiction either in respect of the subject-matter or in respect of parties.

Where the subject-matter of the industrial dispute and the parties thereto were not within the jurisdiction of the Bombay High Court and the Labour Tribunal which gave the award was also not subject to the jurisdiction of that High Court, then simply because the Labour Appellate Tribunal, to which appeal was preferred from the award, has its office situated in Bombay cannot give jurisdiction to that High Court to issue writ of Certiorari against the order of the Appellate Tribunal. AIR 1943 P C 164, Rel. on ('52) 54 Bom L R 552 : (1952) 1 Lab L J 176 : (1952) 53-4 F J R 235 : I L R (1952) Bom 974 : A I R 1952 Bom 449 (450, 451) (Pr 3) (DB).

——Art. 226 — Territorial jurisdiction — To whom High Court is authorised to issue writs.

The petitioners were the original residents of certain villages in the Ferozepore district. Before partition these villages formed part of the Lahore district. The land which was the subject-matter of the petition was in the cultivating possession of the petitioners and had been included in the Lahore district. This area was, however, located on the Indian side of the Sutlaj river and the petitioners remained in possession thereof in spite of the fact that the villages formed part of Pakistan territory. The State of Punjab through the Deputy Commissioner of Ferozepore having issued notices of ejectment to the petitioners, they challenged the validity of the notices by a petition under Art. 226.

Held, that on the question of jurisdiction the High Court had power over the subject-matter as well as over the persons concerned in the case. A I R 1954 S C 207, Foll. 61 Punj L R 134 ; A I R 1959 Punj 532 (533) (Pt A) (Pr 5).

——Art. 226—Certiorari—Issue of writ—Jurisdiction of High Court—Order of Director General of Relief and Rehabilitation allotting land situate outside its jurisdiction.

Under Art. 226 of the Constitution, the High Court has no jurisdiction to issue a writ of certiorari against the Director-General of Relief and Rehabilitation or against the Financial Commissioner merely because of the location of their office within its jurisdiction or merely because the order was passed within its jurisdiction, where the property allotted by the order is situate outside the jurisdiction of the High Court. The High Court must confine the exercise of its powers to persons or authorities within its territorial jurisdiction and the order and writs must be confined to something to be done within its jurisdiction. AIR 1943 P C 164 and AIR 1951 Punj 74, Foll ; AIR 1952 Punj 1, Not Foll. 54 Punj L R 506 : ILR (1953) Punj 72 : AIR 1952 Punj 392 (394) (Pt A) (Pr 7) (DB).

——Art. 226 — Territorial jurisdiction — Property concerned situated outside jurisdiction—High Court if can issue writ to person or authority within jurisdiction — Jurisdiction of Punjab High Court to issue writ to Custodian-General of Evacuee Property in Delhi regarding property in Bombay.

The question was whether certain propeity situate in Bombay was evacuee property. The case was heard by the Custodian in Bombay and he came to the conclusion that the owner was not an evacuee but an intending evacuee. The person who had moved the Custodian in Bombay appealed to the Custodian-General in Delhi. The Custodian-General thought that there were important lacunae in the enquiry conducted by the Custodian in Bombay and in order to remove them he ordered that the case would be heard in Bombay. The order of the Custodian-General was challenged in the Punjab High Court by an application for writs under Art. 226, Constitution of India.

Held (Per Harnam Singh J.) — In plain English Art. 226 of the Constitution of India provides that the High Court shall have power throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority within those territories writs in the nature of mandamus, prohibition or certiorari. That being so, the Punjab High Court has jurisdiction to issue the writs of certiorari, prohibition and mandamus to the Custodian-General Evacuee Property who resides at Delhi. In such cases the Court acts in personam and looks to the fulfilment of its order to the person of the respondent. AIR 1943 P C 164, Expl. and Disting.

Per Soni J. — In the case in question a jurisdiction adequate to the object in view existed in Bombay where the Custodian-General proposed to hold his enquiry and where the property was situate, where the parties resided and where the officials who eventually would deal with the property were functioning. The remedy for any wrongs alleged to be done to the petitioners would be more adequate and complete and their grievance better dealt with by the High Court of Bombay than here. Notes of Cases (Mad.) Vol. 1, p. 135 mentioned in 12 E R 222, Rel. on. AIR 1952 Punj 1 (3, 4, 9) (Pt A) (Prs 13, 18, 47) (DB).

120 (h). Union of India, writ against.

■ ——Art. 226 — Territorial jurisdiction — Mineral Concession Rules (1949), R. 57 — Mineral lease — Granting of — Order of Union Government is final — State Government only carrying out order of Union Government — Quashing of order by Bombay High Court—It cannot do so.

An order of the Union Government cannot be quashed under Art. 226 by the High Court of Bombay, as it does not exercise territorial jurisdiction over the Union Government.

The State Government has the power under the Mineral Concession Rules, to grant the mining lease. But its granting such a lease is subject to the orders on a review by the Union Government. In fact the State Government only effectuates the order of the Union Government. It carries out that order which remains the final order. Shriram Jhunjhunwala v. The State of Bombay, **1961 S C D 984** : (1962) 2 S C R 733 : (1961) 2 S C J 553 : **A I R 1962 S C 670** (671) (Prs 9, 12).

——Arts. 226 and 300 — **Territorial jurisdiction of High Courts—Writ against Union of India.**

The name 'Union of India' has been applied to combination of the territories which together comprise the Union, and the Union of India, as such, cannot be said to be located at any place other than where its Government is located for the purposes of issuing or serving upon it any writ to be issued under Art. 226.

As far as Art. 226 is concerned the Government there refers not to the legislative or judicial departments but merely to the executive department.

The Courts do not issue writs and injunctions which they have no power to enforce. If a writ is issued to some Officer at New Delhi and he ignores it, the Allahabad High Court cannot proceed in contempt against such Officer, as he is outside the jurisdiction of the Court.

Where, therefore, the order that was sought to be quashed purported to have been issued from the Government of India, Ministry of Defence, New Delhi and was signed by an Assistant Secretary to the Government of India, and the directions prayed for were commands to be issued to the Union of India besides the prayer to quash the order and the respondent to the petition was the Union of India through the Ministry of Defence, Government of India, New Delhi.

Held, that the Allahabad High Court could not issue any writ or direction to the Government or to the Union of India. A I R 1953 All 477 (FB), held impliedly **overruled** by A I R 1953 S C 210. **I L R** (1955) 2 All 585 : **A I R 1955 All 468** (469, 470, 472) (Pt A) (Prs 3, 6, 13, 14, 15, 16, 17) (DB).

——Art. 226 — Territorial jurisdiction of High Court — Allahabad High Court cannot issue writ to Union of India. **AIR 1955 N U C (All) 5818.**

——Art. 226—Territorial jurisdiction — Writ cannot be issued by Allahabad High Court to General Manager, Northern Railway, New Delhi, whose office is in New Delhi. **AIR 1955 N U C (All) 2766 (DB).**

■ ——Art. 226 (1)—**"Any Government."**

The Union of India can be said to be within the territorial jurisdiction of the Allahabad High Court as it has been given authority throughout the length and breadth of the country. Maqbulunnissa v. Union of India, **I L R (1953) 2 All 289 : 1953 All L J 148 : 1953 All W R (HC) 212 : A I R 1953 All 477** (479) (Pt A) (Pr 9) (FB).

[**Overruled** in AIR 1961 S C 532.]

——Art. 226—Mandamus—**Territorial jurisdiction — Writ against Government of India — Jurisdiction of Andhra High Court.**

The jurisdiction to issue a writ is co-extensive with the territorial jurisdiction of the High Court and the power can be exercised only over any person or authority in the territories in relation to which the High Court exercises its jurisdiction. Consequently the Andhra Pradesh High Court has no jurisdiction to issue a writ against the Government of India. AIR 1955 S C 233, Rel. on. (1962) 2 Andh W R 436 : (1965) 58 I T R 840 : **A I R 1963 Andh Pra 324** (327) (Pt B) (Pr 23).

——Arts. 226 and 309 — **Income-tax Inspectors' Examination — Rules determining eligibility of persons to sit for examination — Exclusion of graduates —Infringement of rights guaranteed under Art. 19 (1) (g)—Power of Government to prescribe rules for regulating appointments to services — Territorial jurisdiction of High Court to issue writ.**

Held, on facts that the rules relating to the selection of candidates to the post of Inspector of Income-tax have been made by the President under the Proviso to Art. 309 of the Constitution. The prescribing of educational qualifications and standards for recruitment to the service is comprehended within the scope of Art. 309. So long as the qualifications prescribed for recruitment of candidates are within the scope of the power comprehended by Art. 309, the qualifications prescribed must be the same for all citizens seeking admission to the services.

Rule 6 of the Rules lays down certain basic educational qualifications for those who seek to compete for selection to the post of Income-tax Inspector. It may be that the rule-making authority could have permitted graduates, notwithstanding that they have

passed their examination in Third Class, to appear for the examination. But, it is not the function of Courts of law to substitute their wishes and discretion for that of the persons to whose judgment the matter in question is entrusted by the law.

The High Court has no jurisdiction to issue a writ against the Government of India if what the petitioners seek is to question the legality and the correctness of the elucidations and clarifications issued by them. But this objection cannot be mentioned with regard to the power of the High Court to issue a writ against the respondent who is certainly amenable to the jurisdiction of this Court and who, in fact, has been vested with the power to admit or reject a candidate to the examination.

A perusal of the Note to Part IX of the Rules shows that success in the examination confers no right to appointment unless Government are satisfied, that the candidate is suitable in all respects for appointment. The appointment cannot be claimed as a matter of right even if he comes out successful in the examination. In order to be entitled to the issue of a writ of mandamus, the petitioners must at least have a clear legal right to the performance by the respondent of the particular legal duty sought to be enforced. Judged by this test, the petitioners are not entitled to invoke the jurisdiction of the High Court under Art. 226 of the Constitution. **(1962) 2 Andh W R 436 : (1965) 58 I T R 840 : A I R 1963 Andh Pra 324 (327) (Pt C) (Pr 20).**

——Art. 226—Territorial jurisdiction — Writ cannot issue against Union of India whose office is located outside territorial jurisdiction.

It is not competent for the High Court at Bombay to issue a writ compelling the Union of India to refund the moneys paid and return the securities collected or received pursuant to the settlement under S. 8-A, Taxation on Income (Investigation Commission) Act (1947) which has been declared to be ultra vires. The jurisdiction of the High Court under Art. 226 is to be exercised throughout the territories in relation to which it exercises jurisdiction, but, it cannot issue a writ operative outside that jurisdiction. **(1960) 40 I T R 624 : 62 Bom L R 11 : AIR 1960 Bom 353 (361, 362, 369, 370) (Pt B) (Prs 23, 28, 61, 62) (DB).**

——Arts. 226, 256, 246, 248, 253, 3, 53, 51 and 73, Sch. VII, List I, Entries 14, 97—Writ against Union of India and Secretary, External Affairs—Calcutta High Court cannot issue—Arts. 256 and 51 — Exercise of executive power of State — Limitations—Boundary dispute between India and Pakistan regarding Berubari Union No. 12 — 'Radcliffe Award' — Agreement between Prime Ministers of India and Pakistan—Enforcement of — Directive of Central Government to State — Implementation — Writ against State — Agreement if Act of State — Question of cession of territory, if involved jurisdiction of Municipal Courts—Arts. 3, 53 and 73—Scope of — Adjustment of boundaries between Foreign States — Limitations to the exercise of executive power—Sanction of Parliament—(Civil P. C. (1908), S. 9).

In 1952, Pakistan claimed the Berubari Union as having gone to it under the 'Radcliffe Award' and India claimed it for herself. On September 10, 1958, an agreement was arrived at after consideration by the two Prime Ministers, and was signed on behalf of the Government of Pakistan and on behalf of the Government of India. The question that arose to be decided in a petition for the issue of mandamus was as to whether the procedure adopted by the two Prime Ministers in effecting this adjustment of the boundaries between the two countries was in accordance with law, and what exactly were the legal implications of such action.

Held, on the question of territorial jurisdiction of the Court that in order to exercise jurisdiction against the respondents Nos. 1 and 2 (Union of India and the Secretary, External Affairs, New Delhi) the person or authority concerned must be resident of or permanently located within the State of West Bengal and it was not sufficient that their activities outside the State affected the rights of persons within the State. So far as the Union of India was concerned, it was permanently located, at the Capital. The respondent No. 2 also functioned beyond the Court's Jurisdiction. That being so, it was clear that the Court had no jurisdiction to issue a high prerogative writ against either the respondent No. 1 or the Respondent No. 2. AIR 1954 S C 207, Rel. on.

Held, further on the question whether a writ could issue upon respondent 3, namely the State of West Bengal that according to Art. 256, the State Government is only bound to comply with directions by the Government of India so as to ensure compliance with the laws made by Parliament. There was as yet no law passed by Parliament sanctioning the so-called agreement for exchange of territories. This application could not instantly be rejected on the ground that the Court had no jurisdiction over the first two respondents.

Held, also that the question of an 'Act of State' does not arise in this case at all. AIR 1931 P C 248 and AIR 1949 Bom 277, Rel. on.

At this stage, it could not be said that anything unlawful had been done, Considering this along with the fact that writ could not issue against respondents 1 and 2 on the ground of absence of territorial jurisdiction, and also against respondent 3, when there was nothing to show that the Union Government had taken any steps under Art. 256 of the Constitution, directing the State of West Bengal to do something which it was obliged to do under that article, it was not possible to issue a writ in the nature of mandamus which could only be issued in the aid of a legal right. **63 Cal W N 485 : ILR (1960) 1 Cal 537 : AIR 1959 Cal 506 (512 to 519) (Prs 14, 15, 19, 20, 22 25, 30, 31).**

——Art. 226—Territorial jurisdiction of High Courts—Writ against Union of India—Jurisdiction.

The petitioners filed a writ petition under Art. 226 in the High Court of Calcutta seeking to restrain Union of India from bringing or initiating any Bill or legislation in Parliament for the purposes of uniting the two States of West Bengal and Bihar.

Held, that the person who would initiate the Bill, the body which would consider it, all were outside the jurisdiction of the High Court. It was but manifest that the High Court had no jurisdiction to interfere in such a case. AIR 1953 S C 210 and AIR 1954 S C 210, Rel. on. **60 Cal W N 555 : ILR (1957) 3 Cal 390 : AIR 1956 Cal 378 (384) (Pt H) (Pr 26).**

——Art. 226—Application challenging order of requisition made on behalf of Union of India — Relief against Union of India—If can be granted.

Where an application under Art. 226 of the Constitution is made challenging an order of requisition made by the Land Acquisition Collector on behalf of the Union of India, notice must be issued to the Union of India, but no relief can be granted as against it if it is not located within the jurisdiction of the Court. **88 Cal L J 172 : 56 Cal W N 306 : ILR (1958) 1 Cal 155 : AIR 1952 Cal 16 (18, 19) (Pt D) (Pr 14).**

——Art. 226—"Central Government" — Meaning of—Jurisdiction of M. P. High Court.

In the context of the Indian Constitution 'Central Government' would mean the President acting though the Council of Ministers. It cannot be gainsaid that

the Government of India as an authority is permanently located in and normally carries on its activities from New Delhi. In this sense this authority, viz., the Central Government, is situated outside the jurisdiction of M P High Court. Surajmal Arjundas v. State of Madhya Pradesh. 1957 M P C 680 : 1957 M P L J 788 : ILR (1957) Madh-Pra 507 : 1957 Jab L J 1011 : AIR 1958 Madh.Pra 103 (112) (Pt E) (Pr 34) (FB).

——Art. 226—Writs against Union of India—Judicial Commissioner's Court of Manipur has no jurisdiction to issue such writs—AIR 1963 Tripura 1 and AIR 1961 S C 532, Rel on. AIR 1964 Manipur 46 (48, 49) (Pt A) (Pr 3).

——Art. 226 - Jurisdiction — Tripara, J. C.'s Court cannot issue writ against Union of India—Union of India cannot be made even a proper party in order that writ petition may be heard in its presence—Administrator of Tripura being the agent or representative of the President in the administration of Tripura which is a Union Territory orders or writs can be issued by J. C.'s Court to him who resides and has his office within the territory in relation to which J. C.'s Court exercises jurisdiction. AIR 1961 S C 532 and AIR 1953 S C 210 and AIR 1954 S C 207, Foll. AIR 1963 Tripura 1 (5) (Pt A) (Prs 11, 12).

120 (i). Authority within jurisdiction acting on order of authority outside jurisdiction.

——Art. 226 - Territorial jurisdiction of High Court —Order passed by authority who is within jurisdiction but purporting to act in pursuance of order of higher authority situate outside jurisdiction.

It is open to the High Court to issue a writ under Art 226 of the Constitution of India against a person who is within the jurisdiction of the High Court if the said person is acting against the provisions of law even though the said person while doing the impugned act purports to act under the orders of a superior authority which is outside the jurisdiction of the High Court. AIR 1956 S C 246, Rel. on; AIR 1963 S C 1124 Dist. ILR (1964) 1 All 397 : AIR 1964 All 125 (127) (Pt D) (Pr 7) (DB).

—— Art 226—Jurisdiction — Order of authority outside jurisdiction — Execution of order within jurisdiction—Issue of writ.

Collection of sales tax assessed under Bihar Sales Tax Act by Collector of Mirzapur (U. P.) as agent of State of Bihar—Writ application in Allahabad High Court by assessee for issue of mandamus to Collector directing him not to collect tax on ground that order of Bihar State under Sales Tax Law Validation Act was not valid and that therefore the Collector had no jurisdiction to collect illegal tax on behalf of Bihar State—Order of Assistant Superintendent, Sales Tax, Bihar, in pursuance of which collection was sought to be made, not null and void — As long as order stands, no mandamus can issue to Collector, Mirzapur, who is only acting as agent of Bihar State -Validity of order of Asst Superintendent, Sales Tax Bihar cannot be tested in absence of State of Bihar and the Assistant Superintendent, Sales Tax, Bihar —Since both these authorities are outside jurisdiction of the Allahabad High Court, no writ or direction can issue on them. AIR 1960 All 551, Foll. AIR 1960 All 732 (733) (Pt A) (Prs 2, 3).

——Art. 226—Territorial jurisdiction of High Court —Right to apply.

Held, on facts that the petition must be dismissed. So far as the order of the U. P. Government was concerned it had been issued under the direction of a party (Government of India) which was beyond the jurisdiction of the High Court, and secondly, that order did not in any way hit the petitioner's right under the Citizenship Act, 1955. The order of the Superintendent of Police also did not affect the petitioner's right as it was not an order of deportation and hence could not be challenged. AIR 1960 All 551 Foll. As the U. P. Government acted not on its own authority but according to the directions received from the Government of India, no direction could be issued to the U. P. Government. A I R 1956 S C 246, Disting. AIR 1960 All 565 (566, 567) (Prs 4, 7).

——Art. 226 — Jurisdiction — Record of order with officer outside jurisdiction—Agent of Officer within jurisdiction—Order, if can be quashed.

If the person who has passed the order is within the jurisdiction of the High Court a writ quashing the order can be passed by the Court even though the record may be in the possession of some agent residing outside the jurisdiction of the Court. The converse proposition however, is not true. If the principal happens to reside outside the jurisdiction of the Court, the agent though residing within the jurisdiction of the Court cannot be directed to get the records from his principal. The mere existence of a certified copy or an authentic copy of the order in possession of somebody within the jurisdiction of the Court would not empower the Court to quash the original order. I L R (1957) 2 All 246 : AIR 1959 All 624 (625) (Pt A) (Pr 4).

——Art. 226 — Territorial jurisdiction of High Court.

The jurisdiction of the High Court under Art. 226 can be exercised within the territories in relation to which its ordinary jurisdiction extends, and further a direction, order or writ under that Article can be issued only to a person or authority residing within those territories. The mere fact that the official or authority concerned whose central office is beyond the jurisdiction of the Court has also an office or property within the jurisdiction of the High Court will not give it a jurisdiction to issue a direction, order or writ against him.

But where an order of an official or authority who is not resident within the jurisdiction of the Court is a total nullity and is altogether inoperative the official who resides within the jurisdiction of the Court and who intends to put such a null and void order into effect may be restrained. AIR 1953 S C 210; and AIR 1954 S C 207, Foll, AIR 1955 All 435 and AIR 1955 All 515, Dist. ILR 1957) 2 All 302 : AIR 1956 All 684 (686, 687) (Pt A) (Prs 7 11) DB).

——Arts. 226 and 14 — Territorial jurisdiction of High Courts — Income-tax officer, Kanpur, initiating proceedings against assessees in U P. and S. 34, Income-tax Act, in pursuance of directions of Central Government, given under S. 8 (2), Taxation on Income (Investigation Commission) Act Application for writs against Central Government and Income Officer, Kanpur—Jurisdiction of Allahabad High Court to issue writs — (Taxation on Income (Investigation Commission) Act 30 of 1947), Ss. 5, 8 (2))—(Income-tax Act (1922) (as amended in 1954), S. 34 (1-A)).

On the basis of the report submitted by the Investigation Commission, the Government of India, Ministry of Finance issued an order under S. 8 (2) of the Taxation on Income (Investigation Commission) Act, directing re-assessment of the petitioners' firm in U. P. and its partners on the escaped income.

Thereafter Income-tax Officer, Kanpur, issued notices to the petitioners under S. 34 of the Income-tax act. It was not disputed that those notices were issued for purposes of initiating proceedings under S 34 in pursuance of the directions of the Central Government given under S. 8 (2) of the Act (30 of 1947).

After the service of those notices, the petitioners moved a writ petition in the Allahabad High Court and impleaded Income-tax Investigation Commission, New Delhi, the Government of India, New Delhi, the Central Board of Revenue, New Delhi and the Income-tax Officer, Kanpur. The prayer was for various writs against those authorities. Against the Income tax Officer, Kanpur, a writ in the nature of prohibition was sought prohibiting him from continuing further proceedings initiated in pursuance of the Central Government order on the ground that the subsequent proceedings, which were going to be taken by him, would offend Art. 14 of the Constitution

Held, (i) that the Allahabad High Court was not competent to issue writs against Income-tax Investigation Commission, Government of India and Central Board of Revenue, as those parties were situated at New Delhi which was outside the territorial jurisdiction of the Allahabad High Court. A I R 1953 S C 210; A I R 1954 S C 207; A I R 1955 All 435 (FB) and AIR 1955 All 468, Rel. on.

(ii) That so far as Income-tax Officer, Kanpur, was concerned the position however, was different. Even if it be held that the Income-tax Officer was exercising jurisdiction, which had been conferred upon him by means of valid prior proceedings the further proceedings that were going to be taken by the Income-tax Officer, if he complied with the law under which he was acting, would result in bringing about inequality and thus create a breach of Art. 14 of the Constitution. A I R 1955 S C 13, Applied.

Consequently, this was a fit case where an appropriate writ should be issued to the Income-tax Officer, Kanpur, prohibiting him from proceeding further with the cases initiated on the basis of the notices issued by him against the petitioners. **I L R (1955) 2 All 600 : (1955) 28 I T R 211 : A I R 1955 All 515 (516, 517, 518) (Pt A) (Prs 4, 6, 7) (DB).**

——Art. 226—Territorial jurisdiction.

Notwithstanding that a principal is not amenable to the jurisdiction of a High Court a writ will issue to the agent if he seeks to perform anything which is illegal or unauthorised by law, even though he purports to perform those duties in obedience to the directions of his principal. Thus, if any of the acts of the Officer of Government of India are opposed to the statutory provisions, it will be competent for the High Court of that State to exercise the jurisdiction under Art. 226 to set right the wrong that might follow in the illegal acts of the authorised officials. **AIR 1956 S C 246, Foll.;** A I R 1953 S C 210 and AIR 1954 S C 207 and AIR 1958 Andh Pra 717, Disting. **AIR 1960 Andhra Pra 431 (436) (Pt C) (Prs 22, 25) (DB)**

——Art. 226—Jurisdiction of High Court — Order of the General Manager, Central Railway, Bombay, communicated to petitioner through the Divisional Superintendent, Central Railway, Hyderabad — Andhra Pradesh High Court — Jurisdiction to issue writ of certiorari.

The order of the General Manager, Central Railway, whose office is located in Bombay cannot be reviewed by the High Court of Andhra Pradesh on the process of certiorari, though that order was communicated to the petitioner through the Divisional Superintendent, Central Railway, Hyderabad, on the ground that the General Manager, Central Railway, is outside the territorial jurisdiction of this Court. AIR 1953 S C 210 and AIR 1954 S C 207, Rel. on. **(1958) 2 Andh W R 257 : 1958 Andh L T 567 : AIR 1958 Andh Pra 717 (717, 718) (Prs 4, 6) (DB).**

——Art. 226—Jurisdiction — Territorial jurisdiction of High Courts.

A writ petition on the allegations that the petitioner's case had been discriminated in the matter of his pay and promotion was filed before Assam High Court against (i) the General Manager, North Eastern Railway whose Head office was at Gorakhpur in U. P. and (ii) Regional Traffic Superintendent (Personnel), N. E. Railway whose office was at Pandu :

Held, that on the face of it, the High Court of Assam could not issue an appropriate writ on the General Manager at Gorakhpur unless the High Court found from the facts that he worked through some local agent at place within the jurisdiction of the High Court, who could be effectively stopped from doing a particular thing or could be directed to do a particular thing as the writ would command. AIR 1950 S C 246, Rel. on. **A I R 1957 Assam 108 (110) (Pt A) (Prs 5, 6) (DB).**

——Art. 226—Territorial jurisdiction of High Court.

The Joint Chief Controller of Imports and Exports is not an agent of the Chief Controller of Imports and Exports. In the matter of the transfer of quota rights the Joint Chief Controller cannot be regarded as an agent of the Chief Controller because he does not exercise any delegated function with respect to the transfer of quota rights. The grant of quotas and transfer of quotas under the rules framed under the Imports and Exports (Control) Act, 1947 are matters which pertain exclusively to the jurisdiction of the Chief Controller. Hence the rule that where an authority has an agent within the jurisdiction of the High Court it is open to it to issue a writ to that agent directing him to disregard the order made by his principal does not apply. AIR 1956 S C 246, Disting. **63 Bom L R 1 : AIR 1961 Bom 244 (249, 250) (Pt D) (Pr 16) (DB).**

[Overruled on another point in AIR 1966 S C 478.]

——Art. 226—Certiorari or Mandamus — (Contempt of Courts Act (1952), S. 1)).

An action by way of a writ is an action in personam and disobedience of the orders therein is punishable in contempt. The provisions of Art. 226 are expressly intended to be used against persons or authorities within the territorial jurisdiction of the High Court and the characteristics of the remedy available to a litigant by way of a writ further support this view. Hence no direction in the nature of a Writ of Certiorari or Mandamus can be issued to the Custodian-General of Evacuee Property by the Hyderabad High Court inasmuch as he resides and holds his office in territories beyond the jurisdiction of that Court. The fact that the Deputy Custodian who initially decided the case is within the jurisdiction of the Court and his obedience could be effectively enforced cannot result in any difference. A I R 1953 S C 210, Foll.; AIR 1943 P C 164, Disting.

Moreover the fact that the petitioner had specifically prayed for quashing the order of Custodian General, throwing out his revision on the preliminary ground, is a further point against the issue of a writ, because if the order is set aside there should be a direction to hear the revision on merits and such a direction could not be carried out by any authority inside the State. **I L R (1953) Hyd 616 : A I R 1954 Hyd 33 (34) (Pr 4) (DB).**

——Art. 226—Territorial jurisdiction—Writ of prohibition against Collector within jurisdiction of High Court, from executing demand notice issued by I. T. O. outside jurisdiction — Income-tax Act (1922), Ss. 46, 45, Proviso.

Though the High Court of Kerala has no jurisdiction to quash the order of assessment of the Income-tax Officer Bombay, it has jurisdiction to prohibit the

recovery of the same, in pursuance of a demand issued under S. 24, T. C. Revenue Recovery Act, by the Collector Trichur, by issue of a writ of prohibition, against the Collector and his servants from taking any steps for the recovery of the tax, where the assessee could not be treated a defaulter under the proviso to S. 45, Income-tax Act. A I R 1954 Trav Co 131 (FB) and A I R 1956 S C 246 and AIR 1957 Ker 190, Rel. on. **1960 Ker L T 942 : 1960 Ker L J 1120 : ILR (1961) 1 Ker 210 : AIR 1961 Ker 315 (317) (Pr 13).**

——Art. 226—Jurisdiction — Assessing authority outside territorial jurisdiction of High Court —Enforcement of assessment through authority within jurisdiction — Assessment order not shown to be ex facie devoid of jurisdiction — Assessment order cannot be ignored — Relief against enforcement cannot be granted. **1960 Ker L T 174 : (1960) 11 S T C 170 : AIR 1960 Ker 287 (287) (Pt A) (Pr 2).**

120 (j). Effect of amendment by Constitution (15th Amendment) Act.

——Art. 226 (1-A) (as amended by Constitution (Fifteenth Amendment) Act, 1963) — Territorial jurisdiction of High Court — Effect of amendment—Writ petition filed before amendment — Court exercising power and issuing the writ after the amended Act has come into force — Exercise of its enlarged power by the Court would be valid and justified by the provisions of law — As amending law relates to power of the High Court no question of retrospectivity arises in the case. AIR 1964 All 379 (381) (Pt C) (Pr 9).

121. Tribunal, writ against.

See Note 5.

122. Union of India, writ against.

See Note 5.

123. University, writ against.

See also Note 5.

——Art. 226—Power of High Court.

The contention that the final jurisdiction given to High Courts and the Supreme Court to determine the law of the land does not apply to the cases where the law is liable to be changed by the domestic authorities cannot be accepted. Any order passed, by such an authority resulting in affecting the right of a person is subject to the supervisory jurisdiction of the High Court. A I R 1956 All 603 (610) (Pt I) (Pr 29) (DB).

——Arts. 226, 25, 29 (2) and 30 - Scope—Educational institution run on Christian principles and receiving State aid - Power of, to impose restrictions on practice of other religions within College precincts— Refusal of Principal to permit Hindu students to celebrate Saraswati Puja in College compound — Legality— Powers of High Court. See Ibid, Art. 25. AIR 1957 Cal 524.

——Art. 226 — Scope — Interference with internal matters of statutory bodies like university, when proper. 1965 Cur L J 182 (Punj).

124. Who may apply.

See Note 6.

125. Writ of right and writ of discretion.

See Note 39.

PART B

CERTIORARI

(Notes 126 to 185).

126. Administrative orders.

See also Notes 3, 50, 54, 140 and 142.

■ ——Art. 226 — Certiorari — Writ of — When can issue — Conditions for—Writ against acts of administrative tribunals— Administrative and quasi-judicial act—Distinction.

A writ of certiorari can be issued only to quash a judicial or a quasi judicial act and not an administrative act. Before the writ can be issued the following conditions have to be complied with: (1) The body of persons must have legal authority; (2) there must be authority to determine questions affecting the rights of subjects and (3) the body of persons should have a duty to act judicially. A writ of certiorari can be issued to quash a quasi-judicial act of an administrative tribunal or authority. The question whether an act is a judicial act or an administrative one arises ordinarily in the context of the proceedings of an administrative tribunal or authority. An act emanating from an administrative tribunal would not be anytheless a quasi-judicial act if the aforesaid tests were satisfied. The English Judges conceived and developed the concept of a quasi-judicial act with a view to keep the administrative tribunals and authorities within bounds. (1924) 1 K B 171 and (1931) 2 K B 215 and AIR 1950 S C 222 and (1952) 2 Q B 413, Rel. on. If a statute may enjoin or impose a duty on an administrative body to act judicially it is clearly a case of judicial Act. Dwaraka Nath v. I T. Officer, Special Circle, D. Ward, Kanpur, **(1965) 2 S C A 868 : (1965) 2 I T J 218 : (1965) 2 S C J 298 : (1965) 57 I T R 349 : (1965) 2 S C W R 391 : A I R 1966 S C 81 (85, 86) (Pt B) (Pr 5).**

■ ——Art. 226—Administrative and judicial orders—Distinction pointed out. See Companies Act (1913), S. 202. **AIR 1965 S C 507.**

■ ——Art. 226—Administrative order—Validity—No order of Minister can be allowed to stand if obtained by fraud. (1956) 1 All E R 341, Rel. on. S. Partap Singh v. State of Punjab, **(1965) 1 S C A 259 : A I R 1964 S C 72 (81) (Pt B) (Pr 5).**

■ ——Art 226 — Question whether the jurisdiction of the High Court under Art. 226, to quash the order of Administrative Tribunals is confined only to circumstances under which High Court of England can issue a writ of certiorari or is much wider than the said power —Question involves substantial question of law as to the interpretation of the Constitution —Such question can be heard only by a Bench of five Judges. See Ibid, Art. 145. **AIR 1963 S C 1626.**

■ ——Arts. 32, 226—Administrative orders—Not open to challenge.

The orders passed under Ss. 68-F (2) (a) and (b), Motor Vehicles Act flow from the publication of the scheme duly approved and the issue of the order, which is not quasi-judicial but administrative, by the Secretary on behalf of the Regional Transport Authority is not open to challenge. Kalyan Singh v. State of U. P., (1963) 1 S C J 50 : 1962 Supp (2) SCR 76 : ILR (1962) 1 All 906 : 1962 All L J 523 : A I R 1962 S C 1183 (1189) (Pt F) (Pr 18).

■ ——Art. 226—Restrictions on right to carry on trade —Reasonableness —S. 39, Calcutta Police Act — Validity—Order of Commissioner under S. 39 is administrative and not judicial or quasi-judicial —Absence of provision for hearing person applying for licence and for reasons for refusal to grant licence does not make section unconstitutional. See Ibid, Art. 19 (1)(g). **AIR 1961 S C 705.**

■ ——Art. 226—Ultra vires notice or order.

When an order or notice emanates from the State Government or any of its responsible officers directing a person to do something, then, although the order or notice may eventually transpire to be ultra vires and bad in law, it is obviously one which prima facie

compels obedience as a matter of prudence and precaution. A person placed in such a situation has the right to be told definitely by the proper legal authority exactly where he stands and what he may or may not do. AIR 1952 SC 16, Foll. AIR 1953 Pat 87, Reversed. Bengal Immunity Co., Ltd. v State of Bihar, ILR 34 Pat 905 : (1955) 6 S T C 446 : (1955) 2 S C R 603 : 1955 S C A 1140 : (1955) 2 M L J (S C) 168 : 1955 Andhra W R (S C) 422 : (1955) S C J 672 : A I R 1955 S C 661 (669) (Pt C) (Pr 7).

——Art. 226—Prosecution under Excise Regulation (1 of 1915), S. 33 (B)—Notification No E (1) / 5 / 53 & R. W. D/- 7-2-1953—Validity of order if can be questioned by application under Art. 226 — See Excise Regulation (1 of 1915), S. 33 (b). A I R 1955 N U C (Ajmer) 2618.

——Art. 226—Certiorari — Administrative orders. See Wealth Tax Act (1957), S. 25. AIR 1963 All 488 (DB).

——Art. 226—Certiorari — Administrative orders — Power of High Court.

Ordinarily the High Court does not interfere with administrative orders but if the jurisdiction of an administrative officer is limited, then the High Court can go into the question whether the administrative order was within his power or not. Similarly, where reasons are required to be recorded when passing certain orders by the administrative officer and no reasons are recorded, then there is a failure of duty on the part of the officer. AIR 1961 All 61 (61, 62) (Pt B) (Pr 5).

——Art. 226—Administrative orders — Certiorari — If can issue.

A writ of certiorari lies for quashing of orders or proceedings of an inferior Court or other persons or bodies exercising judicial or quasi-judicial functions. Where the orders are administrative orders cancelling contracts entered into by the military department with the petitioner the prayer for issue of a writ for certiorari is clearly untenable. AIR 1958 S C 1018, Foll. AIR 1960 All 72 (78) (Pt E) (Pr 15).

——Art. 226—Administrative orders —Quashing of.

Though Administrative orders cannot be quashed by a writ of certiorari such orders can be quashed by the Court in exercise of the general powers conferred upon it under Art. 226 of the Constitution to issue directions and orders. AIR 1952 All 752 and A I R 1954 All 144, Rel. on. An order passed without jurisdiction which adversely affects the petitioner ought ordinarily to be set aside. 1958 All L J 567 : 1958 All W R (H C) 670 : AIR 1959 All 16 (19) (Pt D) (Pr 28) (DB).

——Art. 226—Administrative order — Jurisdiction of High Court to interfere.

Ordinarily the High Court will not interfere in administrative actions but where the action taken is on the face of it arbitrary or capricious and is without jurisdiction the powers of the High Court are not wanting, 1960 All Cr R 302 : 1960 All L J 570 : 1960 All W R (HC) 472 : ILR (1959) 2 All 115.

——Art. 226—U. P. Municipalities Act (1916), Ss. 68 (2), 69—Appointment subject to approval of Government and appointment with permission of Government —Distinction—Appointment not approved—Certiorari quashing order of Government cannot issue. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 68 (2). AIR 1958 All 68.

——Art. 226—Administrative order—Powers of High Court to interfere. See Ibid, Art. 311. I L R (1957) 1 All 278.

——Art. 226—Certiorari — There must be body of persons with power to make determination affecting rights of parties.

High Court will not issue a writ of 'certiorari' under Art. 226 of the Constitution when the proceedings that are sought to be quashed are merely administrative or are not intended to determine any of the rights of the parties.

There must be 'authority to determine' and the persons exercising that authority must be those who have a duty to act judicially.

It is, therefore, not enough to show that a body of persons has to hear evidence from one side and the other and also submissions of one side and the other and to arrive at a conclusion. What is further necessary to show is that that body of persons has been given the power to make an order or a determination which affects the rights of one of the parties before them,

Hence, no writ of certiorari can lie against the proceedings of a 'Court of inquiry' which had been given power merely to investigate into a charge against an employee and submit its report to the officer concerned for taking necessary action. ILR (1956) 1 All 622: 1955 All L J 375: AIR 1955 All 512 (513, 514) (Pt A) (Prs 6, 7, 8, 13) (DB).

——Art. 226—U. P. General Clauses Act (1904), S. 21 —Judicial or quasi-judicial orders and administrative orders — They include orders of Tribunal other than regular Courts of justice—Power to modify—Tribunal has to act within provisions of law—Modifying orders of Subordinate Tribunal — Power must be expressly conferred — Administrative and executive orders can be modified or revoked under S. 21 — Order of allotment by Rent Control and Eviction Officer — It is not judicial or quasi-judicial order but executive or administrative order — Order can be cancelled or modified by such officer — (Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7)—(Words and Phrases— Judicial or quasi-judicial order). See U. P. General Clauses Act (1 of 1904), S. 21. AIR 1955 All 501.

——Art. 226—Order under S. 45 (3), Cr. P. Code —[Cr. P. Code (1898), S. 45 (3)].

No writ of certiorari can be issued against administrative or executive orders.

The criterion for deciding whether an order is a judicial order or an administrative one is not whether the authority acts under a statute; it is whether it is required to act judicially in passing the order or not. If it is required to act judicially, the order is judicial or quasi-judicial and if it is not, it is administrative. The question whether an order is a quasi-judicial order or not arises only in respect of non-judicial authorities and cannot arise in respect of judicial authorities. In case of judicial authorities, their orders can only be either judicial or adminitrative and cannot possibly be quasi-judicial. Since other authorities are not judicial authorities, their orders cannot possibly be judicial if they are to be passed judicially : they can be only quasi-judicial. A Sub-Divisional Magistrate is a judicial authority and therefore, his order would be either judicial or executive. As an order passed by him under S. 45 (3), Cr. P. Code, has been held to be not a judicial order, it can only be administrative order. Any interference or revision or modification of an administrative order by a superior authority is itself an administrative order. The order of the Sub-Divisional Magistrate is administrative, and so also the order of the Additional District Magistrate passed in revision. The order of the Additional District Magistrate does not become judicial merely because it was passed illegally. A I R 1953 All 739 ; (1932) 289 U. S. 266, Rel. on. 1954 All W R (HC) 155 : 1954 All L J 198 : 1954 Cr L J 879 : AIR 1954 All 447 (448) (Pt A) (Prs 2, 3, 4) (DB).

——Art. 226 — Administrative and quasi-judicial order. (Per Sapru J.)

The distinction between an administrative and judicial or quasi-judicial act, turns upon the question whether the duty of the authority was to act judicially or not. Though the decision of the Government under S. 40 of the U. P. Municipalities Act as to whether a member has or has not acted in such a manner as to render him unfit to be a member of the Board is subjective, the process by which it arrives at the decision involves a judicial act for, in arriving at it, Government must not take into consideration any factor which is not a judicial factor. In other words, it is, on an honest application of its mind to the pros and cons of the case, against the municipal commissioner concerned that it must arrive at its decision. It is obvious that in declaring a person unfit to be a municipal commissioner, Government is passing an order which would deprive him not only of an office to which he has been elected by the electorate but also automatically disqualify him under S. 40 (2) for a period of four years from seeking election to that office. This is a serious thing to do. Obviously therefore, in exercising it the Government must be deemed to have acted quasi-judicially. Case law Rel. on. ILR (1952) 1 All 880 : AIR 1953 All 739 (742, 743) (Pt B) (Prs 12, 13) (DB).

——Art. 226 - Certiorari or suitable orders— Petition for — Application is maintainable even against administrative orders—District Magistrate requisitioning accommodation under S. 3, M. P (Temporary) Accommodation Requisition Act (25 of 1947), does not act judicially or quasi-judicially—If he acts against law, application under Art. 226 is maintainable for proper orders though certiorari is not permissible. 1952 All L J 163 : 1952 R D (H C) 161 : 1952 W R (H C) 241 : ILR (1953) 1 All 216 : AIR 1952 All 836 (838) (Pt A) (Pr 3) (DB).

——Art. 226 — Administrative and Judicial act— Distinction - Tests to be applied.

A quasi-judicial act requires that a decision is to be given not arbitrarily or in the mere discretion of an authority, but according to the facts and circumstances of the case as determined upon an enquiry held by the authority after giving an opportunity to the party to be affected of being heard and whenever necessary leading evidence in support of his contentions. Whenever the authority is bound to make a decision in this way it acts judicially or quasi-judicially. The essential difference between an administrative or executive act on the one hand and a judicial or quasi judicial act on the other is that while in the former case, the authority vested with the power to give a decision affecting the rights of others, may be bound to enter upon an enquiry, he is not bound to give a decision as a result of the enquiry, but may act in his discretion in utter disregard of the result of an enquiry, in the latter case, such authority is bound by law to act on the facts and circumstances, as determined upon the enquiry, in which a person to be affected is given full opportunity to place his case before the authority even though the decision of such authority, whether right or wrong, may be final and may not be liable to be challenged in a Court of law.

In order to determine whether a body is required to act quasi judicially, the whole statute has to be considered and the decision has to be based upon a consideration of all the relevant provisions. When the right to be affected is a natural or common law right of a person, there is a presumption that an authority vested with the power to affect such right must act quasi-judicially. But this presumption may be rebutted by an examination of the provisions of the statute. When the right to be affected is a creature of the statute itself, no such presumption arises at all. (1952) R D (H C) 229 : ILR (1952) 2 All 783 : 1952 A L J 342 : AIR 1952 All 63 (69) (Pt B) (Prs 44, 45) (DB).

——Art. 226—Administrative order— Judicial review. See Panchayats — Andhra Pradesh Panchayat Samithis and Zilla Parishads Act (35 of 1959), S. 72 (1). AIR 1964 Andh Pra 318 (DB).

——Art. 226—Administrative orders—Order granting expansion under S. 8 (3) (d) of Rice Milling Industry (Regulation) Act is administrative and not judicial or quasi-judicial order—Hence not liable to removal by certiorari. (1924) 1 K B 171 and (1931) 2 K B 215 and AIR 1950 S C 222 and (1928) 1 K B 411 and (1952) 1 All E R 480, Rel. on. (1962) 2 Andh W R 156 : (1962) 2 Andh L T 268 : AIR 1952 Andh Pra 363 (366) (Pt A) (Pr 10).

——Art 226—Certiorari—Sanctioning of Budget is an important function of a Panchayat Samithi constituted under Andhra Pradesh Panchayat Samithis and Zilla Parishads Act 1959, even though it is not expressly mentioned in general powers of Panchayat. Failure to perform this function is a dereliction which can be visited by supersession of the Panchayat under S. 63 of the Act—Such supersession being dependent upon the subjective satisfaction of the Government, an order superseding Panchayat cannot be challenged in a petition for a writ of certiorari unless mala fides are alleged or proved. See Panchayats — Andhra Pradesh Panchayat Samithis and Zilla Parishads Act (35 of 1959), S. 18. (1962) 1 An W R 212.

——Art. 226—Administrative orders — Appointment of treasurer under S. 4 of Charitable Endowments Act, 1890—Interference — (Charitable Endowments Act (1890), S. 4).

Section 4 of the Charitable Endowments Act, 1890 provides that the appropriate Government can appoint a treasurer, if it thinks fit. If there was a valid application and if the Government thinks it fit to appoint a treasurer it is not for the High Court to substitute its opinions for those of the Government. The High Court can and will only interfere if it is alleged and proved that the Government, in taking the decision, have been swayed by extraneous considerations or that their action has been mala fide. (1958) 2 Andh W R 580 : AIR 1958 Andh Pra 773 (778) (Pt C) (Pr 21).

——Art. 226 - Judicial or quasi-judicial order.

Where the Government was the owner of the tanks, and it originally passed an order granting a lease of the tanks to the petitioner but later on the Government modified its order, it cannot be said that the orders passed by the Government are judicial or quasi-judicial. 1955 An W R 873 : 1955 A L T 820 : AIR 1956 Andhra 119 (120) (Pt B) (Pr 4).

——Arts. 226 and 311 — Administrative order— Power of State Government to cancel and revise orders.

The Government has the absolute right to pass any order appointing or dismissing a mauzadar who is in essence an agent for collection of the revenue on behalf of the State Government on the basis of certain commission. Such an order is administrative in nature, and the Government has power to cancel its previous order and revise the same when they consider it necessary. There is no rule or any statute laying down restriction on the free use of this power of the State Government.

Held on facts (i) that, the power enjoyed by the State Government to review its order was within its jurisdiction and could not be challenged under Article 226 of the Constitution ; (ii) that the principle of Art. 311 of the Constitution did not apply apart from the fact that there was no question of dismissal or reduction in rank. Nor was there any discrimination

because selecting a candidate out of a number of candidates does not amount to discrimination in the eye of law; (iii) that the statute or rules did not give the aggrieved employee any right to be heard and in the circumstances there was no denial of the principle of natural justice. AIR 1959 Assam 118 (119, 120) (Prs 4, 5, 6) (DB).

——Art. 226 — Excise Appellate Authority — Not merely Administrative body—Exercises quasi-judicial functions in deciding appeals—Powers of High Court —See Eastern Bengal and Assam Excise Act (1 of 1910), S. 36. AIR 1957 Assam 182.

——Art. 226—Writ of certiorari — Order cancelling license under Cl. 20, Bhopal Cotton Cloth Dealers' Licensing Order (18 of 1949) — Certiorari against Chief Commissioner passing such order.

The essential for a writ of certiorari is that the act challenged must be a judicial or a quasi-judicial act.

The necessity of this condition is not affected by the passing of the Constitution of India.

The Chief Commissioner in passing an order cancelling the license of a dealer, under Cl. 20 of the Bhopal Cotton Cloth Dealers' Licensing Order (18 of 1949), does not act judicially or quasi-judicially He acts as an Executive or an Administrative authority. The Chief Commissioner has absolute and unfettered discretion to pass the order under Cl. 20. 1952 Cri L J 57 : AIR 1951 Bhopal 5 (7) (Pt A) (Prs 10, 11, 12, 13.)

——Art. 226 — Administrative orders — Grant of exemption from application of Minimum Wages Act, 1948—Withdrawal of exemption after hearing one side only—Natural justice — (Minimum Wages Act (1948), S. 26 (2)).

The granting of an exemption from the application of the Minimum Wages Act, 1948, by a notification issued by the appropriate Government under S. 26, sub-s. (2) of the Act and the subsequent withdrawal of the said exemption by a notification are not quasi-judicial acts but administrative acts. AIR 1950 S C 222, Rel. on. Under S. 26, sub-s. (2) of the Act the discretion conferred upon the appropriate Government is untettered discretion. Therefore, it was not necessary for the State Government to conform to the principle of natural justice.

Where before withdrawing the exemption already granted the State Government gave a hearing to a representative of the employees but gave no opportunity to the employees to put their views before them, the notification withdrawing the exemption is arbitrary, illegal and invalid. (1911) A. C. 179, Rel. on. 61 Bom L R 148 : I L R (1959) Bom 462 : (1959) 1 Lab L J 576 : A I R 1959 Bom 538 (540, 541, 542) (Pt A) (Prs 5, 6, 7) (DB).

——Art 226—Statutory body — Writ to stop implementation of administrative step — Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 —Calcutta Dock Labour Board constituted for furthering objectives of Scheme — Administrative Body introducing change in identity cards of registered dock workers — Change not prejudicing workers but contributing to better working of Scheme — Change subsequently ratified by Board resolution — Majority of dock workers accepting change — Others refusing to hand over cards for making changes leading to loss of their attendance and loss of wages — Writ application by some dock workers to get order commanding Board authorities not to compel dock workers to submit identity cards for making necessary changes therein according to new system, and for declaration that withholding wages prior to Board resolution was ultra vires — Writ application held not maintainable — (Dock Workers (Regulation of Employment) Act (1948), Ss. 4 (1), 19, 28, 30) — (Calcutta Dock Workers (Regulation of Employment) Scheme, 1956). A I R 1960 Cal 9 (11, 12, 13, 14) (Prs 9, 10, 11).

——Art. 226—Certiorari.

The writ of certiorari can only be issued against judicial or quasi-judicial decisions. The conclusions reached by the Government about the necessity in the interests of public policy of a change in the conditions of the service of primary school teachers are obviously of administrative nature and hence the prayer for a writ of certiorari against the circular putting into effect those conclusions is unjustified and cannot be granted. AIR 1950 S C 222, Rel. on. ILR (1953) Hyd 498 : AIR 1953 Hyd 298 (300, 301) (Pt A) (Pr 7) (DB).

——Art. 226—Writ of certiorari when issued.

Where the order challenged is purely an administrative or an executive order the High Court is reluctant to issue any writ, but if the nature of the proceedings is judicial or quasi-judicial, a writ of certiorari will be issued, provided it is a fit case for the issue of the same. ILR (1953) Hyd 412 : A I R 1953 Hyd 235 (238) (Pt A) (Pr 6) (DB).

——Art. 226— Administrative order passed beyond ambit of statutory limits — Order can be quashed by certiorari. A I R 1956 Cal 96 and A I R 1956 Assam 162 and A I R 1953 Cal 333 and A I R 1951 Raj 139 and A I R 1957 All 359 and A I R 1957 Pat 617 and AIR 1947 Bom 108, Rel. on. 1965 Kash L J 324 : AIR 1966 J & K 9 (11) (Pt C) (Prs 5, 7) (DB).

——Art. 226 — Administrative orders — Certiorari does not lie.

Certiorari will lie to bodies and persons other than Courts stricto sensu. No doubt, the writ of certiorari was issued originally to inferior Courts using the word 'Court' in its ordinary sense. As statutory bodies of various types and denominations exercising quasi-judicial functions came to be set up, the writ was extended to them also. But the important prerequisite for bringing these statutory bodies within the writ jurisdiction is that they must be quasi-judicial bodies entrusted with quasi-judicial functions. If these statutory bodies are entrusted only with purely administrative functions no writ of certiorari can lie to correct their errors. AIR 1961 J & K 47 (49) (Pt A) (Pr 2) (DB).

——Art. 226—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), Ss. 29, 100 (2) (p) and (x) (ii)—Rules under R. 16 — Power of Commissioner to suspend manager—Conditions precedent — Order of suspension is purely administrative order — Disposal of properties — Commissioner cannot initiate proposal—Plea of mala fide — Onus of proof. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 29. 1963 Ker L T 480.

——Art. 226—Decision of Advocate-General under S. 92, Civil P. C.—Nature of — Order neither judicial nor quasi-judicial — Not subject to judicial review under Art. 226 of the Constitution. See Civil P. C. (1908), S. 92. AIR 1962 Ker 90 (FB).

——Art. 226 — Administrative orders — Authority deciding can decide upon report of subordinate officers—What is required is conscious application of mind to the records — Madras Preservation of Private Forests Act (27 of 1949), S. 3 (1) (a).

The rule that the 'authority, who hears, must decide' does not preclude administrative tribunals from reasonably delegating some of their functions. What is required of such authorities is that they must conscientiously apply their mind to the records of the case and reach their own conclusions on the material so placed. AIR 1961 Kerala 299, Rel. on.

The deciding authority under S. 3 (1) (a) of the Madras Preservation of Private Forests Act, can decide the application for sanction to cut forest trees, upon report of the subordinate officer after considering the report. **1961 Ker L T 134 : 1961 Ker L J 469 : A I R 1961 Ker 301 (303) (Pt C) (Pr 5) (DB).**

——Art. 226—Certiorari, writ of— Order of appointment of Melsanthi in temple by Devaswom Board — Order is administrative and cannot be quashed by certiorari. **1959 Ker L J 335 : 1959 Ker L T 401 : 1959 Ker L R 362 : AIR 1960 Ker 97 (98) (Pr 3).**

——**Art. 226 — Administrative order — Certiorari — Determining test is duty to act judicially — Absence of two contending parties — Order held administrative—Not amenable to certiorari.** See Panchayats — T. C. Panchayats Act (2 of 1950), S. 17. **1960 Ker L T 307.**

——Art. 226—Certiorari—Necessary conditions for— **(Houses and Rents—M. B. Sthan Niyantran Vidhan (15 of 1950), S. 14).**

A writ of certiorari can only be asked for if two conditions are fulfilled. Firstly, the decision of the authority must be judicial or quasi-judicial, and secondly, challenge must be in respect of the excess or want of jurisdiction of the deciding authority.

Mere circumstance that a person's right to hold property and to give it on rent to anybody or to dispose of the same in any way is likely to be interfered with by the exercise of the power under S. 14 (1) of M. B. Sthan Niyantran Vidhan by the Collector will not make it obligatory upon the latter to hear the owner and the prospective allottee and to determine any dispute between them judicially where the law does not provide for it.

No doubt before Subha can exercise his powers the premises ought to be vacant but where that fact, which enables the Subha to act under S. 14 (1) is not disputed the exercise of the power becomes an administrative act and no writ of certiorari or prohibition can be issued. Further, before ordering the use of the premises for one of the three purposes mentioned in the Section the necessity for such a purpose must exist and the Subha in exercise of his power must come to the conclusion that such a necessity does exist. But in coming to this conclusion the law does not provide for a judicial approach. AIR 1950 S C 222, Ref. **Madh B L J 1955 H C R 1577 : A I R 1955 Madh B 202 (204, 205) (Pt A) (Prs 20, 21, 22 24, 25) (DB).**

——Art. 226—Administrative or ministerial orders — **Issue of certiorari.**

Certiorari may issue against a judicial or quasi-judicial act or order but it does not lie to remove an order merely ministerial or to remove or cancel executive or administrative acts. A I R 1950 S C 222 and AIR 1954 SC 440, Rel. on. **(1960) M P L J (Notes) 159.**

——**Art. 226 — Certiorari, writ of — Administrative orders and actions are not amenable to such writ.** A I R 1959 S C 107, Foll. **1960 Jab L J 678 : 1960 M P C 325 : 1960 M P L J 633 : I L R (1960) Madh Pra 216.**

——**Art. 226 — Muslim Wakfs Act (1954), S. 55 (1) and (2) — Decision of Board is outside purview of correction by certiorari.**

The decision of the Board to file or not to file a suit itself, that is, to exercise or not to exercise a statutory right given to it by S. 55 (1) of the Act or to sanction or withhold sanction under S. 55 (2) to another person to file a suit is not equivalent to a judicial or quasi-judicial decision affecting the rights of parties. The decision to permit another to file a suit is an administrative act and is outside the purview of correction by the issue of a writ of certiorari: AIR 1955 Raj 166 and AIR 1955 All 372, Applied; AIR 1954 Trav-Co 331, Not applied. **(1961) 2 M L J 77 : 73 Mad L W 649 : I L R (1961) Mad 493 : AIR 1961 Mad 244 (246, 247) (Prs 15, 18).**

——**Art. 226 — Administrative Orders — Duty of Chairman under S. 35 (3) of States Reorganisation Act (1956)—Nature of.**

It is indeed difficult to find an exact label to characterise the function of the Chairman under S. 35 (3) of the States Reorganisation Act in specifying the members to be eliminated which would fit it into a single defined category—semi or quasi-judicial, administrative or ministerial—owing to difficulty due in great part to its composite character. There are competing claims of the several councillors to be retained, and a choice has to be made as between them. This might not by itself draw to its determination the rule of audi alteram partem, but nevertheless it would demand an honest and unbiassed decision. The apt nomenclature would be to describe it as an administrative duty of a quasi-judicial character and not a merely administrative order. **(1956-57) 12 Ele L R 345 (Mad).**

——**Art. 226 — Court and administrative tribunal — Distinction.**

It is often a very difficult task to draw the line, and distinguish a Court from an administrative tribunal exercising quasi-judicial functions. Merely because the administrative Tribunals have the trappings of a Court, they are not Courts in the sense of exercising judicial power. A Tribunal is not necessarily a Court in the strict sense because it gives a final decision not because it hears witnesses on oath nor because two or more contending parties appear before it between whom it has to decide, nor because it gives decisions which affect the rights of subject, nor because there is an appeal to a Court, nor because it is a body to which a matter is referred by another body. 1931 A C 275, Rel. on.

Unless judicial power is vested, a tribunal does not become a judicial tribunal or Court, and by the mere fact that a tribunal is clothed with some of the judicial functions it does not attain the status of a Court. The decisions of Courts are arrived at usually by the application of objective standards which are fixed, i. e., in accordance with the principles of procedure and the mode of taking evidence in the manner laid down by the Evidence Act. No fixed standards are laid down in the case of administrative authorities, and very often they are not bound to observe the judicial procedure, though on the principles of natural justice they must conform to a certain extent to the forms of judicial procedure. It is very often a difficult question to decide whether an administrative tribunal or authority is acting quasi-judicially or merely discharging its functions in its administrative capacity. **(1954) 2 M L J 285 : (1954) 25 I T R 400 : 67 Mad L W 528 : I L R (1954) Mad 1236 : AIR 1954 Mad 806 (808) (Pt D) (Prs 6, 9) (DB).**

——**Art. 226 — Certiorari and mandamus — Writ to quash order of administrative authority based on extraneous considerations—Petitioner losing his job as consequence of that order—Mandamus to Government to consider petitioner's case in accordance with law.**

Where the administrative authority decides a matter by taking into account extraneous consideration, the order which the authority purports to pass is an order passed without jurisdiction. In such a case the proper order would be to grant a writ of certiorari to quash the order of the Government. (1910) 2 K B 165, Rel. on.

Where a State Government Circular, while retrenching the staff of a department, violated Art. 16 of the Constitution and as a consequence of that Circular the petitioner lost his job, the proper order would be to grant a writ of certiorari to quash the order of the Government and also to issue a writ of mandamus directing the State Government to consider the case of the petitioner in accordance with law. I L R 35 Pat 1 : 1956 B L J R 458 : AIR 1957 Pat 617 (633) (Pt H) (Pr 55) (DB).

——Art. 226 — Punjab Government Order, dated 6th November. 1963 prohibiting production of Gur by power crushers in mill supply areas—Order cannot be quashed in writ proceedings—Certiorari. AIR 1964 Punj 307 (311) (Pt C) (Pr 9) (DB).

——Art. 226—Certiorari—Decision under R. 22 of the Rules framed under Displaced Persons (Compensation and Rehabilitation) Act—Cannot be reopened in writ proceedings. AIR 1963 Punj 499 (501) (Pt A) (Prs 4, 5).

——Arts. 226, 32—Administrative orders — Passed in accordance with rules not materially affecting rights of aggrieved party—Courts not competent to scan the wisdom of such orders. I L R (1963) 1 Puni 621 : AIR 1963 Punj 345 (353, 354) (Pt C) (Pr 25) (DB).

——Art. 226 — Pepsu Panchayat Raj Act (8 of 2008 Bk.), S. 123 (2) — Removal of member of Panchayat and imposition of disqualification for re-election—Order is passed by the Director in exercise of administrative function—Decision cannot be disturbed by certiorari for omission to conform to any rule of natural justice.

When the Director of Panchayats acting under S. 123 of the Panchayat Raj Act and in the interests of the public removes an officer of a Panchayat and disqualifies him for future office for a stated period, he merely performs an administrative function and there is therefore no obligation to act in a judicial or quasi-judicial manner. His decision therefore cannot be disturbed by way of certiorari merely because he did not conform to some rule of natural justice: 1958 P L R 394 and Civil Writ No. 1194 of 1961 (Punj), D/- 16-3-1962, Rel. on; AIR 1959 S C 107, Ref. to.

There is nothing in S. 123, nor anything in any other connected provision of the Act to indicate that there is any legal obligation cast on the Director to act in a judicial or quasi judicial manner; nor is there any hint that the Director should before making his decision hear the person concerned. About the nature of the decision it is obvious that it is the director who is required to be satisfied and his satisfaction concerned the undesirability of the person concerned to hold office in the interest of the public and there is nothing to show that any enquiry in the presence of the person concerned is contemplated. The act of the director is on the face of it an administrative act and it is difficult to import into his decision anything in the nature of a judicial or quasi-judicial act. 1962 Cur L J 397 (Punj).

——Art. 226 — Confidential report by superior officer against subordinate is governed by instructions which are purely administrative not having been issued under any statute and is not justiciable—Government servant—Confidential report. I L R (1965) 15 Raj 864.

——Art. 226 — Executive order distinguished from judicial or quasi-judicial order.

The following four conditions are necessary before an order becomes a judicial order—(i) there should be a body of persons, (ii) this body of persons should have legal authority, (iii) the legal authority should be to determine questions affecting rights of subjects or citizens and (iv) this body of persons should have the duty to act judicially. Three of these conditions will be present in most orders of an executive or administrative nature. It is only the fourth condition which will not be present in the case of executive orders, namely, there should be a duty to act judicially. It is the presence of this condition which differentiates an executive order from a judicial or quasi-judicial order. AIR 1950 SC 222, Rel. on. 1954 Cr L J 1672 : ILR (1954) 4 Raj 170 : AIR 1954 Raj 264 (266, 267) (Pt C) (Pr 6) (DB).

——Art. 226 — Certiorari — Conditions for issue — Saurashtra Land Reforms Act (25 of 1951), S. 59 — Rules under, Rr. 105 to 108—Committee appointed under R. 105 is not a judicial or quasi-judicial body —Nor has it a duty to act judicially. 6 Sau L R 24 : AIR 1953 Sau 26 (27, 28) (Prs 5, 6, 7, 8) (DB).

127. Against whom lies.

(a) Inferior tribunal must have authority to decide.

See also Note 144.

(b) New tribunal.

(c) Company.

(d) Authority becoming functus officio.

(e) Merger of order in appellate order.

127. Against whom lies.

■ ——Art. 32—Certiorari — Writ of—When cannot lie.

A writ of certiorari lies wherever a body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially acts in excess of its legal authority. The writ cannot issue to remove or adjudicate upon the order which is of an administrative or ministerial nature. It is not, however, predicated that for a writ of certiorari or prohibition to issue the duty to act judicially must be expressly or independently imposed upon the authority called upon to determine the rights of a citizen. Sadhu Singh v. Delhi Administration, (1965) 2 S C A 147 : AIR 1966 S C 91 (95, 96) (Pt B) (Prs 11, 15).

■ ——Arts. 226, 32, 154, 163 and 166—Quasi-judicial orders—Test stated—Scheme proposed by Transport Undertaking under S. 68C, Motor Vehicles Act, 1939 —Hearing by State Government under S. 68-D (2) — Duty is judicial — Objections to scheme — Hearing by Secretary in charge of Transport Department —Final decision by Minister in charge—Principles of natural justice held vitiated — Scheme framed held ultra vires the Act—(Natural justice)—(Motor Vehicles Act (1939) (as amended by Act 100 of 1956), Chapter IV-A) — (Motor Vehicles Rules (1939), Rr. 8, 9 and 10). AIR 1959 SC 308 (322, 323) (Pt E) (Prs 21, 22).

——Art. 226 — Order of termination of service is neither judicial nor quasi-judicial — There is no question of summoning record or issuing certiorari— It is only in case of petition for issue of writ of certiorari, that party gets right of summoning records. (1961) 2 Fac L R 558 : (1961) 2 Lab L J 191 : AIR 1961 All 284 (285) (Pt B) (Pr 4).

——Art. 226—Certiorari—Judicial or quasi-judicial proceeding.

The Collector or his subordinates are not taking any judicial or quasi-judicical proceeding in acting under S. 73-D of Employees' State Insurance Act. And the prayer for the issue of a writ of certiorari cannot be granted. ILR (1958) 1 All 109 : AIR 1957 All 136 (140, 141) (Pt B) (Pr 26) (DB).

——Art. 226—Against whom certiorari lies.

A writ of certiorari can issue only to a Court or a quasi-judicial body. It cannot be issued in other cases where it was an orde of the Honorary Secretary of the Co operative Union, dispensing with the services of its employee. (1956) 1 Lab L J 242 : AIR 1956 All 43 (46) (Pt E) (Pr 10).

——Art. 226 -Certiorari—Essentials—Two conditions necessary for grant of certiorari—(i) There must be tribunal acting judicially or quasi judicially. There must be duty cast upon it to act judicially (ii) The tribunal must have acted without jurisdiction or must have committed an error of procedure or any other error apparent on face of record. AIR 1955 N U C (All) 6046.

——Art. 226—Writ of certiorari.

Order sought to be quashed must be one partaking of the nature of judicial or quasi-judicial order — Test to determine whether order is one of quasi-judicial nature, laid down—Proceedings by way of Departmental inquiry, in the matter of disciplinary action against railway employee, held to be in nature of quasi judicial inquiry. AIR 1950 S C 22; Applied. (1924) 1 K B 171, Rel. on. **ILR (1953) Hyd 155 : AIR 1953 Hyd 201 (202, 203) (Pt A) (Prs 3, 4, 5) (DB).**

——Art. 226—Against whom certiorari lies.

A writ of certiorari lies only when the impugned decision is that of a judicial or quasi-judicial authority and the said authority acts without jurisdiction or in excess of its jurisdiction. Such a writ is not available to correct an executive or administrative act. AIR 1950 SC 222 and AIR 1954 SC 440, Foll. **M B L J 1955 H C R 569 : AIR 1955 Madh B 173 (174) (Pt A) (Pr 2) (DB).**

——Art. 226 (1) — Certiorari and prohibition—Writ if can be directed by High Court to tribunal which is branch of High Court.

A writ of certiorari cannot be directed by the High Court to any tribunal which is a branch of the High Court for the purpose of quashing its proceedings. A writ of prohibition likewise issues to restrain all inferior Courts whenever such Courts take cognizance of matters outside their jurisdiction. M B L J 1954 H C R 138 : AIR 1955 M B 69 (69) (Pr 3) (DB).

——Art. 226 — Writ of certiorari, and mandamus —Against whom can be issued—Judicial and quasi-judicial body—Sabha registered under Societies Registration Act — Object of Sabha, promotion of moral, social intellectual interests of community and promotion of education by establishment of schools and colleges—Sabha governed by its rules and Bye-laws—Sabha is not judicial or quasi-judicial body — Certiorari cannot issue against it—Life members of Sabha do not hold public offices — Mandamus also cannot issue -Writ of Habeas Corpus, distinguished from writs of certiorari and mandamus — Societies Registration Act (1860).

Held, on facts that the Sabha was clearly not a body exercising judicial or quasi-judicial functions, though no doubt, it had framed rules, bye laws and regulations for the management of its business. No writ of certiorari could issue against the respondents. Observations of Hidayatullah, C. J. in L P A 48 of 1954, dated 28-7-1955 (M B) and (1878) 11 Ch D 553 and (1881) 17 Ch D 615 and AIR 1950 S C 222 and AIR 1954 S C 440 : AIR 1955 S C 233 and AIR 1951 Mad 249, Rel. on.

The life members of the Sabha did not become holders of public offices. That being so, no writ of mandamus could be issued to compel the respondents to restore to the petitioners their status of life members. An order of mandamus no doubt lies to compel the restoration of a person to an office or franchise, of which he has been wrongfully dispossessed; but the office or franchise must be of a public nature. AIR 1953 Mad 556, Rel. on.

The registration of the society under the Societies Registration Act only gave to the Sabha the status of a legal entity. It did not confer on the Sabha the authority to take decisions and determine questions affecting the rights of subjects or impose on the Sabha the duty to act judicially in deciding such question. **1963 M P L J 293 : 1963 Jab L J 431 : AIR 1963 Madh Pra 270 (272, 273 274) (Prs 5, 6, 12, 14) (DB).**

——Art. 226 — Certiorari — Quasi-judicial act — Necessity—(Municipalities—Ajmer-Merwara Municipalities Regulation (6 of 1925), S. 242).

Before the High Court will interfere with an order in the exercise of its certiorari jurisdiction, such order must have been either of a Court in the exercise of its judicial functions or of any other lawful body or tribunal which may not be, strictly speaking, a Court, but still which may have lawful authority to decide between a lis or a proposal and an opposition, and such Court or tribunal is under a duty, which may be express or necessarily implied, to decide between the competing rights of the persons concerned by means of a judicial approach thereto, that is by an objective and not a subjective method. **ILR (1959) 9 Raj 821 : 1960 Raj L W 486 : AIR 1960 Raj 25 (31, 32) (Pt A) (Prs 26, 27) (DB).**

——Art. 226—Certiorari—Writ of—Remedy when applicable.

The remedy of writ of certiorari as a rule is only applicable where it is sought to review a judicial, as distinct from a ministerial, act of an inferior tribunal. **AIR 1950 Trav-Co 97 (99) (Pt C) (Pr 6) (FB).**

127 (a). Inferior tribunal must have authority to decide.

See also Note 144.

——Art. 226—Illegal order—Bihar State Board of Religious Trusts calling upon Mahant of private religious trust to furnish return of income and expenditure under S. 59, Bihar Hindu Religious Trusts Act (1 of 1951)—Issue of writ.

As the Bihar Hindu Religious Trusts Act does not apply to private religious trust an appropriate writ can be issued under Art. 226 of the Constitution quashing the order of the Board calling upon the Mahant to file a statement of income and expenditure with regard to the properties of such Trust and also prohibiting the Board from interfering with the rights of the Mahant in the management of the trust and the properties appertaining thereto, unless and until the Board has under S. 43 obtained the necessary determination that the trust is a public trust. ILR 38 Pat 942, Reversed. Ram Saroop Dasji v. S. P. Sahi, (1959) Supp (2) S C R 583 : ILR 38 Pat 661 : (1959) 2 S C A 415 : 1959 B L J R 820 : 1959 Pat L R (SC) 63 : 1959 SC J 1173 : AIR 1959 SC 951.

——Art. 226—Certiorari.

The Minister for Excise on whom jurisdiction was conferred by notification No. MEX 120/48/1, dated 15th June 1943, was not a mere usurper of office, though by reason of the fact that Excise Minister was disqualified from acting by reason of the prohibition contained in S. 296 of the Government of India Act, he acquired no jurisdiction to act in the matter. Certiorari therefore may not be refused on the ground that the Minister of Excise was a usurper of office. Observations in AIR 1951 Assam 96 held to be obiter. **ILR (1953) 5 Assam 363 : AIR 1953 Assam 170 (175, 176) (Pt B) (Pr 27) (DB).**

——Arts. 226 and 165 — Civil P. C. (1908), S. 92—Order of Advocate-General granting or refusing sanction under S. 92, Civil P. C. — Application for writ of certiorari not maintainable.

A writ of certiorari under Art. 226 of the Constitution to quash the order of the Advocate-General on a sanction application is not maintainable : AIR 1954 Trav.Co 331, Diss. from; AIR 1955 All 372, Rel. on.

Certiorari will not lie unless the body or tribunal whose proceedings are sought to be quashed has legal authority to determine questions affecting rights of the subject and owes a duty to act judicially The Advocate-General is a limb of the Executive qua his official capacity. The power to give or withhold consent to actions in regard to public nuisance and in regard to the public trust under Ss. 91 and 92 of the C. P. Code is a statutory power.

The granting or refusing consent by the Advocate-General under S. 92, C. P. Code is not judicial determination of any legal rights of the parties to the intended action. It is impossible to hold that the act of the Advocate General permitting two or more interested persons to launch a suit against the trust or refusing such consent to them can amount to discharge of a judicial function.

There is no compelling statutory obligation on the part of the Advocate-General to hear witnesses, to admit documentary evidence and to hold an enquiry before granting or refusing consent when he is moved under S. 92 C. P. Code, though adherence to judicial forms of procedure is salutary, indeed advisable, to dispel fear or apprehension of arbitrariness in the mind of the aggrieved person : AIR 1930 Mad 129, Rel. on. **1962 Mad W N 227 : 75 Mad L W 240 : ILR (1962) Mad 722 : (1962) 2 M L J 168 : 1962 M L J (Cr) 449 : AIR 1962 Mad 320 (321, 322, 323) (Prs 4, 5, 6, 7, 8, 10, 11).**

——Arts. 226, 311 — Scope — Railway employee ordered to retire—Writ petition—Order is administrative—Mandamus and not certiorari is appropriate relief. (1958) 2 Lab L J 324 : 1958 Mad W N 623 : (1958) 2 Mad L J 517 : 71 Mad L W 864 : AIR 1959 Mad 88 (89) (Pt B) (Pr 3) (DB).

——Art. 226 -Grounds for interference—Order without complying with law—Effect—Order held nullity —Certiorari could issue. See Madras Local Boards Rules (1920), R 5. **AIR 1958 Mad 211.**

——Art. 226—Order under S. 14 of Manipur Land Revenue and Land Reforms Act (1960) is quasi-judicial and not administrative — Application for review under S 96 (2) of the Act filed after period of limitation—Order passed on it held was in excess of jurisdiction and it being quasi-judicial, High Court could interfere with it under Art. 226 of the Constitution. See Tenancy Laws—Manipur Land Revenue and Land Reforms Act (1960), S. 14 (2). **AIR 1965 Manipur 3.**

——Art. 226—Certiorari—Assam Land and Revenue Regulation (1 of 1886), S. 147 — Order of S. D. C. — Appeals against orders passed by the S. D. C. as well as by the Additional Deputy Commissioner and the Chief Commissioner are quasi-judicial orders and not mere administrative orders — No appeal is provided to the Deputy Commissioner from order passed by S. D. C.— It follows that the Additional Deputy Commissioner also cannot have such appellate jurisdiction Orders in appeal by the Additional Deputy Commissioner and the Chief Commissioner in second appeal have to be set aside. See Tenancy Laws — Assam Land and Revenue Regulation (1 of 1886), S. 147. **AIR 1962 Manipur 14.**

——Art. 226 - Judicial order — Authority not having legal authority to determine questions affecting rights of subjects or having duty to act judicially — Certiorari or Prohibition cannot issue — They can issue against judicial or quasi-judicial order only. **AIR 1955 NUC (Raj) 463 (DB).**

127 (b). New tribunal.

——Art. 226 — Certiorari — Issue of writ—Inferior tribunal not in a position to resume proceedings — Effect.

Certiorari will not be granted where, if the order were subsequently quashed, the inferior Court could not be ordered to resume the proceedings. But this principle will not apply where the tribunal has been constituted and is functioning. **1959 Ker L J 410 : 1959 Ker L T 521 : 1959 Ker L R 1107 : I L R (1959) Ker 1124 : AIR 1959 Ker 347 (350) (Pt E) (Pr 7).**

[Impliedly overruled on another point in AIR 1963 S C 274].

127 (c). Company.

——Art. 226 — Company — Writ against — Writs of mandamus and certiorari cannot be issued against company. AIR 1956 Kutch 9 (10) (Pt A) (Pr 8).

127 (d). Authority becoming functus officio.

——Art. 226 — Parties — Respondents no longer in offices—Necessity to implead present incumbents — Failure to implead—Issue of writ—If barred.

The writ for quashing is directed against a record, and as a record can be brought up only through human agency, it is issued to the person or authority whose decision is to be reviewed. If it is the record of the decision that has to be removed by certiorari, then the fact that the tribunal has become functus officio subsequent to the decision could have no effect on the jurisdiction of the Court to remove the record. Where, therefore, the respondents are no longer in their respective offices, the fact that the present incumbents of these offices have not been made parties to the application is no valid reason why the High Court should not quash the order in question if a proper case is made out on behalf of the petitioner. AIR 1955 S C 233, Foll. **1956 Pat L R 261: ILR 35 Pat 312: AIR 1956 Pat 257 (268) (Pt D) (Pr 33) (DB).**

127 (e). Merger of order in appellate order.

——Art 226 — Applicability — Order of subordinate authority — Merger in appellate order — Remedy against order of subordinate authority — When available.

The basic principle of appeals is that, in the event of the subordinate authority being legally competent to pass the order, the appellate order, as it were, washes it out and takes its place. In such cases it is not possible for the High Court to give relief under Art. 226 from the order of the subordinate authority. But when there is a basic want of jurisdiction or in other words, if the subordinate authority could not have validly made an order to the same effect as the appellate one, the latter not withstanding, the aggrieved party can seek relief under Art. 226 in the High Court from the original order itself **1960 M P C 39 : 1960 M P L J 261 : 1960 Jab L J 241 : (1960) 1 Fac L R 218 : (1960) 2 Lab L J 415 : A I R 1960 Madh Pra 230 (231, 232) (Pt B) (Pr 8).**

128. Bar to.

See Note 17.

129. Bias.

See also Note 144.

(a) **What amounts to.**
(b) **Personal interest or ill will.**
(c) **Interest of some of members of tribunal.**
(d) **To be judge in his own cause.**
See also Note 129 (b).
(e) **Waiver of objection.**
(f) **Justice must not only be done but must appear to have been done.**
(g) **Evidence of.**

129. Bias.

See also Note 144.

●——Art. 226 — Natural justice — Cancellation of licence—State Government's duty to afford reasonable opportunity to licencee—Doctrine of bias — Applicability. See Bihar Mica Act (10 of 1948), S. 25 (1) (c) 2nd Proviso. A I R 1960 S C 468.

●——Art. 226 — Bar Council Tribunal — Bias attributed against Chairman of Bar Council Tribunal — Interference—Proof of actual prejudice not necessary. See Bar Councils Act (1926), S. 11. A I R 1957 S C 425.

——Art. 226 — Motor Vehicles Act (1939), S. 68 D—Proceedings, nature of—Enquiry by Chief Minister — Bias—Tests. See Motor Vehicles Act (1939), S. 68 D. A I R 1960 Andh Pra 214.

——Art. 226 — Decision of statutory body — Challenge on ground of competency and bias — High Court can entertain it under Art. 226—Resolution of Municipal Corporation not accepting certain tender —Decision held in excess of powers of Corporation — Quashed by writ under Art. 226.

Held, on facts, that though the Courts cannot enter into the merits of a discretion exercised by a competent authority, the competence of the authority to interfere as well as the question whether the decision of that authority was vitiated by bias can always be gone into by the High Court. (2) that all public powers are subject to the rule of abuse and the exercise of discretion on irrelevant considerations has always been held to be an illegal exercise of the discretion and therefore justiciable. 1925 A C 338 and A I R 1951 Nag 138, Rel. on. (3) that the resolution passed by the Corporation was in excess of the powers conferred on it by the Act and therefore was void. that the Courts were always reluctant to attribute mala fides to statutory bodies. But if from the facts proved the only reasonable inference was that extraneous considerations had entered into the decision of the Corporation then it was their duty to say so. Case Law Ref. 1962 Mys L J (Sup) 162 : ILR (1961) Mys 859 : A I R 1962 Mys 92 (94, 95, 97, 98) (Pt D) (Prs 4, 10, 13, 14) (DB).

129 (a). What amounts to.

——Arts. 226 and 311 — Departmental inquiry—Bias of inquiring officer will vitiate — What amounts to bias, indicated—Natural justice — Principles of. See Ibid, Art. 311. A I R 1960 Assam 141 (DB).

——Art. 226 — Bias — If ground for interference by writ.

It is well established that an order of an inferior tribunal can be quashed on the ground that it is vitiated by bias, 1915 A C 120 & 1926 A C 586, Rel. on.

"Bias" may be of three kinds, pecuniary, personal and official. Once it is proved that a member of a tribunal has a pecuniary interest in the subject-matter of the decision the order passed by the tribunal will be forthwith quashed. Personal bias may be proved by the existence of close relationship between a member of the tribunal and one of the parties. In case of official bias, there may be evidence of an abnormal desire to upold a particular departmental policy. Fraud, mala fides, and corruption are extrinsic factors which vitiate orders of a tribunal; but they have to be pleaded and proved to the hilt. A I R 1952 Cal 65, Rel. on. 70 Mad L W 623 : AIR 1957 Mad 623 (625, 626) (Pt A) (Prs 9, 10, 11) (DB).

129 (b). Personal interest or ill-will.

●——Art. 226 — Writ petition — Validity of Schemes under Ch. IV-A of Motor Vehicles Act challenged — Allegations of mala fides and personal ill-will made against Chief Minister of the State — Petitioners stating detailed facts in their affidavits — No affidavit in reply from Chief Minister — Counter-affidavit by Secretary rejected — Allegations against Chief Minister held unrebutted — Motor Vehicles Act (1939) (as amended in 1956), S. 68-C

Where certain Motor Transport operators challenged, by a writ petition, the validity of certain schemes framed under Chapter IV A of the Motor Vehicles Act, 1939 nationalising the motor transport in their particular area, on the ground that State Road Transport Corporation had framed the schemes not because of their opinion formed under S. 68-C of the Act but on the direction of the Chief Minister of the State and that the Chief Minister was motivated by extraneous considerations, namely, to strike at his political opponents who worked either against himself or his friends, supporters and relations in the elections in February, 1962, and had devised the schemes in order to cause them loss and compass their ruin; and the petitioners gave all the relevant objective facts in support of their allegations in their affidavits, but there was no denial by the Chief Minister, nor an affidvit by any person who claimed or could claim to know personally about the truth about these allegations and the counter affidavit filed by a Secretary of the Government formally denying the allegations on the instructions of the Chief Minister was rejected as hearsay;

Held, that the Court was constrained to hold that the allegations that the Chief Minister was motivated by bias and personal ill will against the petitioners stood unrebutted. C. S. Rowjee v. State of Andhra Pradesh, (1964) 6 S C R 230 : (1964) 2 Andh L T 48 : A I R 1964 S C 962 (970) (Pt B) (Pr 22).

●——Art. 226 — Bias — Co-operative Societies Act (1912), Ss. 17, 43 — Rules under — Rr. 18, 30 (3) — Defalcation in Co-operative Bank—Application under R. 18 for award against member of managing committee — Registrar deciding to act as arbritrator — Objection on ground of official bias — Not upheld. A I R 1956 Ajmer 63, Reversed See Co-operative Societies Act (1912), S. 17. A I R 1961 S C 1743.

●——Art. 226 — Natural justice — Judicial enquiry against constable — Presiding officer himself giving evidence — The act discloses bias against the constable — Violation of natural justice is present — (Government of India Act (1935), S. 243) — (Criminal P. C. (1898), S. 556) (Police Act (5 of 1861), S. 7 — U P. Regulations under) State of U. P. v. Mohammad Nooh, 1958 S C J 242 : 1958 S C A 73 : ILR (1957) 2 All 422 : 1958 Mad L J (Cr) 197 : 1958 S C R 595 : A I R 1958 S C 86 (90, 91) (Pt A) (Pr 7).

——Art. 226 — Bias — President of Municipal Board alleged to be biased against Executive Officer — Enquiry by President after framing charges against officer, President alone having power to hold such enquiry under S. 69-A, U. P. Municipalities Act — Enquiry not vitiated. A I R 1962 All 117 (120, 121) (Pt B) (Pr 9).

——Art. 226 — Reasonable opportunity—Appointing biased person for enquiry. See Ibid, Art. 311. A I R 1957 Andh Pra 414 (DB).

——Art. 226—Certiorari — Bias — Person acting both as Judge and prosecutor — Proceedings under Sea Customs Act — Customs Authority taking active part in investigation — Disqualified from acting as Judge in adjudication proceeding which followed. A. F. O O No 87 of 1958 (Cal), Applied. 1962 (2) Cri L J 342 : A I R 1962 Cal 460 (465) (Pt B) (Prs 43, 44, 46) (DB).

——Art. 226—Misconduct by Government servant — Departmental enquiry Question of bias — Principles — Charge of casting aspersions on Revenue Minister — Enquiry by Collector — Held that there was no bias.

In dealing with cases of bias attributed to members constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed it would always be a question of fact to be decided in each case. AIR 1957 S C 425, Foll.

Held on facts that simply because the allegations related to alleged aspersions made against the Revenue Minister, it could not be said that the Collector was biased against the officer in question. (1962) 3 Guj L R 492 : (1962) 2 Lab L J 507 : AIR 1962 Guj 197 (199, 200) (Pt B) (Prs 4, 5) (DB).

——Art 226 – Natural justice—Bias—Distinction between official and personal bias, pointed out. See Motor Vehicles Act (1939), S. 68-D. AIR 1961 Raj 168 (DB).

■ ——Art. 226—Quasi-judicial proceedings.

In quasi-judicial proceedings the maxim that a man shall not be judge in his own cause is very difficult to apply. P. M. Bramadathan Nambooripad v. Cochin Deveswom Board, 1955 Ker L T 516 : ILR (1955) Trav-Co 741 : AIR 1956 Trav-Co 19 (25, 26) (Pt N) (Pr 26) (FB).

129 (c). Interest of some of members of tribunal.

——Art. 226—Natural Justice— Principles of — Rule of bias and exceptions to rule — Disciplinary action against employee of Cantonment Board — Whole Board investigating charges — It is not open to employee to say that one of the members of Board has bias against him. A I R 1961 Andh Pra 37 (42, 43) (Pt B) (Prs 18, 19, 21, 22, 23).

——Art. 226—Tribunal—Constitution.

Irrespective of the possibility or otherwise of actual partiality being proved, the constitution of a tribunal entrusted with judicial or quasi-judicial functions is deemed to be bad if and when it deals with any case in which it can be said that one of the members of that body is among the suitors or litigants before the body. (1953) 1 Mad L J 533 : 66 Mad L W 310 : ILR (1954) Mad 36 : A I R 1953 Mad 709 (710) (Pt B) (Pr 4) (DB).

129 (d). To be judge in his own cause.

See also Note 129 (b).

■ ——Art. 226 — Natural justice – Bias — Judge in his own cause — Principle of — Motor Vehicles Act — Effect of — Chief Minister hearing objections to scheme of nationalisation — Principle of natural justice—If violated—(Constitution of India, Art. 166 (3) –(Madras Government Business Rules and Secretariat Instructions, R. 7) — (Road Transport Corporations Act (1950) — (Motor Vehicles Act (1939) (as amended by Act C of 1956), S. 68-C)

The principles governing the "doctrine of bias" vis-a vis judicial tribunals are : (i) no man shall be a judge in his own cause; (ii) justice should not only be done but manifestly and undoubtedly seem to be done. The said principles are equally applicable to authorities, who are empowered to discharge quasi-judicial functions. Any person affected by the scheme of nationalisation of motor transport is required to file objections before the State Government. The Act does not authorize the State Government to act in derogation of the principles of natural justice.

Under Art. 166 of the Constitution and the Rules framed thereunder a Minister in charge of a department is primarily responsible for the disposal of the business. Whatever may be the policy of the Government in the matter of nationalisation of bus transport, it cannot be said that the Chief Minister initiated under S. 68 C of the Act the scheme in question. Consequently, in the absence of any proof that the Chief Minister has expressed his bias for the scheme in his public speeches (as alleged), it cannot be said that by hearing the objections to the scheme the Chief Minister violated the principles of natural justice by being a judge in his own cause. Gullapalli Nageswararao v. State of Andhra Pradesh, (1960) S C J 53 : (1960) 1 Andh W R (SC) 13 : (1960) 1 Mad L J (SC) 13 : (1960) 1 S C R 580 : A I R 1959 S C 1376 (1378, 1379, 1380, 1381, 1382) (Pt A) (Prs 6, 8, 9).

——Art. 226 — Certiorari — Ground — Personal interest of judge making order—Effect.

Held, whether the sub-inspector was actually prejudiced or not, by the Superintendent himself trying the case it was not a matter on which the High Court would express its opinion in the proceedings under Art. 226 initiated for quashing the order of the Superintendent. 1956 All W R (HC) 325 : 1956 All L J 447 : (1956) 2 Lab L J 146 : 1956 Cri L J 1147 : AIR 1956 All 578 (580) (Pt B) (Pr 5).

——Art. 226—Bias—Principle that a man should not be judge in his own cause — Scope indicated — Does not necessarily apply to statutory authorities discharging purely administrative functions — Board of appointments under Mysore University Act, does not discharge quasi-judicial but administrative functions in making selection of candidate — No question of bias arises — Only question of mala fides in making selection is relevant. (1963) 2 Mys L J 383 : AIR 1964 Mys 159 (168, 169) (Pt G) (Prs 28, 29, 30) (DB).

——Art. 226 — Bias — Personal interest of Judge — Proof of bias — Bias alleged against Commissioner appointed under Public Servants (Inquiries) Act — (Public Servants (Inquiries) Act (1850), S. 21).

It is the basic principle of jurisprudence that no one is allowed to be a judge in his own cause. This rule applies not only in the case of Courts of justice but also in the case of administrative tribunals who are required to act judicially. A consequence of the rule is that the least pecuniary interest in the subject-matter of the litigation will disqualify any person from acting as a judge. But there is sharp distinction between a case of pecuniary interest and a case of non-pecuniary interest. In the case of pecuniary interest, the smallest interest in the subject-matter of the enquiry would result in the disqualification of the judge as a matter of course. But if the interest alleged is any other kind of interest, it must be shown by the petitioner that the interest is substantial so as to make it highly probable that the judge has a real bias. A mere possibility of bias is not enough to disqualify the judge. Case-law Ref. AIR 1955 Pat 131 (132, 133) (Pt A) (Pr 4) (DB).

——Art. 226 — Certiorari—Sales tax—Assessee taxed on 'Maida' according to circular issued by Excise and Taxation Commissioner — Revision before Excise and Taxation Commissioner not heard for long time — Petition for writ — High Court quashed order for payment of tax — Commissioner held could not interpret meaning of maida he having himself issued the circular. See Sales Tax — Punjab Sales Tax Act (46 of 1948), S. 5. AIR 1954 Punj 244 (DB).

129 (e). Waiver of objection.

——Art. 226 — Natural Justice—Industrial Dispute—Domestic enquiry — Allegations by employee against officer of company holding enquiry against him — Likelihood of bias in enquiry officer presumed— Bias patent from record of enquiry – Non-raising of question of bias in written statement is immaterial— Conduct of enquiry is unfair. 1965 Ker L J 1180 : 1966 Ker L R 26 : (1966) 12 Fac L R 131 : (1966) 1 Lab L J 498 : AIR 1966 Ker 167 (168) (Pt A) (Pr 4).

129 (f). Justice must not only be done but must appear to have been done.

■ ——Arts. 32 and 226—Natural justice—Bias.

It is a fundamental principle of natural justice that in the case of quasi-judicial proceeding, the authorities

empowered to decide the dispute between opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interested in one party or the other should not, even formally, take part in the proceedings though in fact he does not influence the mind of the person, who finally decides the case. This is on the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. (1854) 5 H L C 72 (89; (1924) 1 K B 256 (258) and (1927) 2 K B 475, Rel. on. Gullapalli Nageswara Rao v. Andhra Pradesh Road Transport Corpn., **(1959) 2 Mad L J (SC) 156 : (1959) 2 Andh W R (SC) 156 : 1959 S C J 967 : 1958 Andh L T 1014 : (1959) 1 SCR (Sup) 319: A I R 1959 S C 308 (326, 327) (Pt H) (Pr 30).**

——Art. 226 — Bias — When is a disqualification for disciplinary authority — Proposed enhancement of penalty – Show cause notice served on Sub Inspector —Plain and surprise expressed at leniency of sentence already imposed — Mind of the Revising tribunal held biased. See Ibid, Art. 311. ('62) 66 Cal W N 54.

—— Art. 226 — Certiorari — Bias—Collector's order under Treasure-trove Act — Likelihood of prejudice or bias—(Treasure-trove Act (1878), S. 7).

Where there is a real likelihood of an operative prejudice, although unconscious, in the mind of the Collector when he holds the inquiry under S. 7, Treasure-trove Act, and the proceedings taken and the order passed by him do not remove the suspicion that this bias may have affected his mind in exercising his discretionary power in summoning witnesses and in closing the petitioner's case, this is by itself enough in the interests of justice to oblige the High Court to grant the order of certiorari. Such a likelihood of prejudice or bias is by itself sufficient for quashing the order. (1910) 2 IR 271, Rel. on. **A I R 1956 Punj 235 (238) (Pt C) (Pr 8).**

[Reversed in AIR 1960 Punj 82.]

——Art. 226 — Quasi-judicial proceedings— Person himself a witness in case – He cannot take upon himself duty of final arbiter of matter in controversy.

It is a fundamental principle of natural justice that a person who is himself a witness in the case, and the facts to be determined are in his personal knowledge, should not take upon himself the duty of a final arbiter of the matter in controversy. Justice should not only be done, but manifestly and undoubtedly be seen to be done. AIR 1959 S C 308, Rel. on.

Observations : Rule 74 of the Rules under the Motor Vehicles Act has laid down the authority for hearing appeals against the orders of the District Magistrate as registering authority, but omits to prescribe the appellate authority when action, has been taken by any officer empowered under R. 67 of the Rules. This lacuna in the Rule has remained because it was not brought up to date after S. 33 of the Act was amended in 1956 with the insertion of sub-s. (1) (b) therein. The lacuna needs to be rectified by a proper amendment of R. 74. **I L R (1965) 15 Raj 100 : 1965 Raj L W 49 : AIR 1965 Raj 149 (151, 152) (Pt C) (Prs 7, 9).**

129 (g). Evidence of.

——Art. 226 - Motor Vehicles Act (1939), S. 68 D —Approval of scheme—State Government to act judicially – Charge of bias—should be supported by reliable evidence See Motor Vehicles Act (1939), S. 68 D. AIR 1960 S C 1073.

——Art. 226—Bias—Proof of—Oath against oath not sufficient.

It is incumbent upon a party to show that there is a real likelihood of bias. Moreover, before a party can be allowed to raise any argument based on bias, whether real or fancied, it should first of all prove existence of bias. Unless, therefore, the factum of bias is established, foundation for the plea itself does not exist and any superstructure of arguments raised in this connection cannot stand and must fall. Thus where the charge of bias is made in the affidavit of the petitioner and denied by counter-affidavit filed on behalf of the opposite parties as well as by the trial Judge it is a case of oath against oath, writ proceedings are not suited to do a thing which would condemn a person unheard. That would be a violation of a principle of natural justice. **A I R 1956 All 718 (718, 719) (Pt C) (Prs 13, 15) (DB).**

——Art. 226—Writ of certiorari—Bias—Suspicion not sufficient

It is well settled that there must be a real likelihood of bias and not mere suspicion of bias before proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest. Case law referred. **I L R 34 Pat 254 : A I R 1955 Pat 345 (349) (Pt B) (Pr 11) (DB).**

——Art. 226—Certiorari—Bias.

The Court has certainly the authority to say that a particular witness is not telling the truth and it is a matter of discretion whether it should in such a case permit the pleader to cross-examine the witness. It is highly far-fetched to argue that this circumstance necessarily leads to the conclusion that the Court has a biased outlook. **AIR 1954 Pat 550 (553) (Pt A) (Pr 3) (DB).**

——Art. 226—Bias or prejudice—Tribunal– Evidence of rejection of several requests — (Evidence Act (1872), S. 14).

An effective showing of bias and prejudice cannot be made out on the basis of unfavourable rulings only.

Thus where in an inquiry against a public servant, the Commissioner rejects several requests of the public servant which he considered to be unreasonable giving satisfactory reasons in support of his decisions, no charge of bias or prejudice can be made against the Commissioner. **I L R 1956) Punj 236 : AIR 1956 Punj 58 (63) (Pt E) (Pr 9) (DB).**

——Art 226—Bias of Advocate-General in exercising powers under S 92, Civil P. C.

From the nature of a particular decision it may not always be possible to know that the decision is the result of actual bias. All that can be made out is that the position of the Judge in relation to the parties between whom he had to adjudicate, was such that it could be reasonably inferred that he could not deal with the matter dispassionately with an open, impartial and unbiased mind. Mere possibility of suspicion of bias would not be a sufficient ground to justify an order setting aside the decision on the ground that it is vitiated by bias. There must be real and substantial grounds to sustain the suspicion of bias as being legitimate and reasonable.

When the sanction petition under S. 92 Civil P. C. was pending consideration by the Advocate-General, the managing trustee had engaged him as his counsel for filing an appeal filed for and on behalf of the trust in question and the respondents were persons unconnected with and having no interest in the trust. The dispute involved in that appeal was one between the trust on the one hand, and the stranger-respondents on the other.

Held, that since the appeal had been filed on behalf of the trust for protecting its interests, it was obvious that the persons who had applied for sanction as well as the managing trustee and the other members of the

managing board had the same interest in that litigation. Since there was no conflict of interest between these parties in the matter of that appeal, it cannot be said that by accepting the engagement from the managing trustee for filing that appeal, the Advocate-General had placed himself in a position having any bias or partiality in favour of the managing trustee as against the persons applying for sanction. It is no good contending that others might view the conduct of the Advocate-General with suspicion and attribute bias to his order. Any such suspicion has only to be ignored as unreasonable and baseless suspicion by perversely minded persons. Case-law discussed. ILR (1954) Trav-Co 369 : AIR 1954 Trav. Co 331 (345, 346, 347) (Pt E) (Prs 31, 33) (DB).

[Overruled on another point in AIR 1962 Ker 90 FB].

130. Board of film censors.

——Art. 226—Cinematograph Act (1918), S. 7—Board acts in judicial or quasi judicial manner. See Cinematograph Act (1918), S. 7. AIR 1952 Cal 653.

131. Co-operative Societies Act, order under.

——Art. 226 - Quasi judicial acts—Madras Co-operative Societies Act (6 of 1932), S. 43 — Functions of Registrar under S. 43 are of a quasi judicial nature — Writ of certiorari refused to be issued. A I R 1951 Mad 1003 ; W. P. Nos. 1383 and 1384 of 1958, D/-30-3-1960 Andh Pra, Rel. on. (1964) 2 Andh L T 94: AIR 1965 Andh Pra 69 (75, 76, 77) (Pt A) (Prs 22, 23).

——Art. 226 — Proceedings under S. 51, Madras Co-operative Societies Act — Writ of certiorari to quash —(Madras Co-operative Societies Act (6 of 1932), S. 51).

A worked as an honorary secretary of certain co-operative urban bank from 3-12-1942 to 19-2-1944. Under the then bye-laws he was entitled to certain percentage in profits as his honorarium. The bye-law was subsequently amended but the Bank, by resolution of its general body, sanctioned the amount of remuneration according to that bye-law and paid it to A on 31-10-1945. The Deputy Registrar, however, being of the view that the old bye-law could not be enforced in 1945, ordered the Bank to recover the payment from A on which the Bank started the proceedings under S. 51, Madras Co-operative Societies Act, against A. A applied for a writ to quash to proceedings.

Held, that the payment made to the petitioner in 1945 cannot be recovered in 1953 by resort to the provisions of S. 51.

(2) That it would be a misnomer to call the order of the Deputy Registrar an advice which was tendered to the Board of Directors of the bank by him. It was a quasi-judicial order which was capable of being called in question and quashed by the issue of a writ of certiorari,

(3) That there was no dispute between the Bank and the petitioner A which could be referred to arbitration under S. 51.

(4) That A was entitled to an order quashing the order of the Deputy Registrar and the proceedings under S. 51 pending before the arbitrator as beyond their jurisdiction.

(5) That this case exemplified an abuse of statutory powers to correct which Art. 226 of the Constitution has been designed. 1954 Mad W N 686 : A I R 1955 Mad 41 (43) (Prs 7, 9, 10, 11).

——Arts. 226 and 19 (1) (c)—Resolutions by General Body of Co-operative Society — Communication by Registrar that resolutions were ultra vires—Communication held departmental — No writ of certiorari can issue—Directions under Art. 226 also held could not issue — No infringement of fundamental right under Art. 19 (1) (c) — No appeal held lay under S. 12 of Madras Co-operative Societies Act—(Madras Co-operative Societies Act (6 of 1932), Ss. 51 and 12).

A Co-operative Society registered under Madras Co-operative Societies Act (6 of 1932), at a meeting of a General Body passed certain resolutions. The Secretary of the Society had doubts regarding the validity of the resolutions. So he wrote to the Deputy Registrar communicating the resolutions and asked whether they were valid, considering certain bye-laws of the Society. The Deputy Registrar replied that the resolutions were invalid and gave his reasons. The communications were marked "confidential". Certain members of the Society applied to the High Court for a writ of certiorari under Art. 226 or directions quashing the "Order" of the Deputy Registrar.

Held, (i) that the order in question not being one under S 51 was not the proceeding of any judicial or quasi-judicial tribunal but purely a departmental communication and was therefore, not one liable to be quashed by a writ of certiorari.

(ii) The communication did not prohibit the formation of any association The rules and bye laws of the association were binding on its members and so long as they were in force all the members were bound to act in accordance therewith, and it was no infringement of their right to form an association under Art. 19 (1) (c) to require that members of an association should act in conformity with the rules of that association. If the majority of the member were dissatisfied with those rules, their only remedy was to get them amended in accordance with law and not to break them.

(iii) The members could not be said to be aggrieved by the order if in pursuance of the directions contained therein the Secretary did anything which infringed the rights of the members, then it would be open to them to move in the matter and claim such appropriate reliefs as they might be entitled to in proceedings properly taken in that behalf. At this stage, there was only an expression of opinion by the Registrar that the resolution was ultra vires and on that the petitioners were not entitled to any directions under Art. 226 of the Constitution.

(iv) The resolutions were not amendments to bye-laws and no appeal lay against the order under S. 12 of the Madras Co-operative Societies Act. 1953 Mad W N 674 : 66 Mad L W 905 : (1953) 2 Mad L J 584: A I R 1954 Mad 348 (349, 350) (Prs 1, 4, 5, 6).

●——Art. 226 — Scope — (Civil P. C. (1908), S. 9—Madras Co-operative Societies Act (6 of 1932), Ss. 43, 51)—A I R 1951 Mad 352 and W. P. Nos. 317 and 318 of 1951 (Mad), Overruled.

A dispute relating to election is undoubtedly a dispute concerning or relating to the business of the society. Further, the activity of the members assembled in a meeting is a corporate activity of the society.

Where, therefore, the general body of the Bank elected the directors from its members under its bye-laws but the election was impugned under S. 51 by one of them and the Deputy Registrar acting under S. 43 passed the order setting aside the election.

Held, that the adjudication was within the jurisdiction of the Deputy Registrar and the same could not be questioned in writ proceedings. Case-law reviewed. Madhava Rao v. Surya Rao, 1953 Mad W N 515 : (1953) 2 Mad L J 340 : 66 Mad L W 821: I L R (1953) Mad 1047 : A I R 1954 Mad 103 (108, 109, 112) (Pt F) (Prs 16, 26) (FB).

——Art. 226—Quasi-judicial orders—Award—Setting aside—Order of Registrar under Rajasthan Co-operative Societies Act 4 of 1953 is quasi-judicial. See Rajasthan Co-operative Societies Act (4 of 1953), S. 62. I L R (1958) 8 Raj 1063.

132. Costs.

See Note 31.

133. Court of Wards Act, order under.

——Arts. 226, 15 and 19 (1) (f)—Certiorari—Assumption of superintendence of the estate of a female proprietor — U. P. Court of Wards Act (4 of 1912), S. 8 (1) (b) — Discretionary on the ground only of sex — Unreasonable restriction of freedom to hold property—Arts. 15 and 19 (1) (f) of the Constitution offended—Void.

A declaration under S. 8 (1) (b) of the U. P. Court of Wards Act 4 of 1912. was a quasi-judicial act and. as such, it is possible for the High Court to issue a writ of certiorari in respect of it. (A I R 1952 All 63; A I R 1952 All 99, Foll.; A I R 1950 S C 222, Dist.).

Section 8 (1) (b) of the Act 4 of 1912 (U. P.) cannot be justified as a reasonable classification ; it classifies female proprietors in an unreasonable manner and places them in a more disadvantageous position than the male proprietors who cannot be declared to be disqualified without enquiry and that too only on the five grounds under S. 8 (1) (d) ; it makes a discrimination on the ground only of sex. It is therefore void under Art. 13 of the Constitution. A I R 1952 S C 71; A I R 1961 All 746, Ref.

Article 19 (1) (f) of the Constitution is also infringed by S. 8 (1) (b) of U. P. Act (4 of 1912), as it restricts the freedom relating to property unreasonably on the ground only of sex. **1952 All L J 293 : 1952 All W R (H C) 284 : I L R (1953) 1 All 29 : A I R 1952 All 746 (747, 748, 749) (Pts A, B) (Prs 9, 10, 11, 13, 16) (DB).**

——Art. 226 — Power to issue a writ of certiorari—Exercise of power by the Government in issuing a notification under S. 8 of the U. P. Court of Wards Act, 1912.

When the Government of the U. P. exercises its powers to make a declaration under S. 8 of the U. P. Court of Wards Act the capacity in which it acts is quasi-judicial so that its actions are open to review by the High Court by a writ of certiorari. A I R 1952 All 63, Foll. **I L R (1952) 2 All 949 : A I R 1952 All 99 (101) (Pt A) (Pr 4) (DB).**

——Art. 226—Failure to follow procedure under the U. P. Court of Wards Act — U. P. Court of Wards Act (4 of 1912), S. 8.

Under the U. P. Court of Wards Act, the State Government and the Court of Wards are bodies of persons vested with legal authority to determine questions affecting the rights of other persons. Where a notification was published in the official Gazette declaring the applicant and the persons alleged to be his co-sharers "to be incapable of managing the estate" under S. 8(1)(d), since the right to be affected is a natural or common law right of the applicant, there would be a presumption that the Government must act quasi-judicially. But apart from that, there is an express provision in the U. P. Court of Wards Act under S. 8(2) which makes it the duty of the Government to act quasi-judicially. If in making the declaration, the Government furnished a detailed statement of the grounds, but did not give the applicant an adequate opportunity of showing cause why such a declaration should not be made and all that the Government did was to ask for a mere representation from the applicant within a certain time, the local Government fails to follow the procedure laid down by law and it exceeds its jurisdiction in making the declaration. The Court would quash the declaration made by the local Government. **I L R (1952) 2 All 783 : 1952 R D (H C) 229 : 1952 All L J 342 : AIR 1952 All 63 (67, 69, 70) (Pt A) (Prs 32, 46, 47, 50, 52) (DB).**

——Art. 226—U. P. Court of Wards Act (4 of 1912), S. 11—Finality—Effect.

Provisions of S. 11 do not bar the High Court from issuing a writ, direction or order under Art. 226 if it finds that the Government has contravened the provisions of statute which empowered it to act in infringement of the rights of a citizen. **I L R (1952) 2 All 783 : 1952 All L J 342 : 1952 R D (HC) 229 : AIR 1952 All 63 (70) (Pt C) (Pr 49) (DB).**

——Art. 226—Courts of Wards Act (2 of 1903), Ss. 12 and 5(2)(d) — Superintendence of property assumed under S. 5(2)(d) — Evidence, sufficiency of—Competence of High Court to examine evidence and express an opinion on the adequacy or otherwise of material. **56 Punj L R 382 : A I R 1954 Punj 247 (250) (Pt B) (Pr 10) (DB).**

[Overruled on another point in AIR 1963 Punj 9.]

——Art. 226 — Judicial or quasi-judicial order — Punjab Court of Wards Act (2 of 1903), S. 5 (2) (d).

If there is any judicial or quasi-judicial order which has been passed and which is illegal, the High Court would certainly call for the record and quash that order and if the case calls for a writ of prohibition the High Court would also issue that. There is no provision in the Punjab Court of Wards Act or in the rules requiring any detailed statement of grounds on which action is proposed to be taken to be furnished to the proposed ward or to give him an opportunity for showing cause why superintendence should not be assumed. It cannot be said that this is a judicial or a quasi-judicial act which the Government has to perform. No certiorari would, therefore, lie; nor can a writ of mandamus lie when nothing has been shown as to what duty the Government was bound to perform which has not been performed by it. 54 Cal W N 883 (PC); 54 Cal W N 893 (PC); 1948 A C 87, Foll. **55 Punj L R 279 : I L R (1953) Punj 279 : AIR 1953 Punj 30 (31, 33) (Pt A) (Prs 6, 19, 23) (DB).**

[Overruled on another point in AIR 1963 Punj 9.]

134. Courts.

See also Note 171.

——Art. 226—Returning officer deciding on validity of nomination paper under S. 36(2), Representation of the People Act is not "Court"—Constitution of India, Arts. 226 and 227 — Court and tribunal)—Distinction between, pointed out. See Criminal P. C. (1898), S. 195. **AIR 1956 S C 153.**

——Art. 226—Special Tribunal and Court—Distinction.

That there is a real distinction between a tribunal and a Court cannot be disputed, though it may often be fine and sometimes difficult to define. **66 Mad L W 287 : (1953) 1 Mad L J 542 : 1953 Mad W N 200 : AIR 1954 Mad 340 (343) (Pt D) (Pr 7).**

135. Custodian of evacuee property.

——Art. 226 — Mandamus — Wrong assumption of jurisdiction — Administration of Evacuee Property Act (1950), S. 48(1)—Notice under—Wrong assumption of jurisdiction to issue — Mandamus directing Custodian not to act under notice — (Administration of Evacuee Property Act (1950), S. 48(1).

The condition precedent for the issue of notice under S. 48 is that there must be a sum due under the Act to the Custodian. It does not give power to the Custodian himself to treat any amount as due to him and thereby assume jurisdiction to issue notice under s. 48. There being no provision in the Act empowering the Custodian to treat a person in possession of evacuee property claiming rights adverse to the evacuee as tenant and to fix rent, any amount fixed by him as rent cannot be regarded as a sum due to

the Custodian under the provisions of the Act and consequently a notice issued for payment and for realisation of the amount as arrears of land revenue under S. 48 (1) is without jurisdiction, and the High Court can issue a writ of mandamus directing him not to act against the law and under a notice which is issued without jurisdiction. 1957 All W R (HC) 8 : 1957 All L J 41.

——Art. 226 –Scope of — Declaring certain property as evacuee property — Decision has to be made under Administration of Evacuee Property Act, by Tribunal —Act provides for elaborate inquiry — Relief under Art. 226 cannot be granted to declare that certain property belonged to applicant and to restrain Assistant Custodian from taking possession and selling fruits of groves — Writ petition lies only where Tribunal acts without jurisdiction or in excess of it or in failure of it or when order is on face of it illegal or grossly improper — (Administration of Evacuee Property Act (1950), S. 7). 1954 All L J 545 : 1954 All W R (HC) 552 : A I R 1955 All 97 (97, 98) (Prs 1, 2) (DB).

——Art. 226 –Certiorari — Issue of writ — Order of Custodian-General under Evacuee Property Act— Erroneous.

The High Court will not grant the application for a writ of certiorari where there is nothing in the orders of the Additional Custodian or the Custodian-General to show that they have acted without jurisdiction or in excess of it or failed to exercise the jurisdiction vested in them or that there has been a violation of the principles of natural justice. A I R 1952 S C 179 and A I R 1952 S C 319, Foll. 1952 All L J 703 : 1955 All L W 17 : 1952 All W R (HC) 150 : AIR 1953 All 117 (118) (Pr 4) (DB).

——Art. 226—Patent lack of jurisdiction — Assets of Company, whether evacuee property — Administration of Evacuee Property Act (1950), S. 2 (f).

It cannot be said that because under the Companies Act, a shareholder has always been held to have no existing right of ownership in the assets of the company, it would necessarily lead to the conclusion that a shareholder has no right or interest of any kind, and in any capacity, in the assets of the company. It cannot, therefore, be said on this ground that there is a patent want of jurisdiction in the Custodian to treat the assets of the Company as evacuee property in proceedings against the shareholders, and it cannot therefore be said that an application under Art. 226 of the Constitution would not justify a dismissal without consideration on merits in spite of the suppressions, misrepresentations and misleading statements in the application. Case law referred. Asiatic Engineering Co v. Achhru Ram, I L R (1952) 2 All 838 : 1951 R D (HC) 241 : 1951 All L J 576 : A I R 1951 All 746 (765) (Pt C) (Pr 46) (FB).

——Art. 226 — Patent lack of jurisdiction — Company whether evacuee—Administration of Evacuee Property Act (1950), S. 2 (d) (f).

The definition of the word 'evacuee' can include the case of an incorporated company and it is not a case of patent lack of jurisdiction in the Custodian treating the Company as an evacuee. Asiatic Engineering Co. v. Achhru Ram, I L R (1952) 2 All 838 : 1951 R D (HC) 241 : 1951 All L J 576 : AIR 1951 All 746 (766) (Pt D) (Pr 48) (FB).

——Art. 226—Scope of power under—Order declaring property as evacuee property reversed under writ of certiorari — Proceedings for declaration restarted on basis of new title—Issue of writ—(Administration of Evacuee Property Act (1950), S. 7)—(Civil P. C. (1908), S. 11).

The provisions of Art. 226 of the Constitution can be utilized only in those rare cases where the subordinate tribunals or bodies act wholly without or in excess of jurisdiction or where they refuse to exercise jurisdiction possessed by them. The jurisdiction to issue writs does not enable High Courts to convert themselves into Courts of Appeal and to examine for themselves the correctness of the decisions impugned on questions of fact or question of law or to decide afresh as to what view should have been taken of the points at issue between the parties by those who are made responsible by the legislature to decide the dispute. The jurisdiction conferred by Art. 226 is not an alternative mode of redress to the normal process of litigation. The powers exercised under it are only intended to meet those extraordinary cases, where but for the exercise of those powers grave and serious injustice would be occasioned to the applicants on account of the disregard of either the fundamental rights or of the jurisdiction conferred by law on judicial or other tribunals or of the principles of natural justice or where the orders are otherwise ultra vires.

Where an order declaring a certain property as evacuee property on the basis of adverse possession of the evacuee is reversed by the High Court under writ of certiorari the order of the High Court cannot operate to debar the Custodian from issuing a further notice to the applicant to show cause why the property should not be deemed to be evacuee property on the basis of the new title discovered later. Jurisdiction to make further declaration is not taken away and a writ cannot be issued against the subsequent order of the Custodian. Nor is there any legal basis for the applicability of the doctrine of res judicata in such a case. ILR (1954) Hyd 111 : AIR 1954 Hyd 167 (168) (Pr 2) (DB).

——Art. 226 — Administration of Evacuee Property Act (31 of 1950), Ss. 8 and 9 (2)—Claim by mortgagee — Jurisdiction to decide—Administration of Evacuee Property (Central) Rules (1949), S. 8 (2) (Civil P. C. (1908), S. 9). See Administration of Evacuee Property Act (1950), S. 8. AIR 1958 J & K 51.

——Art. 226 — Administration of Evacuee Property Act (1950), S. 12 — Administration of Evacuee Property (Central) Rules (1950), R. 14 (4)—Custodian enhancing rent of room without complying with R. 14 (4)—His act is not purely administrative but is judicial—Certiorari will lie.

Rule 14 of the Administration of Evacuee Property (Central) Rules, 1950, dealing with cancellation or variation of lease by the Custodian is to be taken subject to the provision of S. 12. The act of the Custodian in pursuance of such power cannot be said to be purely administrative but is quasi-judicial and the High Court has, therefore, power to control that power by a writ of certiorari.

Held, in the instant case that as the act of the Custodian in affecting variation of rent prejudicially affected the right of the petitioner a writ of certiorari could lie. (AIR 1955 Bom 440, 538) and (AIR 1952 Pepsu 12 Rel. on. Madh B L R 1956 Civ 803 : AIR 1957 Madh B 4 (5, 6, 7) (Pt C) (Prs 20, 25, 33) (DB).

——Art. 226 –Order of Custodian is of quasi-judicial character—Order can be corrected by High Court by writ of certiorari. See Administration of Evacuee Property Act (1950), S. 7 (1). AIR 1954 Madh B 173 (DB).

——Art. 226 — Order under Evacuee Property Act— High Court's power to challenge validity of order. See Administration of Evacuee Property Act (1950), S. 43. AIR 1954 Madh B 173 (DB).

——Art. 226 — Administration of Evacuee Property (Central) Rules 1950, R. 14 (4)—Cancellation of allotment without notice, validity — (Administration of Evacuee Property Act (1950), S. 2). See Administra-

tion of Evacuee Property (Central) Rules, 1950, R. 14 (4). AIR 1953 Pepsu 119.

——Art. 226 — Administration of Evacuee Property Act (1950) S. 52—Notifications under, dated 3-7-1950 and 9-5-1954 issued by Government of India Ministry of Rehabilitation—Applicability—Held conditions in the notifications were not complied with. See Administration of Evacuee Property Act (1950), S. 52. (1962) 64 Pun L R 1116.

——Arts. 226 and 227 — Administration of Evacuee Property Act (31 of 1950), Ss. 6 and 40—Power of Custodian to issue instructions — Refusal to confirm sale—Assistant Custodian acting according to Custodian's instruction—Legality of order—Interference by High Court. See Administration of Evacuee Property Act (1950), S. 6. AIR 1959 Punj 222.

——Art. 226 — Administration of Evacuee Property Act (1950), S 26 (2) — Review under S. 26 (2)—Its nature—See Administration of Evacuee Property Act (1950), S. 26 (2). AIR 1958 Punj 63.

——Art. 226—Applicability—Administration of Evacuee Property Act, S. 12—Order under S. 12—Notice—Applicability of principle of natural justice—Failure to give notice not resulting in injustice—Issue of writ. See Administration of Evacuee Property Act (1950), S. 12. AIR 1957 Punj 155 (DB).

——Art. 226—Powers of High Court. See Administration of Evacuee Property Act (1950), S. 58. AIR 1955 Raj 63 (DB).

——Art 226—Jurisdiction of High Court.

The original order was passed by the Naib Tahsildar, Pali, purporting to act as Assistant Custodian of Evacuee Property for that area. That order was taken in appeal to the Custodian of Evacuee Property, Rajasthan, and was modified. This order of the Custodian was taken in revision to the Custodian-General. The revision was dismissed and the order of the Custodian, Rajasthan, stood as it was. In the proceedings under Art. 226, the contention was that the office of the Custodian-General of India was in Delhi beyond the jurisdiction of this Court, and as the matter was taken in revision to the Custodian-General, it was not open to the High Court to pass any order under Article 226:

Held, that the order really in dispute before the High Court was not the order of the Custodian-General, but the order of the Custodian, Rajasthan. As that order was passed by a person within the territories over which the High Court had jurisdiction, and related to Pali which was also within the jurisdiction of the High Court, the High Court could issue a writ against the Custodian of Evacuee Property, Rajasthan and the Assistant Custodian of Evacuee Property, Pali, though not to the Custodian-General whose office was located in Delhi. The matter would have been different if the Custodian General had in any manner modified the order of the Custodian Rajasthan, for in that case the order in dispute would have been the order of the Custodian General. AIR 1953 S C 210, Disting. 1955 Raj L W 95 : ILR (1954) 4 Raj 526 : AIR 1954 Raj 214 (216) (Pt C) (Prs 8, 9, 10) (DB).

——Art. 226 — Administration of Evacuee Property Act (31 of 1950)—Person suspected of having looted evacuee property—Order by Deputy Custodian to recover price from such person—Validity. See Administration of Evacuee Property Act (1950). AIR 1953 Raj 71.

——Art. 226 — Writ of certiorari or prohibition — Issue of, to inferior Court—Person acting on behalf of Deputy Custodian, evacuee property — Writ, if can be issued against him—Rajasthan (Administration of Evacuee Property) Ordinance (14 of 1949), Ss. 6 and 7

A writ of certiorari or prohibition can be issued only against an inferior Court which expression includes the bodies created by the acts of the legislature. It can only be issued against such bodies if a duty has been cast upon them of exercising, after hearing evidence, judicial functions in the sense that they have to decide on evidence between a proposal and opposition. Where a person is neither a Custodian nor an Additional Deputy or Assistant Custodian simply because he has been acting on behalf of the Deputy Custodian under an alleged authority which is not warranted by law, it cannot be said that he has been acting as an inferior Court because law has cast no duty upon him to decide the questions under the Ordinance in a judicial or quasi judicial manner. Consequently neither a writ of certiorari nor a writ of prohibition can be directed against such person when he purports to have acted under Ss. 6 and 7 of the Ordinance. 1950 Raj L W 186 : AIR 1950 Raj 58 (61, 62) (Prs 18, 23).

——Art 226 — Administration of Evacuee Property Act (1950), S. 12 (1) — Order terminating tenancy without giving opportunity to tenant to show cause — Validity — Administration of Evacuee Property (Control) Rules, (1950), R. 14 (4)— Retrospective effect of —Interpretation of Statutes) — See Administration of Evacuee Property Act (1950), S. 12 (1). AIR 1953 Sau 20.

——Art 226—Administrative Order—Writ, if can be issued in respect of administrative act of Custodian of evacuee property.

Where the custodian of evacuee property takes possession of certain property it is purely an administrative or executive Act and so a writ of certiorari cannot issue to him in respect of such an act. A I R 1951 Sau 73 (74, 75, 76) (Pt A) (Prs 3, 4, 5) (DB).

136. Domestic tribunal.

See Note 42.

137. Effect of order under.

——Art. 226—Certiorari—Effect of writ.

A writ of certiorari has the effect of removing the order from the way of a party. When the order passed by the subordinate tribunal is quashed it is removed from the way of a party enforcing his rights. It cannot in the absence of any direction to the contrary in the order passed by the Court prohibit the tribunal or authority to proceed further in the matter according to law. ILR (1958) 1 All 577 : AIR 1958 All 532 (535) (Pt A) (Pr 8).

——Art. 226 — Certiorari—Finality of order passed —Test.

The test for determining the finality of an order is what is the effect of the order on the suit or original proceeding in which it is made. If its effect is to put an end to the suit or original proceeding, so far as the Court or tribunal before which the original proceeding is pending is concerned, then the order is a final order. The finality of an order under Art. 226 must be determined on the test whether the order completely and finally disposed of the petition under Art. 226. Where in a proceeding under Art. 226 the effect of the order was to quash the decision of the Election Tribunal on the question of the effect of absence of an affidavit as required by the proviso to Section 83 (1) of the Representation of the People Act on the allegations of corrupt practices contained in the election petition, and the Tribunal had then to decide the matter again in the light of the said order, the order passed by the High Court under Art. 226, issuing a writ of certiorari quashing the determination of the Election Tribunal is a final order and cannot be likened to an order of

remand made by an appellate Court. A I R 1952 S C 12, Foll. AIR 1964 Mad 194, Rel. on. 1964 Jab L J 549 ; 1964 M P L J 893 : AIR 1965 Madh Pra 15 (19, 20) (Pt E) (Prs 13, 14) (DB).

138. Election authorities, against.

See also Note 44.

■ —Arts 226 and 329 (b) — Meaning of 'election' in Art 329 (b)—Bar to writs—Power subject to other provisions of Constitution — Writ against Election Tribunal

The word 'election' in Art. 329 (b) is used in a comprehensive sense as including the entire process of election commencing with the issue of a notification and terminating with the declaration of election of a candidate An application under Art. 226 challenging the validity of any of the acts forming part of that process will be barred. These are instances of original proceedings calling in question an election and will be within the prohibition enacted in Art. 329 (b). But when once proceedings have been instituted in accordance with Art. 329 (b) by presentation of an election petition, the requirements of that article are fully satisfied. Thereafter when the election petition is in due course heard by a Tribunal and decided, whether its decision is open to attack, and if so, where and to what extent, must be determined by the general law applicable to decisions of Tribunals. And as they are subject to the supervisory jurisdiction of the High Courts under Art. 226, a writ of certiorari under that article will be competent against decisions of the election Tribunals also. AIR 1952 S C 64, Foll. ; A I R 1954 S C 520 Rel. on. Hari Vishnu v. Ahmad Ishaque, 1955 Mad W N 449 : 1955 Nag L J 1 : (1955) 1 Mad L J (SC) 157 : 1955 S C J 267 : (1955) Andh W R (SC) 157 : 1955 All W R 339 : 1955 S C R 1104 : 1955 S C A 105 : AIR 1955 S C 233 (238, 239) (Pt C) (Pr 6).

■ —Art. 226 — Writ of certiorari for quashing — Nature of such writ — Election Tribunal becoming 'functus officio' — Writ of certiorari can still be issued.

The High Courts have power under Art. 226 to issue writs of certiorari for quashing the decisions of Election Tribunals notwithstanding that they become 'functus officio' after pronouncing the decisions. The writ of certiorari for quashing is directed against a record, and as a record can be brought up only through human agency it is issued to the person or authority whose decision is to be reviewed. As it is the record of the decision that has to be removed by certiorari, the fact that the tribunal has become 'functus officio' subsequent to the decision can have no effect on the jurisdiction of the Court to remove the record.

Under S. 103 of the Representation of the People Act, 1951 the Tribunal is directed to send the records of the case after the order is pronounced either to the relative District Judge or to the Chief Judge of the Court of Small Causes and there is no legal impediment to a writ being issued to those officers to transmit the record to the High Court. The power to issue a writ under Art. 226 to a person as distinct from an authority is sufficiently comprehensive to take in any person, who has the custody of the record, and the officers mentioned in S. 103 of the Act would be persons who would be amenable to the jurisdiction of the High Court under the article. Civil Appeal No. 42 of 1952 (SC), Expl. ; (1921) 2 A C 570, Disting. Hari Vishnu v. Ahmad Ishaque, 1955 Mad W N 449 : 1955 Nag L J 1 : (1955) 1 Mad L J (SC) 157 : 1955 S C J 267 : (1955) Andh W R (SC) 157 : 1955 All W R 339 : 1955 S C R 1104 : 1955 S C A 105 : AIR 1955 S C 233 (240, 241, 242, 243) (Pt D) (Prs 11, 18, 19).

—Art. 226— Migration—Proof — A opting for service under Pakistan Government in 1947 and leaving for Pakistan, leaving wife in India—A returning to India in 1953 on Pakistani Passport and applying for Indian citizenship—Deletion of A's name from electoral roll by Electoral Authorities on finding that A migrated to Pakistan and never became citizen of India—Held, there was sufficient proof of A's migration to Pakistan and therefore order of Electoral authorities could not be interfered with, under Art. 226—S. 9 (2), Citizenship Act, did not preclude tribunals from recording such finding. See Ibid, Art. 7. 1965 (1) Cri L J 22 : AIR 1965 Cal 1 (DB).

—Art. 226 — Election case — Order of Election Tribunal striking off matter from election petition and refusing to amend it —Interferance — (Elections —Representation of the People Act (1951), S. 92).

Under the Representation of the People Act (1951), as amended in 1956 the Election Tribunal does not now possess the power to order better particulars. It can only either consider an application for amendment if one was made or refuse to try a matter which does not raise precise issue. Where the Election Tribunal orders certain matter to be struck off from the Election petition as being vague and refuses a prayer for amendment for supplying better particulars, the order whether right or wrong is within jurisdiction and cannot be the subject of a writ, unless there is an error of law apparent on the face of the record or there has been a violation of the principles of natural justice or the case otherwise warrants interference on well-settled principles. A I R 1958 Madh Pra 168, Rel. on. 1958 M P L J 485 : 1958 M P C 389 : 1958 Jab L J 479 : A I R 1958 Madh Pra 313 (314) (Pr 4) (DB).

139. Error on face of record.

(a) Mere error, no ground for interference.
(b) Error must be apparent from judgment or order.
(c) Must be an obvious point not requiring elaborate argument.
(d) Proof.
(e) Speaking orders.
(f) Non-speaking orders.
(g) Error should not be mere clerical, accidental or formal,
(h) Error apparent on face of record — Illustrative cases.
(i) No error apparent on face of record—Illustrative cases.

139. Error on face of record.

● —Art. 226 — Certiorari, writ of — When can be issued—Madras Shops and Establishments Act (36 of 1947), S. 51—Decision of Labour Commissioner about question of status though made final can be quashed by writ if there is error apparent on face of record.

A writ of certiorari can be issued when the order of the inferior tribunal is shown to suffer from an error which is apparent on the face of the record. It is not correct to say that unless an error of jurisdiction is established, or fraud proved, no writ of certiorari can be issued. Observations of Mukherjea J. in AIR 1952 S C 179 at p. 181, Expl.; AIR 1958 S C 398, Foll.

Where, therefore, the Commissioner for Labour who is empowered to deal with questions referred to in S. 51 of the Madras Shops and Establishments Act has given a decision that the appellant was a person employed and he was not in a position of management and if the Commissioner's order is shown to suffer from the infirmity of an error of law apparent on face of the record, the High Court would be

justified in issuing a writ notwithstanding the fact that S. 51 of the Act purports to make the Commissioner's order final. T. Prem Sagar v. M/s Standard Vacuum Oil Co., Madras. (1964) 5 S C R 1030 : (1964) 1 Lab L J 47 : (1964-65) 26 F J R 1 : (1964) 8 Fac L R 247 : AIR 1965 S C 111 (115, 116) (Pt A) (Prs 14, 15).

● —Art. 226 — Error apparent on the face of the record.

Writ of certiorari can be issued not only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record. Errors of fact though they may be apparent on the face of the record, cannot be corrected. Though it cannot be easy to lay down an unfailing test of general application it is usually not difficlut to decide whether the impugned error of law is apparent on the face of the record or not. (1952) 1 K B 338 and A I R 1958 S C 398 and A I R 1955 S C 233, Rel. on. Shri Ambica Mills Co., Ltd. v. S. B. Bhatt. (1961) 3 S C R 220 : (1961) 2 Fac L R 205 . 63 Bom L R 496 : (1961 62) 20 F J R 161 : (1961) 1 Lab L J 1 : (1961) 1 S C A 419 : (1961) 1 S C J 643 : (1961) 1 Mad L J (S C) 198 : (1961) 1 Andh W N (S C) 198 : AIR 1961 S C 970 (973) (Pt A) (Pr 8).

——Art. 226—Quasi-judicial proceedings—In examining the correctness of the findings of a tribunal in quasi judicial proceedings the High Court can, in the interest of justice take notice of any error which is manifest. AIR 1960 All 304 (317) (Pt I) (Pr 61).

——Art. 226 — Error apparent on face of record—Effect.

It is open to the High Court to quash the decision of an inferior tribunal if it is erroneous in law on the face of the record. A I R 1956 All 603 (606) (Pt C) (Pr 13) (DB).

——Art. 226 — Error apparent on face of record — Meaning of.

No exhaustive definition can be given to the words "error apparent on the face of the record". A superior Court or Tribunal will have to examine an order itself and decide whether the order, in the circumstances of that particular case, can be regarded as erroneous on the face of the record or a mere error of law. A I R 1955 S C 233, Foll. A I.R 1956 All 603 (607) (Pt D) (Pr 15) (DB).

——Art. 226 — Error apparent on face of record—Utility of decisions under O. 47. R. 1, Civil P. C., in deciding question under Art. 226, Constitution of India.

It is not a safe guide to rely upon the cases interpreting the words error apparent on the face of the record' in O. 47, R. 1, Civil P. C., in order to determine the scope of these words in connection with the power of the High Court to issue a writ of certiorari under Art 226 of the Constitution. AIR 1956 All 603 (607) (Pt E) (Pr 15) (DB).

——Art. 226—Jurisdiction — Error of law on face of record of Subordinate Court must be there — Second condition is that body must be under statutory duty to act judicially— Cane Commissioner, acting under U. P. Sugar Factories Control Act (I of 1938), Rules under Act, R. 23, has duty to act judicially. A I R 1955 N U C (All) 3596.

——Art. 226 — Powers of High Court under— Writs when issued stated—Order of Labour Appellate Tribunal where question involved is pure question of law not obviously incorrect or unjustified—No error apparent on face of record — Order held would not be interfered with. AIR 1955 N U C (All) 1157.

■ ——Art. 226 — Tribunal having jurisdiction to decide question, wrongly deciding it — No writ can issue—Proper remedy.

The High Court in exercise of its writ jurisdiction cannot convert itself into a Court of appeal for the purpose of judging the correctness or incorrectness of a decision of a Tribunal which, admittedly was rightly seized of the matter and had jurisdiction to give a decision therein.

Merely because a decision may be incorrect on the ground that the inferior Court wrongly interpreted some provisions of law, or has wrongly applied some provision of law, which was not applicable in arriving at its decision, it cannot be said that that Court has exercised jurisdiction not vested in it, or has committed an error apparent on the face of the record or proceeding which justify interference by issue of a writ of certiorari.

An incorrect decision whether on a question of fact or on a question of law, by a Court or tribunal in proper exercise of jurisdiction vested in it is not contemplated by the words, 'error on the face of the record or proceedings' used by their Lordships of the Supreme Court in the cases of A.I R 1952 S C 179 and A I R 1952 S C 182. Such an error would be merely a wrong decision on a question of law which can be re-examined only by a Court of appeal and not in proceedings for issue of a writ under Art. 226 of the Constitution.

The Industrial Court (Sugar), Lucknow, had jurisdiction to decide the question whether the members of the staff of the petitioners-companies at Calcutta were or were not workmen for purposes of the orders of the Government, directing payment of bonus by the petitioner companies to their workmen. In order to decide this question, the Industrial Court had to refer to the provisions of the U. P. Sugar Factories Control Act, 1938, and the rules framed thereunder. The Industrial Court (Lucknow) held that Calcutta workers were not workers.

Held, that even if the Court committed an error in interpreting those provisions and came to a wrong conclusion, the decision by the Industrial Court could not be held to be one without jurisdiction or in excess of it and could not consequently be challenged by issue of a Writ under Art. 226, of the Constitution : Case law Ref.

Held that the appropriate remedy for the petitioners if any, could be by way of an application for a special leave to appeal to the Supreme Court against the decision of the Industrial Court (Sugar), Lucknow in case they wanted to seek redress against a decision which they contend was incorrect. Deoria Sugar Mills v. Govt. of U. P. 1954 All L J 259 : 1954 All W R (H C) 305 : A I R 1954 All 497 (499, 500) (Prs 6, 7) (FB).

——Art. 226—Certiorari—Error on face of record.

Even when there is no error of jurisdiction or of procedure, a certiorari may issue when there is manifest error on the face of the proceedings as when the decision is based on clear ignorance or disregard of the provisions of law. But this is subject to the limitation that the Court granting a certiorari acts not in an appellate but only in a supervisory capacity and does not substitute its own views for those of the inferior tribunal. 1955 Andh W R 419 : 1955 Andh LT (Civ) 372 : ILR (1956) Andh 369 : A I R 1957 Andh Pra 903 (907) (Pt D) (Pr 15) (DB).

——Art. 226 — Error on face of record — Points not raised before tribunal.

If it is not suggested that the Tribunal acted without jurisdiction or with mala fides, a writ can be issued only if there is an error on the face of the record. But there cannot be obviously an error on the face of the record in regard to questions which were never raised before the tribunals. (1957) Mad L J (Cri) 469 : ILR (1956) Andh Pra 591 : (1957) 2

Andh W R 196 : A I R 1957 Andh Pra 882 (834) (Pt A) (Pr 4) (DB).

——Art. 226—Error on face of record.

Where an error of law apparent on the face of the record is committed by a tribunal in the exercise of its jurisdiction, the High Court can interfere under Art. 226. It is true that there are difficulties in defining exactly what an error apparent on the face of the record is and it must be left to be judicially decided on the facts of each case. The tribunal is said to have committed an error of law apparent on the face of the record if it ignores fundamental principles of law such as that the proof should not be in conflict with pleadings and also overlooks clear admissions which destroy the case for a party. A I R 1955 S C 223; Rel. on. **A I R 1955 N U C (Andh) 5846.**

——Art. 226 –Certiorari—Error on face of record — Certiorari may issue—Error of jurisdiction or procedure need not be there—But Court granting writ acts in supervisory and not in appellate capacity. A I R 1955 Andh Pra (N U C) 3624 (DB).

——Art. 226—Certiorari — Writ not to issue unless there is manifest error of law—Obiter.

Obiter:—The High Court cannot issue a writ of certiorari unless there is some manifest error of law and it can issue such a writ against an order of a judicial, or a quasi-judicial tribunal. **I L R (1962) 14 Assam 231.**

——Art. 226 — "Certiorari," — Grounds for issue of writ — Misconstruction of section or overlooking of provision — When a ground for issue of writ of certiorari.

Ordinarily the writ of certiorari would be issued to correct the decisions of an inferior tribunal when such decisions are either given in excess of jurisdiction or in the irregular exercise of jurisdiction or when in the exercise of such jurisdiction canons of natural justice are disregarded. But the High Court has also the jurisdiction to issue a writ of certiorari even to correct an error of law on the face of the record. If a section of a statute is misconstrued or if a provision of law is over-looked or not applied and that appears from the judgment of the lower Court itself, then the superior Court would interfere by a writ of certiorari. A I R 1952 Bom 235. Rel. on.

The writ of certiorari is intended in fact to cure manifest defects in an order made by the Tribunal. **59 Bom L R 287 : ILR (1957) Bom 459 : A I R 1957 Bom 182 (185) (Pt E) (Pr 16) (DB).**

——Art. 226 – Certiorari and prohibition, writs of — New point.

In a proceeding for a writ of certiorari and prohibition, the error of law must appear on the face of the record and must also be made a specific ground of attack in the petition. **(1961) 3 Fac L R 334 : ILR (1961) 1 Cal 899 : (1961) 1 Lab L J 720 : (1961-62) 20 F J R 309 : A I R 1961 Cal 160 (163) (Pt B) (Pr 9) (DB).**

——Art. 226—Certiorari—Error of law.

The supervision by the High Court through the issue of a writ of certiorari goes to two points; one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise. Hence, a writ of certiorari can be issued even if the error at which it is directed is an error of law, committed in the course of the exercise of jurisdiction. But error of law which can be corrected by a writ of certiorari must be an error on the face or the surface of the record. (1922) 2 A C 128 and (1951) 1 K B 711 and (1878) 4 A C 30, Foll. **(1958) 33 I T R 866 : (1957-58) 12 F J R 324 : A I R 1957 Cal 514 (519) (Pt C) (Pr 19) (DB).**

——Art. 226 –Certiorari—Error on face of record.

An error that can be corrected by a writ of certiorari must be an error apparent on the face of the record. And in order that the error may appear on the face of an order, the order has got to be what has been described as a 'speaking order', that is to say, an order which gives the reasons for it. In this respect the record must contain at least the document which initiates the proceedings; the pleadings, if any; and the adjudication; but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them. When the error alleged is not an error of jurisdiction, but only an error of law it is not permissible to call for other records and seek the basis of the error there. (1952) 1 K B 338, Rel. on. **(1958) 33 I T R 866 : (1957-58) 12 F J R 324 : AIR 1957 Cal 514 (519, 520) (Pt D) (Prs 20, 21) (DB).**

——Arts. 226 and 32 (2-A) — Error must be apparent on face of record — Writ proceedings — Nature of, stated—(Constitution of Jammu and Kashmir, S. 103).

Before a writ of certiorari is issued it must be shown that the authority which passed the order acted without jurisdiction. An error of law or any other technical error cannot be said to be an error apparent on the face of the record to attract the extraordinary writ jurisdiction of the High Court to overset the order. The writ of certiorari is not meant to take the place of an appeal where the statute does not confer a right of appeal : A I R 1952 S C 319 and AIR 1958 S C 398, Rel. on. **A I R 1960 J & K 43 (44) (Pt B) (Prs 7, 9).**

——Art. 226—Grounds of certiorari—Want of jurisdiction and errors apparent on face of record — Distinction between — Proceedings under Minimum Wages Act—Application for amendment filed 2 1/2 years after original petition for claim—Court allowing amendment without satisfying itself as to sufficiency of cause for delay—Error of law apparent on face of record — High Court could interfere and quash it—Minimum Wages Act (1948), S. 20 (2).

Certiorari can be issued not only in cases of want of jurisdiction or illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record. The expression "want of jurisdiction" includes questions of fraud, bias of the members of the Tribunal, breach of any principle of natural justice and matters akin thereto. Errors of fact, though apparent on the face of the record, cannot be corrected. The vital distinction between the two main grounds, namely, want of jurisdiction and error of law apparent on the face of the record, is that where it is said that the tribunal or inferior Court has gone wrong in law while acting within its jurisdiction, the jurisdiction of the High Court is only to interfere if it is seen that the error is apparent on the face of the record, that is, the error is self-evident and it does not require any elaborate examination of the record to discover the error, whereas if certiorari is moved for want of Jurisdiction the High Court is entitled to look at affidavit evidence to see whether or not there was jurisdiction. When there is a speaking order by the Tribunal or the inferior Court and reasons which led to its decision are given the High Court will consider the question whether the reasons given are right in law, and if they are wrong in law, will quash the decision.

In the proceedings under Minimum Wages Act, an application for amendment was filed about 2 1/2 years after the filing of the original claim petition. Though the Court had jurisdiction to entertain the application for amendment under S. 20 (2) of that Act, the order of the Court allowing the amendment

did not disclose any sufficient cause for the applicant not making the application within time.

Held, that there was an error of law apparent on the face of the record and the High Court could interfere and quash the order. **1962 Ker L T 618 : (1963) 1 Lab L J 196 : ILR (1961) 2 Ker 637.**

——Art. 226 — Jurisdiction of High Court under — Nature and extent of.

The High Court is not to be appellate Court in exercise of the powers under Art. 226, and, if there is no error of law apparent on the face of the record, the decision of the lower tribunal cannot be vacated by writ of certiorari. AIR 1960 S C 1168, Rel. on. **1961 Ker L J 1107 : 1961 Ker L T 792 : I L R (1962) 1 Ker 585.**

——Art. 226—Stage carriage permit — Grant on distinct grounds — Some grounds valid—Order will not be quashed in writ jurisdiction—Motor Vehicles Act (1939), S. 57.

Where the order granting stage carriage permits to an applicant is based on grounds which are distinct and separable and one of them is indisputably valid, the High Court would not be justified in interfering in writ jurisdiction merely because the other ground is opposed to law being a misdirection in law or being a result of assumption of jurisdiction in excess of inhibition of S. 57 (4) of the Motor Vehicles Act It is not every error of law which will be rectified by the High Court in exercise of its jurisdiction under Art. 226 of the Constitution. In order to justify interference in writ jurisdiction the error of law must be apparent on the face of the record and must have directly led to the result or caused it. If the result can be justified as a distinct ground, it would be proper for the High Court to point out and correct the error of law in its judgment for the guidance of the statutory body but it will not be proper to make that a basis for interference by quashing the order. **(1964) 1 Mad L J 131 : AIR 1964 Mad 465 (466, 468) (Prs 2, 3, 9) (DB).**

■ **——Art. 226—Writ cannot be availed of to interfere with errors of facts simpliciter.**

Per Ramchandra Iyer, C. J. and Jagadisan, J.:—A writ would lie to set right errors of law, manifest on the record, and to correct errors of jurisdiction to keep the subordinate tribunals within the bounds of the authority. It cannot be availed of to interfere with errors of fact simpliciter. However wide the language of the constitutional provision, the controlling or supervisory jurisdiction in Art 226 or Art. 227 is not species of appellate power. The High Court would not go into the question whether the variation of a route was properly granted or not by the Transport Authority having regard to the interests of the public. S. V. Natesa Mudaliar, Proprietor, S. I. N. S. Transports, Kancheepuram, v. Sri Dhanapal Bus Service Private, Ltd., Kancheepuram, **ILR (1964) 1 Mad 288: (1964) 2 Mad L J 23 : AIR 1964 Mad 136 (139) (Pt A) (Pr 3) (FB).**

——Art. 226 — Power to issue writ of certiorari—Error on face of record.

A writ of certiorari lies not merely when a Tribunal acts in excess of jurisdiction but also when the Tribunal commits an error of law patent on the face of the record ; in other words, the High Court is able by virtue of the writ to see that the inferior tribunals keep within their jurisdiction and also to see that the inferior tribunals observe the law in the course of exercise of that jurisdiction. AIR 1954 Pat 238, Ref. **AIR 1955 Manipur 30 (37) (Pt F) (Pr 23).**

——Art. 226—Certiorari — When can be granted — Error apparent on the face of the record.

Where it can be shown that an inferior tribunal has come to its decision by taking into account matters which it ought never to have taken in account and are virtually extraneous to what they have to decide, that is a ground for granting certiorari. AIR 1959 Cal 1, Rel. on ; (1952) 2 All E R 4; AIR 1957 S C 232, Dist.; (1940) 4 All E R 132, Applied.

In the present case which arises out of a proceedings under S. 398 of the Orissa Municipal Act 1950, the subsequent report of the Municipal Engineer, which was outside the records of the case, clearly appears to have operated on the mind of the Revenue Divisional Commissioner, who remanded the case for fresh decision, without giving the persons concerned an opportunity for explanation as required by S. 398 (2) and hence the order offended against principles of natural justice.

The Municipal Engineer's report undoubtedly contained evidence both as to measurement and other essential facts for determination of the issue before the Municipal authority. It was not a mere expression of opinion. Consequently the Commissioner erred in relying upon the same without giving the persons concerned an opportunity of being heard regarding the same and the order passed by him was clearly beyond the extent of his powers in view of the express provisions of S. 398 (2) of the Orissa Municipal Act. There was thus an error apparent on the face of the record and hence the order must be set aside. **(1963) 5 Orissa J D 97.**

——Art. 226—Jurisdiction under, is limited to errors of law apparent on face of record. 1965 B L J R 947.

——Art. 226—Error apparent on face of record.

What is an error apparent on the face of the record is a question that has to be decided on the facts of each case. An error in the decision may be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceeding, e. g., when it is based on clear ignorance or disregard of the provisions of law. AIR 1955 S C 233 Foll.

Where the Additional Commissioner ignored the provisions of Bihar Act (3 of 1947) in determining the nature of the tenancy.

Held, that the error of the Additional Commissioner was so manifest and clear that it was an error which spoke for itself and was, therefore, amenable to a writ of certiorari. AIR 1955 Pat 498, Rel. on. **1956 Pat L R 136 : 1956 B L J R 706 : I L R 35 Pat 396 : A I R 1956 Pat 305 (308) (Pt B) (Prs 14, 15) (DB).**

——Art. 226—Error apparent on face of record—Interference by writ.

The High Court does not sit in appeal against the decision of the inferior Court or Tribunal while dealing with the matter on an application for issue of a writ under Art. 226 of the Constitution and a decision wrong either in fact or in law will not ordinarily be interfered with by the High Court on such application. Different consideration may, however, arise where the decision is wrong on the very face of it, that is to say, where the order sought to be quashed is a speaking order. An error in the decision or determination itself may be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceeding. **ILR 35 Pat 292 ; (1958) 1 Lab L J 84 : 1956 B L J R 270 : (1956-57) 10 F J R 255 : AIR 1956 Pat 294 (299) (Pt F) (Pr 13) (DB).**

——Art. 226 — Writ of certiorari — Nature and scope of.

A writ of certiorari is a remedy of a very special character. The doctrine of certiorari is that the High Court exercises control over inferior tribunals by issue of writ. The control is exercised by means of a power to quash the determination of the tribunal which on the face of it contravenes the law.

The scope of a writ of certiorari is very wide. A writ of certiorari lies not merely when the tribunal acts in excess of jurisdiction but also when the tribunal commits an error of law patent on the face of the record; in other words, the High Court is able by virtue of the Writ to see that the inferior tribunals keep within their jurisdiction and also to see that the inferior tribunals observe the law in the course of exercise of that jurisdiction. A writ in the nature of certiorari under Art. 226 could therefore be granted for an error of law apparent on the face of the decision of an inferior tribunal. (1922) 2 A C 128 and (1951) 1 K B 711, Rel. on. **1954 B L J R 148 : AIR 1954 Pat 238 (240) (Pt B) (Prs 6, 7) (DB).**

—Art. 226—Error apparent on face of record—Error of fact and error of law.

The very words 'an error apparent on the face of record' clearly show that the error must be such which can be detected or noticed without much difficulty.

An error of fact apparent on the face of record would not justify interference by the High Court under Art. 226 : AIR 1958 S C 398, Rel. on. A finding based on no evidence or in disregard of evidence or on inadmissible evidence or on assumption of facts without enquiry is an error of law. Similarly, a refusal to draw any inference from proved facts one way or the other or the drawing of an inference which cannot be drawn from, and is not warranted by the facts, is an error of law **63 Pun L R 327 : AIR 1961 Punj 275 (277, 278) (Pt D) (Prs 9, 10, 11) (DB).**

—Art. 226 — Apparent error of law — Industrial tribunal — Decision on question whether strike was justified—It is not a mere question of fact but a mixed question of law and fact—If there is apparent error of law in judgment of Industrial Tribunal, High Court will interfere—(Industrial Disputes Act (1947), Ss. 22, 24). **(1958-59) 15 F J R 96 : 1958-2 Lab L J 628 : I L R (1958) 8 Raj 866 : AIR 1958 Raj 202 (Pt A) (Pr 7) (DB).**

—Art. 226—Writ of certiorari—Error apparent on the face of the record — Phrase explained — (Motor Vehicles Act (1939), S. 64).

The error of law envisaged should be so patent that a bare perusal of the judgment and the record on which it is based would show that there was error. Where two views are however possible or where the decision as to whether there is error of law can only be arrived at after long arguments such error cannot be called error of law apparent on the record. Only those errors of law, which are patent on the face of the record can form the basis of interference in certiorari. AIR 1952 Bom 235 and AIR 1953 Bom 133, Rel. on.

Inconsistency in the argument of the Appellate Authority constituted under the Motor Vehicles Act with respect to various points which it decided cannot be called an error of law apparent on the face of the record. **I L R (1952) 3 Raj 931 : 1954 Raj L W 649 : AIR 1955 Raj 19 (24 to 26) (Pt E) (Prs 13, 16) (DB).**

139 (a). Mere error, no ground for interference.

—Art. 226 — Error of law apparent on face of record.

One of the grounds on which the jurisdiction of the High Court on certiorari may be involved, is an error of law apparent on the face of the record and not every error either of law or fact, which can be corrected by a superior Court, in exercise of its statutory powers as a Court of appeal or revision. Nagenda Nath Bora v. Commissioner of Hills Division and Appeals, Assam, **38 Mys L J 389 : (1958) SCA 572 : 1958 SCJ 798 : 1958 SCR 1240 : AIR 1958 S C 393 (412, 413) (Pt E) (Prs 24, 25, 26, 27, 28).**

—Art. 226—Certiorari—Writ of—Conditions for issue of writ — Mere wrong decision is no ground —Administration of Evacuee Property Act (1950), S. 24.

A writ of certiorari cannot be granted to quash the decision of an inferior Court within its jurisdiction on the ground that the decision is wrong. It must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Once it is held that the Court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a Court has jurisdiction to decide rightly as well as wrongly. The Custodian General has been constituted an appellate Court under S. 24 of the Administration of Evacuee Property Act in words of the widest amplitude and the Legislature has not limited his jurisdiction by providing that such exercise will depend on the existence of any particular state of facts. Ordinarily, a Court of appeal has inherent jurisdiction to determine any points raised before it in the nature of preliminary issues by the parties. Thus whether an appeal is competent, whether a party has locus standi to prefer it, whether the appeal in substance is from one or another order and whether it has been preferred in proper form and within the time prescribed are all matters for the decision of the appellate Court so constituted. Even if it decides these questions wrongly a writ cannot be issued against it for quashing the order. (1888) 21 Q B D 313, Applied. Ebrahim Aboobakar v. Custodian General of Evacuee Property, New Delhi, **1952 SCR 696 : 90 Cal L J 133 : (1952) SCA 501 : ILR (1953) Punj 17 : 1952 SCJ 483 : 1952 Mad WN 502 : AIR 1952 S C 319 (322, 323) (Pt B) (Pr 14).**

—Art. 226 — U. P. Industrial Disputes Act (20 of 1947)—Petitioner challenging power of State Government to withdraw a reference and to make fresh reference — Same objection was rejected by Labour Court holding view that S. 6-G of U. P. Industrial Disputes Act (1947), empowers Government to do so —Petitioner neither challenging that decision nor alleging that the withdrawal and references were not as contemplated by S. 6-G of U. P. Act — Determination of objection involves not merely pure question of law but also question of fact — Petitioner cannot be permitted to challenge action of Government—Petitioner also failed, on material on record, to show any error of law apparent on face of award holding State Government competent to withdraw and make reference : AIR 1958 S C 1018, Distinguished. (1964) 1 Lab L J 601 : (1964) 8 Fac L R 256 (All).

—Art. 226—Error on face of record—What is not.

Where on a question agitated in the writ proceedings two opinions are possible or the conclusion can be arrived at by a long and involved process of reasoning it cannot amount to a self-evident error or an error patent on the record. **(1963) 2 ITJ 107 (All).**

—Art. 226—Error on the face of record.

Certiorari will not issue to correct a mere error of law or fact. The distinction between a mere error and an error apparent on the face of the record has not been defined, but the decision must be left to be determined judicially on the facts of each case : AIR 1955 S C 233 and AIR 1956 All 603, Foll. **AIR 1959 All 440 (450, 451) (Pt G) (Pr 31).**

—Art. 226 — Certiorari — When issued—Want of jurisdiction—Not necessary.

A writ of certiorari not only lies in cases where there is want of jurisdiction or excess of jurisdiction

but even on the ground that the order passed by a subordinate Court is erroneous on the face of it. AIR 1955 S C 233, Rel. on. AIR 1956 All 89 (92) (Pt C) (Pr 8).

——Art. 226—Certiorari.

An incorrect decision of a Court on a controversial point of law which is within its competence to decide cannot be said to be an error of law apparent on the face of the record. An error even if it is found to be such after argument as to the incorrect application of any law or as to its incorrect interpretation is not the type of error, apparent on the face of the record which can be considered a ground for exercising the powers of issuing a writ of certiorari. 1954 All L J 152 : 1954 All W R (H C) 256 : AIR 1954 All 454 (454) (Pt A) (Pr 1).

——Art. 226 — Writ against Election Tribunal — Findings of fact arrived at by Election Tribunal—Cannot be challenged by petitioner — Writ of certiorari can only be issued to correct error of law patent on face of record. (1961) 2 Andh W R 124 : 1961 Andh L T 636 : ILR (1962) Andh Pra 292 : AIR 1962 Andh Pra 113 (119, 120) (Pt C) (Pr 17) (DB).

——Art. 226 — Writ of certiorari when should be issued.

It is now well settled that a writ of certiorari should be issued only to correct an error of law which is apparent on the face of the record. Even if a Tribunal commits an error of law, that cannot be a ground for interference under Art 226, unless it is one which appears on the face of the record. (1960) 2 Lab L J 470 (Andh Pra).

——Art. 226 — Writ of certiorari—Error on face of record.

In order that an error of law may form a ground for correction by the High Court, such error must manifest on the record But with regard to errors of fact it is now settled that it cannot form a ground for interference. (1959) 1 Lab L J 235 (Andh Pra).

——Art. 226—Certiorari—Error on face of record—Meaning.

The jurisdiction of the High Court may be invoked only if it is an error of law apparent on the face of the record. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inferences, there is no case for the exercise of jurisdiction under Art. 226 of the Constitution. (1961) 43 I T R 562 : ILR (1960) 12 Assam 104 : (1960) 1 Assam L R 35 : AIR 1960 Assam 162 (166) (Pt B) (Pr 9) (DB).

——Arts. 226 and 227— Interference with question of fact —Error apparent on face of record.

The High Court will not concern itself under Art. 226 with questions of fact decided by any tribunal subordinate to it. But where there is an apparant error of law on the face of the record it can be corrected by a writ of certiorari AIR 1954 S C 440, Rel. on. ILR (1955) 7 Assam 71 : AIR 1955 Assam 148 (151, 152) (Pt B) (Pr 12) (DB).

——Art 226—Certiorari —Industrial Dispute relating to interpretation of a previous award- Preveous award capable of two interpretations—Tribunal giving effect to one of the interpretations in its own award, rejecting other —Held, that it cannot be said to have committed an error apparent on the face of the record, which was liable to be cured by a writ of certiorari. (1963) 7 Fac L R 52 : (1964) 1 Lab L J 139 (Cal).

——Art. 226—Finding of fact —Industrial dispute—Jurisdictional fact — Interference.

The finding of the Industrial Tribunal that all workmen working in a particular place are the workmen of the company, one of the disputants to the dispute is a finding of fact. The High Court has no power under Art. 226 of the Constitution to quash by a writ of certiorari an error of fact even though the error may be apparent on the face of the record. In the exercise of its supervisory jurisdiction, the High Court cannot convert itself into a Court of appeal. AIR 1958 S C 398 ; AIR 1957 SC 804 ; AIR 1955 S C 233, Rel. on. The remedy of certiorari is not designed to raise issues of fact to be determined de novo by the superior Court. The Court will interfere if there is no evidence to support the decision. AIR 1957 S C 264 ; (1951) 1 All E R 482, Rel. on ; AIR 1958 Cal 278, Disting. (1960) 2 Lab L J 189 ; (1960) 1 Fac L R 384 : ILR (1961) 2 Cal 35 : (1960.61) 18 F J R 412 : 64 Cal W N 950 : AIR 1961 Cal 315 (319, 320, 321) (Pt E) (Prs 21, 24, 27) (DB).

——Art. 226—Error—When ground for interference.

Simply because there is an error in the award of an Industrial Tribunal, that is not sufficient for asking for relief by way of a writ petition. There must be an error apparent on the face of the proceedings. 62 Cal W N 248 : (1958) 2 Lab L J 198 : (1958) 14 F J R 145 : AIR 1958 Cal 208 (213) (Pt G) (Pr 17).

[Overruled on another point in AIR 1958 S C 1018].

——Art. 226—Judicial or quasi-judicial order—Settlement of Government khas land —Order of collector set aside by Board of revenue—Jurisdiction of Board —Extent of —Interference under Art. 226— (Bengal Land Revenue Regulation (Reg, II of 1793), Rr. 36, 39).

The Bengal Land Revenue Regulation of 1793 has undoubtedly statutory force and the rules in the Regulation clearly establish that the Members of the Board of Revenue have the power of superintendence in matters of settlement of lands.

Where, therefore, a member of the Board of Revenue, in exercise of the power of superintendence, sets aside an order of a collector making a settlement of Government khas land in favour of certain person, he has absolute jurisdiction in the matter and the fact that he has come to an erroneous conclusion, will not justify the High Court in interfering with it under Art. 226 of the Constitution. If it could be said that in making that order he had committed any error of law which was apparent on the face of the record, then it might be that a writ of certiorari would lie to quash such an order, as he was exercising judicial or quasi judicial functions. ('57) 61 Cal W N 301.

——Arts. 226 and 227—Jurisdiction of High Court—Interference with finding of fact — (Criminal P. C. (1898), S. 145).

The question whether a particular document is genuine or not is a pure question of fact and a finding arrived at on that question which is necessary for deciding a proceeding under S. 145, Criminal P. C. can be challenged only in a separate suit as provided by S. 145. The extraordinary jurisdiction of the High Court is not to be exercised for interfering with findings of fact.

Held, that as the tribunal has acted within its jurisdiction and there were no errors apparent on the face of the record it was not fit case for interference under Art. 226 or 227 of the Constitution AIR 1958 S C 398 Foll 1958 Ker L J 1195 : 1958 Ker L T 1067 : 1958 Mad L J (Cr) 985 : ILR (1959) Ker 70 : 1959 Cri L J 1082 : AIR 1959 Ker 275 (276) (Pt A) (Pr 4) (DB).

——Art. 226—Error apparent on record.

A decision of the lower tribunal may be a right decision or a wrong decision on facts. But in writ proceedings under Art. 226, the High Court is not sitting as an appellate authority reviewing the factual considerations that may have weighed with that officer in coming to the particular factual conclusion. The Court has only to see whether the order evidences any error apparent on the face of the record or is one passed without jurisdiction. It is a patent error which can be corrected by a certiorari but not a mere wrong decision. A I R 1954 S C 440, Rel. on. **1958 Ker L J 198: 1958 Ker L T 130 : ILR (1958) Ker 319 : A I R 1958 Ker 357 (366) (Pt C) (Prs 64, 65) (DB).**

——Arts. 226 and 227 – Powers of High Court — Error on face of record — High Court when will or will not interfere.

The High Court in exercise of its jurisdiction under Article 226 or 227 will not interfere with findings of fact even though they might have proceeded on erroneous appreciation of oral or documentary evidence or inferences drawn therefrom. It will also not interfere with what might be called mere formal or technical errors of law. However it will interfere with the decision of an inferior tribunal if, in reaching it, it has exceeded its jurisdiction or has failed to proceed in accordance with the essential requirement of law which it is called upon to administer and that such an error has gone to the root of the matter. **1962 M P L J 123 : 1962 Jab L J 380: ILR (1961) Madh Pra 947 : AIR 1962 Madh Pra 12 (15) (Pt B) (Pr 20) (DB).**

——Art. 226—Certiorari — Writ issued only in cases of grave error and not to correct errors of faet or mere technical errors.

Held, that a writ of certiorari might not be issued to correct errors of fact or mere formal or technical errors even though of law. It might be issued only in grave cases where the error of law was apparent on the face of the record and had resulted in manifest injustice. There would be no case for exercise of the jurisdiction under Art. 226, if the errors were merely errors in appreciating documentary evidence or affidavits or errors in drawing inference or omission to draw inferences. A I R 1952 S C 192; AIR 1956 S C 463 and AIR 1958 S C 398 and AIR 1960 S C 1168, Rel. on ; A I R 1957 Cal 638 (642), Foll. **1962 M P L J (Notes) 106.**

——Art. 226—Certiorari—Issue of — Grounds — No error of law —No writ issued — (Madras Shops and Establishments Act (36 of 1947), Ss. 51, 4 (1) (a).

Whether a person is in a position of management or not is mostly a question of fact, Even if it is a mixed question of law and fact it would be more a question of fact than a question of law. A person employed may be in a position of management. But on such a question the Commissioner of Labour and the Additional Commissioner for Workmen's Compensation are entitled to come to their own findings and merely because the view of the High Court happens to differ from theirs, High Court would not be justified in quashing their orders. Further, if there is no error of law in their decision, and the most that can be said is that the lower Tribunals have taken a view of the facts different from that which the High Court is disposed to take, that will not justify interference. **(1959) 2 Lab L J 771 : A I R 1960 Mad 288 (293, 294) (Pt D) (Prs 24, 26).**

[Reversed on another point in AIR 1960 Mad 425.]

——Art 226— Error apparent on face of record — Tribunal taking one of two possible views – (Tenancy Laws —Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 34 (2A) (1)).

The mere fact that two views are possible on a question of law does not make the decision of a Tribunal with jurisdiction bad on the face of the record. Only that error will be corrected by the High Court which is clearly apparent on the face of the record and which does not become apparent only by a process of examination or argument. Where, therefore it cannot be said that S. 34 (2A) Cl. (1). Bombay Tenancy and Agricultural Lands Act, 1948, is not capable of being understood in the manner in which it has been understood by the Board of Revenue, it cannot be said that the Board of Revenue has committed an error apparent on the face of the record. A I R 1953 Bom 133, Rel. on. (1959) **Mys L J 276 (DB).**

——Arts. 226 and 227 — Error apparent on face of record — Revenue case — Decision erroneous is not ground for interference. A I R 1955 N U C (Nag) 1428 (DB).

——Art. 226—Powers of High Court to issue writs— Formal errors.

It is not every error that calls for correction in writ proceedings. The formal or technical errors, even though of law, will not be sufficient to attract the extraordinary jurisdiction.

Held, that in the matter of the revision under R. 54 of the Mineral Concession Rules of 1960 the Government of India had jurisdiction to decide the matter of priority under S. 11 of the Mines and Minerals (Regulation and Development) Act, 1957 and if an erroneous view was taken of the principles of 'first come, first serve' embodied in that section and in the Mineral Concession Rules, it was not such a patent error which would call for interference of the High Court. A I R 1958 S C 398, Rel. on **67 Pun L R 841 : A I R 1964 Punj 432 (434, 435) (Pt B) (Pr 10).**

——Art 226—Certiorari — Error apparent on face of record—Two views possible in the matter—Order of subordinate Tribunal taking one view cannot be quashed on the ground of error apparent on face of record. AIR 1960 S C 137, Rel. on ILR (1964) 1 Punj 646 : 66 Punj L R 297 : A I R 1964 Punj 105 (109) (Pt B) (Pr 9).

——Art. 226 — Error apparent on face of record. Two views on meaning of "wages" possible — Particular meaning of "wages" taken by tribunal, held did not constitute error on face of record. See Industrial Disputes Act (1947), S. 2 (rr). ('63) 65 Pun L R 593.

——Art. 226—Error of fact.

A mere mistake of fact though apparent on the face of the record can by no means afford a good ground for quashing an order of an inferior tribunal under Art. 226 of the Constitution. A I R 1958 S C 398, Foll.

Held, on the pleadings and documents that the finding of the Custodian General that there was no completed transaction of exchange was a finding of fact of departmental officers. **63 Pun L R 339 : AIR 1961 Punj 366 (367, 368) (Pt A) (Pr 6) (DB).**

——Art. 226—Prayer for writ against Revenue Board on the ground that there was conflict on the point between various High Courts and that therefore the view taken by Revenue Board was wrong — Writ will not be allowed — The error of the Revenue Board cannot be said to be patent one — Where the Board accepts one of the two views, it does not commit any error. 1956 Raj L W 341.

——Art. 226 — Error of law — (Saurashtra Land Reforms Act (25 of 1951), Ss. 3 and 65).

The Revenue Tribunal's view that S. 3 of the Saurashtra Land Reforms Act does not abrogate the

rights acquired under the Gharkhed Ordinance (41 of 1949) is not wholly impossible of acceptance. If the view is erroneous it is merely an error of law and does not amount to a conscious violation of law or a manifest error and the High Court has no jurisdiction to correct it under Art. 226. Case-law discussed. **6 Sau L R 272 : A I R 1953 Sau 195 (196, 197) (Pt A) (Prs 4, 6) (DB).**

——Art. 226 — Error apparent on face of record — Chief Inspector of Factories granting licence to owner of factory and not to lessee thereof — Order, if liable to be quashed — (Factories Act (1948), S. 6 (1) — Rules under — Travancore Cochin Rules, Rr. 4, 5 and 7).

Held, on facts that the reliance by the Chief Inspector in his order on the views of the higher authorities on the law bearing on the matter was not a defect at all and as such the order was not liable to be quashed. A I R 1952 S C 16, Foll. **(1957) 2 Lab L J 501 (Trav.-Co).**

——Art. 226 — Error apparent on face of record — Other remedy open (Cochin Income-tax Act (6 of 1117), (as amended in 1122), Ss. 3 (9), 5 (3) (iii), (vii)) — (Income tax Act (1922), Ss 6 (c), 4 (3) (ii), (vii) - Income Donations and mass stipends).

The High Court will interfere only if the Income-tax Authorities had no jurisdiction to assess the petitioner to income-tax or if they acted illegally in the exercise of their jurisdiction or if there is an error apparent on the face of the record in their orders. The question whether the petitioner has other effective remedy will also be taken into consideration. But the existence of an alternative remedy is not by itself a ground for the High Court to refuse to exercise the jurisdiction vested in it under Art. 226 of the Constitution.

Under the Income tax Act, the Income tax Officer has full jurisdiction to decide whether a person is liable to be assessed to income tax in respect of particular items of receipt. If the decision is wrong the remedy of the party is to appeal to higher authorities Under the Indian Income-tax Act, donations received by a person for putting up a charitable institution and use for that purpose will not be regarded as his income and assessed to income-tax. They are obviously of the nature of gifts and are capital receipts They do not come within the meaning of the word 'income' as understood in the ordinary language. Assuming however that the donations are of the nature of 'income' and not capital receipt, they clearly come within S. 5 (3) (vii) Cochin Income-tax Act, which exempts receipts, which are of a casual and non-recurring nature, from liability to assessment. The mere fact that the receipts have recurred in some years is not sufficient to characterise them as recurring receipts. There must be a claim or right in the assessee to expect its recurrence. A voluntary gift depending entirely upon the goodwill of the donor does not cease to be of a casual and non-recurring nature by reason merely of the fact that the gift is repeated. In no sense can Mass stipend be said to be a donation made to the Monastery. Such donations whether received by religious or charitable institutions or by any other body or individual, were not liable to be taxed under the Cochin Income-tax Act (1117), before it was amended in 1122 and they are not taxable income under the Indian Income-tax Act. The amendment of the Cochin Act in 1122 had not the effect of making donations of this kind taxable income. What was exempted under Cl. (iii) of S. 5 (3) was 'any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.' The Income-tax authorities proceeded on the basis that what was exempted under the clause was voluntary contributions while what was really exempted was "income derived from" voluntary contributions: Donations and Mass stipends will come within the ambit of Cl. (iii) only if they are 'income' derived from voluntary contributions.

Held, that the orders of the Income tax Authorities in this case were the result of an error apparent on the face of the record. They did not decide the one question they were called upon to decide, viz., whether the donations received by the Monastery for the construction of the college and Mass stipends were 'income' at all. Failure to decide this question which went to the very root of the matter was not only an error apparent on the face of the record but also amounted to an illegal exercise of jurisdiction by the Income-tax authorities which by itself was a sufficient ground for interference by the High Court in the exercise of its supervisory jurisdiction. **(1957) 30 I T R 451 : I L R (1956) Trav Co 930 : 1956 Ker L T 665 : A I R 1956 Trav-Co 240 (243, 244, 245, 248, 249, 250, 251, 252, 253) (Prs 6, 9, 13, 14, 25, 26, 29, 30, 32, 33, 35, 36, 37, 38, 39) (DB).**

——Art. 226 — Writ of certiorari — Erroneous decision within jurisdiction.

A decision within jurisdiction, however erroneous it may be, will not be an error apparent on the face of the record so as to attract the jurisdiction of the High Court in certiorari. **1953 Ker L T 310 : A I R 1953 Trav Co 386 (387) (Pt A) (Pr 5).**

139 (b). Error must be apparent from judgment or order.

● **——Art. 226—Writ of certiorari—Issue of—Error apparent on face of record — What is — Statutory provision capable of two constructions — Error not apparent — Question depends on facts and circumstances of each case.**

An error of law which can be corrected by a writ of certiorari must be one which is apparent on the face of the record. Thus where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record.

If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari.

However, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision alleged to have been misconstrued or contravened. Syed Yakoob v. K. S. Radhakrishnan. **(1964) 5 S C R 64 : A I R 1964 S C 477 (480) (Pt C) (Pr 8).**

● **——Art. 226—Certiorari to correct error of law.**

A writ of certiorari can be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be

manifest on the face of the record. (1952) 1 K B 338; AIR 1952 S C 192; AIR 1954 S C 440; Rel. on. Hari Vishnu v. Ahmad Ishaque, 1955 Mad W N 449: (1955) 1 Mad L J (S C) 157 : 1955 S C J 267 : 1955 Andh W R (S C) 157 : 1955 All W R 339 : 1955 S C R 1104 : 1955 Nag L J 1 : 1955 S C A 105 : AIR 1955 S C 233 (244) (Pt J) (Pr 23).

——Art. 226 — Certiorari—Error apparent on face of record — Order passed by Government without jurisdiction—Order resulting in manifest injustice—Error apparent on face of record will be deemed to be in the order—Order can be quashed by issue of writ. AIR 1965 All 436 (438) (Pt B) (Pr 21).

——Art. 226—Certiorari — Error apparent on face of record.

Where the conclusion of the Tribunal is based on an obvious misinterpretation of the relevant statutory provision or if it is expressly based on the reasons which are wrong in law, the High Court is justified in correcting the error by issuing a writ of certiorari. AIR 1964 S C 477, Rel. on. (1965) 11 Fac L R 395 (All).

——Art. 226—Certiorari—Issue of — Error apparent on face of record.

A writ of certiorari will issue to correct an error of law only if it is manifest or apparent on the face of the record. A writ will not issue if it is a mere error of law, and certainly not if the error relates to a finding of fact. AIR 1960 All 304 (313) (Pt G) (Pr 38).

——Art. 226 — Error on face of record—Industrial dispute referred to Adjudicator—Award—Quashing of—(Industrial Disputes Act (1947), S. 15).

A Company engaged workmen after obtaining their signatures on the prescribed forms. Under these special agreements, the employment of these workmen was of a temporary character. They could be discharged without notice. In November and December, 1953, sufficient raw material was not available. So the Company discharged the temporary workers.

Held, (1) that the Company was entitled to discharge the temporary workmen on finding that there was no work for them, since the discharge of the workmen was in accordance with the special agreement, the Adjudicator could not award any compensation to them.

(2) that the mistake committed by the Adjudicator could be seen upon a perusal of his award and the special agreement in the prescribed form. This was an error apparent on the face of the record and, therefore, this was a fit case for quashing the award by issuing a writ in the nature of certiorari. AIR 1959 All 639 (643) (Pt E) (Pr 35).

——Art. 226—Certiorari—Error on face of record.

Where the High Court comes to the conclusion that the decision of the Board of Revenue as regards the retrospective effect of the Explanation added to S. 20, U. P. Zamindari Abolition and Land Reforms Act, by the Amending Act (20 of 1954), is manifestly erroneous, the High Court can interfere with that decision under Art 226 of the Constitution AIR 1955 S C 233; AIR 1955 All 131 and AIR 1955 All 557, Rel. on. 1955 All L J 883 : 1956 All W R (H C) 18 : AIR 1956 All 177 (178) (Pt A) (Pr 3).

——Art. 226—Certiorari — Error on face of record—What is—Interpretation of expression "at the election" in R. 43, under Cantonments Act—(Cantonments Act (1924), S. 31—Rules under—R. 43).

An error cannot be said to be apparent on the face of the record if it is not self-evident and if it required an examination or argument to establish it.

Held, on facts that Election Tribunal did not commit any manifest error in interpreting the words 'candidate at the election' in R. 43 of the Rules under the Cantonments Act as including a candidate whose nomination paper was rejected. AIR 1956 All 89 (92, 94) (Pt D) (Prs 9, 16).

——Art. 226 — Error apparent on face of record — Failure to notice presumption and burden of proof—Effect—Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948) (as amended by Act 27 of 1957), Ss. 2 (7), 9 (7)—Madras Estates Land Act (1 of 1908) (as amended by Act 2 of 1945), S. 3 (2) (d).

Where the decision is vitiated by either lack of jurisdiction or a manifest error of law, it is open to the High Court in exercise of its jurisdiction under Art. 226 of the Constitution to quash the order. A writ of certiorari can therefore be issued to correct an error of law, provided it is one that is manifest and patent on the face of the record. AIR 1954 S C 440; AIR 1955 S C 233; AIR 1957 S C 804, Foll.

Where the Estates Abolition Tribunal, has misapprehended the clear terms of the definition of an estate under S. 3 (2) (d) of the Madras Act (1 of 1908) as amended by Act (2 of 1945) and of S. 2 (7) of the Madras Act (26 of 1948) as amended by Act (27 of 1957) and has also failed to notice the burden of proof resting on the landlord and did not invoke the presumption under S. 9 (7) of Act (26 of 1948), these circumstances constitute an error patent on the face of the record so as to justify interference under Art 226. (1960) 1 Andh W R 229.

——Art. 226 — Writ of certiorari — Error of law apparent on face of record—What is — Inference of fact based on no evidence on record—Amounts to error of law.

The High Court can interfere under Art. 226 in the case of manifest error of law and not with manifest error of fact. Even a finding of fact if based on no evidence will be regarded as an error of law. AIR 1965 Assam 87 (88, 89) (Pt C) (Pr 4) (DB).

——Art. 226 — Error apparent on face of record—Powers of High Court to review decision.

The powers of review enjoyed by the High Court are very limited powers and when a decision is challenged on the ground that there is an error apparent on the face of the record the error contemplated is an error so manifest, so clear, that no Court would permit such an error to remain on the record.

The High Court cannot extend its jurisdiction on a review application. Questions of jurisdiction must not be determined from the point of view of the merits of the particular case which is being argued before a Court. Whether a Court has or has not jurisdiction does not depend upon how strong or how meritorious the case of a party is, and however meritorious the case may be, the High Court is helpless and unable to give him relief because the points sought to be urged are points which cannot be urged on a review application. 60 Bom L R 1354 : ILR (1959) Bom 334 : AIR 1959 Bom 466 (466, 467, 468) (Prs 1, 5).

——Art. 226—Certiorari—Error on face of record—Essentials.

The High Court has power to issue a writ of certiorari against a Tribunal to correct an error apparent on the face of the record. But the error must be so obvious that when attention is invited to it, no elaborate argument is needed to support the contention that the conclusion is erroneous. 59 Bom L R 209 : (1956-57) 12 F J R 251 : (1957) 2 Lab L J 194 : ILR (1958) Bom 8 : AIR 1957 Bom 111 (116) (Pt E) (Pr 12) (DB).

——Art. 226 — Interference by writ — Absence of jurisdiction apparent on face of record.

No tribunal and no officer can confer jurisdiction or authority or competence upon itself or himself by misconstruing a section. If the section has been wrongly construed, it would be a clear case of absence of jurisdiction apparent on the face of the record because the Court has got to look at the section and to decide whether the officer construing the section was in the right or in the wrong. 58 Bom L R 184 : (1956) 29 I T R 856 : ILR (1956 Bom 374 : AIR 1956 Bom 530 (535) (Pt E) (Pr 13) (DB).

[Reversed on another point in AIR 1963 S C 1356].

——Art. 226 – Error apparent on face of record—Two views of law possible.

The mere fact that two views are possible on a question of law does not make the decision of a Tribunal with jurisdiction bad on the ground that it has erred in law and the error is apparent on the face of the record. Only that error will be corrected by the High Court which is clearly apparent on the face of the record and which does not become apparent only by a process of examination or argument. (1952 53) 4 F J R 571 : (1953) 2 Lab L J 178 : 54 Bom L R 922 : ILR (1953) Bom 191 : AIR 1953 Bom 133 (137) (Pt E) (Pr 8) (DB).

——Art. 226—Certiorari—Error of law—If ground—Income-Tax cases—Interference.

Errors of law are considered to be amenable to correction by the writ, if such errors appear on the face of the record. Mistakes in the observance of the law in the course of the exercise of jurisdiction are not outside the scope of a writ of certiorari. Therefore, the mere fact that the Income tax Officer had jurisdiction to deal with the question of the assessee's liability will not by itself exclude the issue of the writ. In order, that an error of law may be corrected by certiorari, it has to be an error apparent on the face of the record. The order, alleged to be vitiated by the error, must be a speaking order, that is to say, an order giving its reasons for the view taken therein and such reasons being manifestly wrong.

Held, that the order in question under S. 18 (7) of the Income-tax Act was a speaking order and that irrespective of the consideration whether there was an error in the finding of the Income-tax Officer or not it could not be said that as a matter of procedure that the writ of certiorari could not be available against it on the ground that it was not a speaking order. ILR (1960) 1 Cal 49 : (1959) 36 I T R 365 : AIR 1959 Cal 131 (139, 140) (Pt E) (Pr 31, 32) (DB).

——Art. 226—Certiorari, writ of — Error on face of record.

An error of law can be corrected if the error is patent on the face of the record. If a point of law is dependent on disputed questions of fact then if the facts are not patent, the error in law cannot be corrected.

Where on the face of the record, it is found that the Income-tax Officer did make an error of law in construing certain provisions of the Income-tax Act, it should be set right by a writ of certiorari. (1956) 30 I T R 525 AIR 1956 Cal 450 (453) (Pt D) (Pr 6).

——Art. 226—Error on face of record—Investigation of facts.

In order to enable the High Court to act under Art. 226 of the Constitution, the error of law must appear on the face of the order. The error must be a patent error, lying on the face of the order and capable of being seen without being shown by a decision.

It is not permissible under Art. 226 of the Constitutions and on an application for a writ to make any investigation and either embark on a discovery of facts for itself or substitute its decision, for that of the authority complained of, even though the point involved may be an error of law; correction or removal of such errors by means of a writ is possible only, if the error appears on the face of the order. Abindra Kumar Maity v. A. K. Mazumdar 60 Cal W N 299 : AIR 1956 Cal 273 (275) (Pt C) (Prs 11, 12) (FB).

——Arts. 226, 227—Certiorari—Error of law—Error apparent on face of record.

Before an error of law can be rectified by an issue of the writ of certiorari, it must be an error which is apparent on the face of the record and self evident. AIR 1960 S C 137, Rel. on ; AIR 1955 S C 233 Disting. AIR 1961 Him Pra 2 (6) (Pt C) (Prs 13, 15, 16).

——Art. 226—Certiorari—Error apparent on face of record—Impugned order set aside.

A finding that a point was proved on the ground that there was an admission is an error apparent on the face of the record when the record only shows a denial of that point by the party who is said to have admitted it. An order based on such a finding must be set aside. ILR (1953) Hyd 116 : AIR 1953 Hyd 56 (57) (Pr 1) (DB).

——Art. 226 — Error apparent on face of record—Errors of the kind which might be corrected by a Court of appeal are not necessarily errors which would be amenable to correction by a writ of certiorari. AIR 1955 S C 233, Foll. AIR 1960 J & K 125 (128) (Pt F) (Pr 13).

——Art. 226—Error of law apparent on face of record—Award of Industrial Tribunal.

Exercise of jurisdiction under Art. 226 is not excluded where an award of the Industrial Tribunal is tainted with error of law apparent on the face of the record. AIR 1953 S C 437, Expl. 1960 Ker L J 798 : 1960 Ker L T 766 : (1960-61) 18 F J R 337 : AIR 1961 Ker 44 (48) (Pt B) (Pr 9) (DB).

——Arts. 226, 227—Certiorari when can be issued—'Error on the face of record'—What is.

A writ of certiorari can be used to correct errors of law which appear on the face of the record even if they do not go to jurisdiction. The error of law, however, must be self-evident. AIR 1961 S C 970; AIR 1955 S C 233, Rel. on. 1963 Jab L J 795.

——Art. 226 — Error of law apparent on face of record — Certiorari can issue. A I R 1958 S C 398, Foll. 1960 M P L J 221 : I L R (1959) Madh Pra 734 : 1960 M P C 180 : 1960 Jab L J 228 : AIR 1960 Madh Pra 217 (220) (Pt A) (Pr 6) (DB).

——Art. 226—Error apparent on face of record — What is, indicated. (1963) Mad L J 76 : 76 Mad L W 278 : 1963 Mad W N 303 : I L R 1963 Mad 752 : AIR 1963 Mad 399 (401) (Pt B) (Pr 9) (DB).

——Art. 226—Error on face of record.

Where a tribunal commits a patent error in respect of propositions of law and its conclusion has been reached on the basis of such erroneous premises which go to the root of the matter the case is one not merely of an erroneous decision but of error on the face of the record which attracts the jurisdiction of the High Court under Art. 226 of the Constitution. 68 Mad L W 783 : (1956) 1 Mad L J 82 : I L R (1956) Mad 867 : AIR 1956 Mad 72 (79) (Pt F) (Pr 23) (DB).

——Art. 226—Order without complying with statutory requirements — Validity – Error of law apparent on face of decisions — Setting aside by High Court. See Assam Land and Revenue Regulation. AIR 1955 Manipur 18.

—— Art. 226—Error apparent on face of record — Order must be quashed. See Industrial Disputes Act (1947), S. 33 (2)(b), Proviso. AIR 1965 Mys 295 (DB).

——Art. 226—Certiorari—(Civil P. C. (1908), S. 9—Special Tribunal).

Erroneous decisions of inferior tribunal—Error apparent on face of record—High Court has jurisdiction to quash order though subject-matter was one which was within jurisdiction of tribunal. AIR 1952 S C 179, Expl. 1953 Nag L J 279 : I L R (1953) Nag 226 : AIR 1953 Nag 148 (150) (Pt A) (Pr 7) (DB).

——Art. 226—Writ—Certiorari—Jurisdiction—Error on face of record is treated as error of jurisdiction.

Errors apparent on the face of the proceedings are always treated as errors of jurisdiction for the purposes of quashing by issuing a writ of certiorari.

Where a tribunal especially created by the statute in question has stated on the face of its order the grounds on which the order had been made and in law those grounds were not such as to warrant the decision arrived at by it, certiorari will issue in the High Court to quash the order. (1951) 1 All E R 268 : M. P. No. 37 of 1950, D/- 3-10-1950 and A I R 1949 Mad 535, Foll. 1951 Nag L J (Notes) 104 : 1951 Nag L J 566 : I L R (1951) Nag 769 : AIR 1952 Nag 4 (6) (Pt B) (Pr 12) (DB).

[Overruled in AIR 1953 Nag 89 (FB).]

——Art. 226—Error apparent on face of record—Other remedy open—Certiorari—(Sales Tax—Orissa Sales Tax Act (14 of 1947), S. 12 (3)).

Errors apparent on the face of the record are always treated as errors of jurisdiction for purposes of quashing and for issuing a writ of certiorari. In such a case the objection that there is another remedy open to the petitioner by way of appeal under the provisions of law cannot stand.

Held, on facts that the assessment was based upon mere guesswork. As the error was apparent on the face of the order it was not necessary for the assessees to go in appeal under the Sales Tax Act before invoking the jurisdiction of the High Court. 24 Cut L T 377 : (1958) 9 S T C 648 : A I R 1959 Orissa 79 (80, 81) (Pr 4a) (DB).

——Art. 226—Error on face of record—Departmental enquiry — Findings based on no evidence may be quashed. See Ibid, Art. 311(2). I L R (1959) Cut 425.

[Reversed in AIR 1963 S C 404.]

——Art. 226—Order erroneous on face of it can be interfered with.

An order which is erroneous on its face because of a misapprehension of the law on the subject is capable of being interfered with by a writ of certiorari. A I R 1952 Nag 4, Rel. on 1952 Nag L J 426 : I L R (1953) Nag 178 : A I R 1953 Nag 16 (17, 18) (Pt B) (Pr 9) (DB).

——Art. 226—Certiorari—Error apparent on face of record—Order of Tribunal passed on conjectures ignoring material evidence—Constitutes error of law apparent on face of record—Order liable to be quashed—Displaced Persons (Claims) Supplementary Act (1954), S. 5 (1) (b). 1963 Cur L J 163 : I L R (1963) 1 Punj 374 : 65 Pun L R 429.

——Art. 226—Certiorari — Error apparent on face of record High Court can interfere. (1962-63) 23 F J R 412 : (1963) 2 Lab L J 29 (Punj).

——Art 226—Certiorari—Issue of writ—Jurisdiction of High Court—Limits.

The jurisdiction of the High Court to issue a writ of certiorari is a limited jurisdiction. The High Court has power to issue such a writ when an error of law is patent on the face of the record. I L R (1951) 1 Raj 815 : 1952 Raj L W 154 : A I R 1952 Raj 162 (163, 164) (Pt A) (Prs 5, 6) (DB).

——Art. 226—Certiorari — Issue of writ — Error patent on face of record—Jaipur Rent Control Order, S. 6 (2).

The High Court can issue a writ of certiorari quashing an order of the Collector under S. 6(2) of the Jaipur Rent Control Order, 1947, where an error is patent on the face of the record. 1952 Raj L W 117 : I L R (1951) 1 Raj 724.

139 (c). Must be an obvious point not requiring elaborate argument.

——Art. 226—Error apparent on face of record.

An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari.

Held, that the alleged error in the judgment of the Bombay Revenue Tribunal, namely, that an order for possession should not be made unless a previous notice required by S. 14 of the Bombay Tenancy and Agricultural Lands Act, 1948, had been given, was not an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari. AIR 1955 S C 233, Rel. on; AIR 1953 Bom 207, Reversed. Satyanarayan Laxminarayan Hegde v Mallikarjun Bhavanappa Tirumale, 1961 Andh L T 1 : 62 Bom L R 146 : (1960) 1 S C R 890 : 1960 S C J 1065 : A I R 1960 S C 137 (141, 142) (Pt A) (Pr 17).

——Art. 226—When does error become apparent on face of record.

When does an error cease to be mere error, and become an error apparent on the face of the record? The test that no error can be said to be apparent on the face of the record if it is not self-evident and if it requires an examination or argument to establish it, may afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one judge as self-evident may not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. AIR 1953 Bom 133, Ref. Hari Vishnu v. Ahmad Ishaque, 1955 Mad W N 449 : (1955) 1 Mad L J (SC) 157 : 1955 S C J 267 : (1955) Andh W R (SC) 157 : 1955 All W R 339 : 1955 S C R 1104 : 1955 Nag L J 1 : 1955 S C A 105 : AIR 1955 S C 233 (244) (Pt K) (Pr 23).

——Art 226—Writ of certiorari—Error on face of record—Charge under R. 4 (1) (b) of U P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947—Failure to discharge duties properly—Tribunal's finding against the delinquent Guilt or innocence of the accused could be established only upon elaborate argument and interpretation of statutory provisions—Tribunal's finding did not suffer from an error apparent on the face of the record—Writ could not issue—Single Judge's decision, Reversed—(U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, R. 4 (1) (b). AIR 1955 S C 233 and AIR 1960 S C 137, Foll. ILR (1963) 1 All 432 (DB).

——Arts. 226 snd 227 — Error apparent on face of record.

Where an alleged error committed by an inferior tribunal is far from self-evident and, it has to be established by lengthy and complicated arguments, such an error cannot be regarded as an error apparent

on the face of the record, and cannot be cured by a writ of certiorari according to the rules governing the powers of a superior Court to issue such a writ. 1961 Nag L J (Notes) 37.

——Art. 226—Error apparent on face of record.

Obiter: No error could be said to appear on the face of the record if it required an examination or argument to establish it. (1956) 2 Lab L J 328 : 60 Cal W N 602 : A I R 1957 Cal 560 (569) (Pt E) (Pr 32) (DB).

——Art. 226—Error apparent on face of record—An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. AIR 1960 S C 137, Foll. A I R 1960 J & K 125 (128) (Pt G) (Pr 14).

——Art. 226—Certiorari—Interference can only be with error apparent on face of record.

Only these errors of law which are patent on the face of the record can form the basis of interference in certiorari. The error of law envisaged should be so patent that a bare perusal of the judgment and the record on which it is based would show that there was an error. Where two views are possible or where the decision as to whether there is an error of law can only be arrived at after long argument, such error cannot be called an error of law apparent on the record. AIR 1952 Bom 235, Rel. on. 1961 Ker L J 669 : 1961 Ker L T 553.

——Art. 226 — Error on face of record—What is—Statement of wrong law — Effect — (Civil P. C. (1908), O. 41, R. 22, S. 141)—(Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 21).

An error of law apparent on the face of the record exists where a tribunal or Court states a proposition of law which is fundamental to the decision of the case and which, on examining it as a proposition of law, one can say is erroneous. If there is a general error in the application of the law, and the chain of reasoning has to be examined to find out the error, then there is not an error on the face of the record.

Where in an appeal by a tenant under Cl. 21 of the C. P. and Berar Rent Control Order, 1949, the Additional Deputy Commissioner stated it as a proposition of law that unless an appeal was filed by the respondents before him, they were not entitled to sustain the order on any ground which had been decided against them before the Rent Controller, it is an erroneous proposition of law, and as it was fundamental to the decision of the appeal before him, it can be described as an error of law apparent on the face of the record. Writ is competent. 1958 M P C 234 : 1958 Jab L J 285 : 1958 M P L J 438 : AIR 1958 Madh Pra 221 (223) (Pt C) (Prs 7, 8, 9) (DB).

——Art. 226—"Error apparent on face of the record."

An error which has to be established by long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. AIR 1961 Manipur 28 (30) (Pt B) (Pr 7).

——Art. 226 — Certiorari—Error of law apparent on face of record — To consider question, court cannot travel outside record of case. (1965) 2 Mys L J 187 (DB).

——Art. 226—Error apparent on face of record.

No error could be said to be apparent on the face of the record if it was not self evident and if it required an examination or argument to establish it. AIR 1953 Bom 133, Foll. 36 Mys L J 97 : (1958) 2 Lab L J 613 : ILR (1957) Mys 388 : A I R 1958 Mys 85 (89) (Pt C) (Pr 24) (DB).

——Art. 226—Mistake or error apparent on face of record must be one of inadvertence and not of judgment—Existence of error apparent on face of record—Review rejected — High Court will interfere in writ jurisdiction. See Civil P. C. (1903), O. 47, R. 1. AIR 1965 Orissa 49.

——Art. 226—Error apparent on face of record cannot be determined with reference to extraneous facts.

The error apparent on the face of the record cannot be determined with reference to new and extrinsic facts transpiring in the writ petition or otherwise. (1965) 1 Lab L J 349 (Orissa).

——Arts. 226, 227 — Scope — Error apparent on the face of the record — Controversy requiring adjudication of facts — Not within the scope of jurisdiction conferred on Courts by Arts 226 and 227 of the Constitution. ILR (1965) 2 Punj 266.

——Art. 226 — Error apparent on the face of the record—Error requiring lengthy and elaborate arguments for its establishment—Not an error apparent on the face of the record so as to justify interference under Art. 226. A I R 1960 S C 137, Foll 65 Pun L R 990 : ILR (1964) 1 Punj 177 : A I R 1964 Punj 138 (141) (Pt B) (Pr 9).

——Art. 226 — Error apparent on face of record—What is.

It is well settled that even if two views can be taken but the view adopted is a possible one, the High Court will not interfere under Art 226 if after long and elaborate arguments it comes to the conclusion that the view which has not been accepted was the correct view, as that will not constitute an error apparent. 65 Pun L R 33 : A I R 1963 Punj 158 (162, 163) (Pt C) (Pr 13).

——Arts. 226 and 227 — Certiorari — Error when apparent on face of record, indicated - Error not apparent on face of record—Interference not desirable —Powers of High Court under Art 227 and Civil P. C. (1908), S. 115, stated (1961-62) 20 F J R 270 : (1961) 2 Lab L J 615 (Punj).

——Art. 226—Certiorari—Error apparent on the face of record—What is indicated—High Court cannot determine such error by examining evidence in the case. A I R 1958 S C 298; A I R 1952 Bom 235; A I R 1955 Raj 19, Rel on. A I R 1953 Raj 84, Dist. 1961 Raj L W 42 : I L R (1960) 10 Raj 1638.

——Art. 226—Error apparent on face of record.

An error of law apparent on the face of the record means that the Court should be able to find out the error without long arguments of a balanced nature on either side. No great citation of authorities should be necessary to discover the error and the Court should be able to say after a careful perusal of the words of the law that there is an error of law in its application. 1958 Raj L W 121 : I L R (1958) 8 Raj 137.

139 (d). Proof.

——Art. 226—Grounds of interference—Duty of applicant.

The Income-tax Officer is entitled to proceed to issue notice for reassessment proceedings under S. 34 (1) (a) of the Income-tax Act in all cases where he believes that the income of the assessee has escaped assessment by reason of failure to disclose truly or fully material facts. When a person applies under

Art. 226 challenging the validity of the notice issued under S. 34 of the Income-tax Act, the burden undertaken by the petitioner must be to prove the total absence of jurisdiction of the Income-tax Officer to proceed under S. 34 of the Act and this absence of jurisdiction must be apparent on the face of the record. For that purpose it is absolutely necessary for the petitioner to prove that the Income-tax Officer did not have any reason to believe that the assessee had failed to disclose fully and truly all material facts, and that accordingly the Income-tax Officer was not entitled to proceed under S. 34 (1) (a). On a mere allegation in the petition that reasons have not been recorded by the Income-tax Officer and that the Commissioner was not satisfied, the Court is not bound to go into the evidence and insist that the Income-tax Officer is bound to produce before it the reasons recorded by him and the Commissioner's satisfaction in respect thereof. (1960) 39 I T R 182 : 62 Bom L R 823 : A I R 1961 Bom 5 (8, 9) (Pt A) (Prs 13, 14, 18).

139 (e). Speaking orders.

——Art. 226 — Error apparent on face of record — Incorrect interpretation of statute — Order passed by Chancellor of University — Writ of certiorari — (Allahabad University Act (3 of 1921), S. 42).

An erroneous interpretation of the provisions of a statute may be considered by the superior Court as an "error apparent on the face of the record." It is the duty of the High Court to finally determine the law of the land. It is for the superior Court to examine the decision of an inferior tribunal and see if the law has been correctly followed by the inferior tribunal. If it finds on the face of the order, which is a speaking order, that it had not observed the law as determined by the superior tribunal inasmuch as it has held contrary to that law, it can quash the order of the inferior tribunal.

Hence, in the case of a decision given by the Chancellor of a University it is open to the High Court to examine the order of the Chancellor which is a "speaking order", to consider the interpretation which he places on the statute and the reasons therefor which he gives and, on finding that he misinterpreted the relevant provisions of the statute, to quash his order in the exercise of its power of certiorari. AIR 1955 S C 233, A I R 1955 S C 425, A I R 1955 All 557, Rel. on. A I R 1956 All 603 (604, 605, 607, 608) (Pt F) Prs 1, 6, 15, 16, 20) (DB).

——Art. 226 — Certiorari — Error on face of record — Power of Superior Court to disturb decision of inferior Court on question of jurisdiction — Board of Revenue erroneously entertaining and allowing revision under S. 275, U. P. Tenancy Act — Decision whether can be quashed by writ of certiorari under Art. 226 — (Tenancy Laws — U. P. Tenancy Act (17 of 1939), S. 275).

The power of the High Court to issue a writ of certiorari is not confined to the grounds where the subordinate Court has acted without jurisdiction or in excess of its jurisdiction but also on the ground that there is an error of law apparent on the face of the record.

If a certain order passed by the subordinate tribunal gives the reasons for the decision, that is to say, it is a speaking order as it is termed by English Courts, then it is open to the High Court, in the exercise of its power under Art. 226 of the Constitution, to scrutinise the reasoning of the subordinate tribunal so far as can be done without going outside the order itself, examine it and if the Court finds that the reasons are manifestly wrong on a question of law and the conclusions arrived at by the Courts below are apparently erroneous, then it is open to the High Court to exercise its jurisdiction under Art. 226 of the Constitution and quash such a decision. AIR 1955 S C 233, Rel. on. AIR 1955 All 131, Ref.

The question whether a matter is to be decided by a subordinate Court as an issue in the case and as such relating only to the exercise of its jurisdiction or it is a matter on which the jurisdiction itself depends and is collateral to the exercise of the jurisdiction is a question which can be determined on the language of the section under which the Court has been constituted or has been given the power to entertain and decide a matter.

Under S. 275, U. P. Tenancy Act the Board of Revenue can only interfere with an order passed by the subordinate Court if the grounds enumerated in Cls. (a) to (c) of the said section exist. It is a conditional jurisdiction exercisable by the Board of Revenue. Any decision by the Board of Revenue as to the existence or non-existence of conditions mentioned in the section is not a decision on any issue in the case which the Board had to decide.

It is a decision with regard to the existence or non-existence of the conditions on which its jurisdiction depended and any decision by the Board, whether explicit or by implication, on this point can be looked into by the High Court in the exercise of its writ jurisdiction and if the Court is of opinion that the Board of Revenue has exceeded its power of interference with the order of the Assistant Collector, on grounds not permissible under S. 275, then such a decision can be interfered with by the High Court. Case-law, Ref. I L R (1955) 2 All 724 : 1955 All L J 570 : 1955 All W R (H C) 494 : A I R 1955 All 557 (560, 561, 562) (Pt B) (Prs 11, 17) (DB).

——Art. 226 — Speaking order — What is — Mere brevity of order — If ground for interference.

Where the main case put forward by the petitioner as to the injustice of holding him vicariously responsible was, as a matter of fact, considered by the Collector and reasons were given for the decision it cannot be said that the order is not a speaking one merely because it is brief. Brevity of the order does not mean that it is necessarily bad any more than prolixity makes for soundness. AIR 1961 Andh Pra 350 (353) (Pt A) (Pr 16).

——Art. 226 — Certiorari — When can issue — Manifest error of law — Assam Excise Rules — Tender for excise shop — Rejection of, for omission to mention certain facts in form — Issue of certiorari — (Assam Excise Rules, R. 205).

Manifest error of law is a ground on which the High Court can issue a writ of certiorari in the exercise of its powers under Art. 226. If on the examination of the order itself which is a speaking order, it appears to the High Court that an erroneous view has been taken by the inferior tribunal on the question of law, High Court will certainly interfere with such an order, in the exercise of its power under Art. 226.

Where the Appellate Authority under the provisions of the Assam Excise Rules rejects a tender holding that an omission to mention some of the facts which could be mentioned under Column 10 is a failure to comply with the mandatory provision, it commits a manifest error of law and its order is liable to be quashed. I L R (1958) 10 Assam 407 : A I R 1959 Assam 64 (64, 65, 66) (Pr 2) (DB).

——Art. 226 — Certiorari — Error of law apparent on face of record — (Houses and Rents — Travancore-Cochin Buildings (Lease and Rent Control) Order (1950), Ss 2 (1) and 4).

An error of law apparent on the face of the record is a sufficient ground for interference under Art. 226.

The record must contain at least the document which initiates the proceedings, the pleadings if any, and the adjudication, but not the evidence, nor the reasons, unless the Tribunal chooses to incorporate them. If the Tribunal does state its reasons, and those reasons are wrong in law, certiorari lies to quash the decision.

Where an order says that a transaction is a lease and not a rent arrangement or that lease cannot come within the purview of the Rent Control Order, the order is vitiated by an error of law apparent on the face of the record and, being a quasi-judicial order, it is subject to correction by a writ of certiorari. 1957 Ker L J 380 : 1957 Ker L T 411 : A I R 1957 Ker 109 (111, 112) (Pt F) (Prs 7, 8, 9, 11).

——Art. 226—Certiorari — Issue of writ — Speaking order.

An order which is a speaking order and erroneous on its face because of a misapprehension of the law on the subject is capable of being interfered with by a writ of certiorari. I L R (1953) Nag 178 : 1952 Nag L J 426 : A I R 1953 Nag 16 (17) (Pt B) (Pr 9) (DB).

——Art. 226 — Certiorari — When to issue — Error apparent on face of record—'Speaking order'—Order of Commissioner under S. 18-B of Bihar Act (3 of 1947)—Interference.

A writ of certiorari lies not merely when the inferior tribunal acts in excess of jurisdiction, but also when the tribunal commits an error of law patent on the face of the record. It is also well settled that what is an error apparent on the face of the record that is what is "speaking order" calling for an interference, is a question that has to be decided on the facts of each case. "Speaking order" is one which, on mere perusal, springs to one's mind as being erroneous and does not require a careful and elaborate argument to establish that there has been an error of law.

Where the Controller as well as the Collector under the Bihar Buildings (Lease, Rent and Eviction) Control Act considered the irregular deposit of the rent with the Collector to the credit of the landlord as amounting to non-payment of rent and they further found that the personal requirement of the house by the landlord had been made out but the Commissioner in revision under S. 18-B of the Act reversed their findings, and came to the conclusion, on the materials on the record that there had been no non-payment of rent and the plea of personal requirement was not bona fide:

Held, that the Commissioner was perfectly entitled in law in coming to his own conclusion and finding on the material before him, and that no manifest error apparent on the face of the record had been shown to call for interference. A I R 1957 Pat 57 (59) (Pr 8) (DB).

——Art. 226—Speaking order—Certiorari when can be granted—Finding as to sub-letting, if conclusive—(Houses and Rents—Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11 (1) (a)).

When a tribunal makes a speaking order and the reasons given in that order in support of the decision are bad in law, certiorari can be granted. But certiorari is only available to quash a decision for error of law if the error appears on the face of the record. (1951) 1 K B 711, Foll.

It is really for the tribunals under the Bihar Buildings (Lease Rent and Eviction) Control Act to determine whether in fact there was subletting or not, and a finding arrived at by those tribunals must be taken as conclusive, unless some defects appear on the face of the record. A I R 1951 S C 115 and (1874) 5 P C 417, Foll. 1956 B L J R 217 : A I R 1955 Pat 516 (517, 518) (Pt A) (Prs 2, 3) (DB).

——Art. 226 — Error apparent on face of record—Certiorari to be granted.

A writ of certiorari can be issued to correct an error of law which is manifest on the face of the record. Certiorari is not a remedy which can be granted only where an inferior tribunal has acted without or in excess of its jurisdiction, but it can also be granted when the decision of the inferior tribunal, where the latter has embodied the reasons for its order, has made a 'speaking order", and those reasons are bad in law. I L R (1959) 9 Raj 821 : 1960 Raj L W 486 : A I R 1960 Raj 25 (41) (Pt G) (Prs 69, 71) (DB).

——Art. 226—Error on face of record—Interference—Power of High Court.

While exercising its jurisdiction under Art. 226 of the Constitution the High Court does not function as a Court of Appeal. It is only when the order of the inferior tribunal or body is a speaking order and there is an error of law on the face of the record that the Superior Court has power to quash it by certiorari writ. A I R 1952 Cal 789, Rel. on. A I R 1956 Tripura 35 (40) (Pt D) (Pr 18).

139 (f). Non-speaking orders.

——Art. 226 — Duty of applicant — Government passing order 'in interests of justice' — High Court will not interfere—(Houses and Rents—U P. Temporary Control of Rent and Eviction Act (3 of 1947), S. 7 (F)).

Where on a representation made by a landlord under S. 7 (F), U. P. Temporary Control of Rent and Eviction Act, the State Government passes an order 'in the interests of justice' the order is a non-speaking order. It is not open to the High Court, in proceedings under Art. 226 and without any further enquiry, to go behind, the language of an inscrutable or non-speaking order. It is for the petitioner, in proceedings under Art. 226, to make out a prima facie case which will enable the Court to ask the respondent to show cause against it. A I R 1959 All 737 (738, 739) (Pr 5).

——Art. 226—Writ of certiorari—Error apparent on face of record — Income-tax Act (1922), S. 41 (1), Proviso — Failure to quote section or set out reasons in order of assessment — This is not error apparent on face of record.

The failure of the Income-tax Officer to indicate the reason for applying the maximum rate of tax is not such an error apparent on the face of the record as to justify an order quashing it by the issue of the writ of certiorari. The contention that there is an error of law apparent on the face of the record, in the failure of the Income tax Officer to quote the provisions of the Income-tax Act and set out the reasons in the order made cannot be accepted. For that can by no means be treated as an error of law apparent on the face of the record. ('65) 69 Cal W N 984.

——Art. 226—Certiorari—Error apparent on the face of the record—Court required to go beyond order of tribunal to determine alleged errors—Errors cannot be held to be apparent on face of record — Sea Customs Act (1878), S. 30.

Where the order of the Assistant Collector of Appraisement was attacked on the ground that provisions of S. 30, Sea Customs Act had not been followed in that no mention was to be found in the order about the wholesale cash price or the trade discount, nor was there any determination as to the wholesale cash price less trade discount for which goods of the like kind and quality are sold or are capable of being sold at the time and place of importation :

Held, that in order to sustain these objections before the High Court the petitioner would have to take the Court to the calculations and computations made by the Assistant Collector of Appraisement which did not appear on the face of the order and, therefore, it could not be said that there was an error on the face of the proceedings. A I R 1961 Cal 195 (198) (Pt D) (Pr 6).

139 (g). Error should not be mere clerical, accidental or formal.

——Art. 226—Error of law or jurisdiction.

The question of adverse possession is a question of law based on facts; and if arrived at erroneously, without proper materials, would render an order or decision void in law. Errors apparent on the face of the proceedings are always treated as errors of jurisdiction for the purpose of quashing by issuing a writ of certiorari. The error apparent should not, however, be a mere accidental or formal error which could be set right by amendment. It must be a substantial error and one which goes to the root of the matter. Where the conclusion which is made the basis of assuming jurisdiction is erroneous and void in law, (there being no material in law to justify the conclusion) the order must be held to be ultra vires and is liable to be quashed by a writ of certiorari. AIR 1949 Mad 535, Rel. on. ILR (1951) Hyd 788 : AIR 1951 Hyd 137 (138) (Pt B) (Pr 4).

139 (b). Error apparent on face of record—Illustrative cases.

■ **——Art. 226—Error of law apparent on the face of the record—Direction under S. 43-A, Motor Vehicles Act—Disobedience — Relevant consideration in the matter of granting stage carriage permit not taken into account under manifest error of law — There is error of law apparent on face of record.** A I R 1959 S C 694 and A I R 1959 S C 896 and Civil Appeal No. 198 of 1962, D/- 17-9-1962 (SC) and Civil Appeal No. 213 of 1960, D/- 10-10-1960 (SC), Disting K. M. Shanmugam, Proprietor, K. M. S. Transport, Madras State v. S. R. V. S. (P.) Ltd., (1964) 1 S C A 428 : (1964) 2 S C J 120 : (1964) 2 Andh W R (SC) 13 : (1964) 2 Mad L J (SC) 13 : (1964) 1 S C R 809 : AIR 1963 S C 1626 (1629, 1630, 1631) (Pt B) (Prs 7, 8, 9).

■ **——Art. 226—Certiorari—Error apparent on face of record—Industrial dispute—Dismissal of employee—Question whether enquiry was held by management before dismissal—Perverse findings by Labour Commissioner and Industrial Court that no enquiry was held—There is error apparent on face of record — Good ground for High Court to correct that error under Art. 226.** Special Civil Appln. No. 59 of 1959, D/- 17-10-1959 (Bom), Reversed. Provincial Transport Service v. State Industrial Court, Nagpur, (1963) 3 S C R 650: (1962) 2 Lab L J 360 : (1962-63) 23 F J R 102: (1962) 5 Fac L R 294: 65 Bom L R 288: (1963) 7 Fac L R 152 : (1963) 2 S C J 412: AIR 1963 SC 114 (117) (Pt C) (Pr 9).

■ **——Art. 226 — Representation of the People Act (1951), S. 100 (2) (c) — Wrong decision of Election Tribunal—Jurisdiction—Error on face of record — AIR 1954 Nag 166, Reversed.:**

In maintaining the election of the successful candidate on the basis of 301 votes which were liable to be rejected under R. 47 (1) (c) the Tribunal commits an error. But this error is not one of jurisdiction. Because the Tribunal has jurisdiction to decide whether on a construction of section 100 (2) (c) it can go into the fact of breach of R. 23, and if it committs an error, it is an error in the exercise of its jurisdiction and not in the assumption thereof. But the error is manifest on the face of the record, and calls for interference in certiorari. AIR 1954 Nag 166, Reversed. Hari Vishnu v. Ahmad Ishaque, 1955 Mad W N 449 : (1955) 1 Mad L J (SC) 157 : 1955 S C J 267 : (1955) Andh W R (SC) 157: 1955 All W R 339 : 1955 S C R 1104: 1955 Nag L J 1 : 1955 S C A 105 : AIR 1955 SC 233 (249) (Pt V) (Pr 38).

——Art. 226—Mistake apparent on face of record — Ejectment suit dismissed on merits—Additional Commissioner in appeal setting aside judgment and sending back case for de novo trial after making landholder party to suit—Further appeal to Board of Revenue summarily rejected—Appellate Courts by not going into merits held committed mistakes apparent on face of record—Tenancy Laws—U. P. Tenancy Act (17 of 1939), S. 180—Civil P. C. (1908), S. 99. 1965 All L J 884.

——Art. 226 — Income-tax Act (1922), S. 34 (1) (a) — Notice by Income-tax Officer under S. 34 (1) (a)— Notice in contravention of principle of law laid in a High Court decision — Held, that there was patent error of law causing failure of justice and hence order could be set aside in writ jurisdiction. AIR 1961 SC 372, Rel. on. **(1965) 1 I T J 114 : (1965) 57 I T R 583 (All).**

——Art. 226—U. P. Consolidation of Holdings Act (5 of 1954), Ss. 38 (2) and 12—Error apparent on face of record—Only one view possible on interpretation of scheme under Act—View preferred by revisional authority untenable in law — There is error apparent on face of record and High Court will quash it—1962 A L J 888, Disting. 1965 All W R (HC) 279 : 1965 All L J 790.

——Art. 226—Error apparent on face of record — Error of law—Finding of fact in the face of contrary evidence in existence — It is error apparent on face of record. A I R 1964 All 228 (229) (Pt A) (Pr 3).

——Art. 226—Patent error of law—U. P. Industrial Disputes Rules (1949), R. 42.

Where there is a patent error of law in the reason given by the Industrial Tribunal while holding R. 42 (1) of the U. P. Industrial Disputes Rules to be mandatory, the reason given being that the word "shall" has been used in the main clause and in the sub-clauses of this rule and further by its wrong interpretation of R. 42, the tribunal has failed to administer the law which it was bound to do, the High Court will interfere under Art. 226 of the Constitution and the fact that the construction presented some difficulty does not make any difference. A I R 1962 Mad 327, Rel. on. (1964) 1 Lab L J 730 : (1964) 8 Fac L R 1 (All).

——Art. 226 — U. P. Large Land Holdings Tax Act (31 of 1957), Ss. 2 (16), 4, Expl. 1 — Scope and applicability of S. 4 — Clubbing of property—Circumstances necessary for — Family Deity, Sarbarkar and guardian of minor Sarbarkar, no family—Constitution of India, Art. 226—'Error apparent on the face of the record.' See U. P. Large Land Holdings Tax Act (31 of 1957), S. 2 (16). **1962 All W R (H C) 57.**

——Art. 226 — Error apparent on face of record—Appeal under S. 35, Central Excises and Salt Act, dismissed by Deputy Collector — No reasonable opportunity given to appellant to challenge order appealed against —Deputy Collector not applying his mind to various pleas raised in grounds of appeal — Order is defective — High Court can under Art. 226 rectify error which is apparent on face of record — Central Excises and Salt Act (1944), S. 35. 1960 Cri L J 867 : AIR 1960 All 402 (404, 405) (Pt B) (Prs 11, 12, 17).

——Art. 226—Finding of fact.

A finding of fact reached on the basis of additional

evidence which ought not to have been admitted would justify interference on the ground that an error of law had been committed. AIR 1951 S C 193, Foll. **AIR 1960 All 304 (317) (Pt J) (Pr 61).**

——Art. 226— Rules under U. P. Municipalities Act, S. 153—Municipal Account Code, R. 132, Item No. 17 — Scope of — Sewing machines when exempt from Octroi duty — Order holding all machines exempt from tax—Error apparent on face of record — Order quashed by writ of certiorari. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 153. **1960 All L J 833.**

——Art. 226—Error on face of record — Representation of the People Act, 1951, S. 117— Rules regarding deposit and Government Treasury Receipts—Duty of Court to look into—Ignorance and disregard of rules is error on face of record — Certiorari can issue — Issue of. See Representation of the People Act (1951), S. 117. **AIR 1960 All 113 (DB).**

——Art. 226 — Certiorari — When can issue—Disregard of provisions of S. 3, Income-tax Act — Error apparent on face of record — Certiorari to quash assessment order—(Income-tax Act (1922), S. 3).

Certiorari will be issued for correcting errors of jurisdiction. Where the Income tax Officer charges tax on the income in the hands of the association after it has been charged in the hands of the individual members of the association, the officer totally disregards the effect of the provisions of S. 3, Income-tax Act, so that he commits a manifest error apparent on the face of the record and certiorari can issue to quash the second assessment. A I R 1953 Punj 55, Disting. A I R 1954 S C 440 and A I R 1955 S C 233, Rel on. ILR (1958) 2 All 805 : (1959) 37 I T R 107 : **AIR 1959 All 456 (459) (Pt E) (Pr 5) (DB).**

——Art. 226 —Error apparent on face of record.

An order which is not in conformity with what is provided in an Act and an order passed on a wrong view of the law as interpreted by the High Court suffer from an apparent error of law and can be interfered with under Art. 226 **I L R (1959) 2 All 403 : 1959 All W R (H C) 691 : 1959 All L J 897.**

——Art. 226—Certiorari — Grounds for issue of writ —Error of law.

A writ or certiorari can issue not only on the ground of jurisdiction but also on the ground of manifest error of law; and a decision based on no evidence can be treated to be a manifest error. If on the face of the record it is apparent that the trial Court has come to a decision on no evidence it will be a manifest error of law amenable to a writ of certiorari by the Court. **ILR (1958) 1 All 577: A I R 1958 All 532 (539) (Pt E) (Pr 15).**

——Art. 226 — Powers of High Court — Power to quash orders—Error of law.

It is true that the High Court in exercise of its powers under Art. 226 of the Constitution does not sit as a Court of appeal but where the decisions of the Appeal Officer and the Commissioner have been arrived at in disregard of the provisions of S. 147 (1) (c), U. P. Municipalities Act and are manifestly erroneous the orders will be quashed under Art. 226. **I L R (1957) 2 All 224 : A I R 1958 All 211 (214) (Pt D) (Pr 16).**

——Art. 226 — Certiorari — Order of Chancellor of University that petitioner was not entitled to be member of Executive Council — Order on face of it erroneous in law. See Allahabad University Act (3 of 1921), S. 42. **AIR 1955 All 131.**

——Art. 226—Error on face of record—Tribunal acting in flagrant disregard of rules of procedure or against principles of natural justice — Error can be corrected by certiorari. AIR 1955 N U C (All) 4170 (DB).

——Art. 226—Error apparent on face of record.

Before S sold his six plots to B a lease was executed in favour of N whose name therefore came to be recorded in khatauni as a tenant in 1942. When B sued to eject N under S. 180, U. P. Tenancy Act and N's second appeal was pending before the Board of Revenue, N applied under Rr. 4 and 5 of the Rules framed under the U. P. Act 1 of 1951. Meanwhile the Board rejected N's second appeal holding that N though recorded as an occupant in the year 1356F, was not correctly so recorded because he was not in possession for seven days in that year from 23-6 1949 to 30-6-1949. It also held that N could not be deemed to have acquired the rights of an Adhivasi under S. 20 and was, therefore, liable to be ejected. On application under Art. 226,

Held that (i) Cls. (b) (i) and (b) (ii) of S. 20 do not require the proof of actual possession in the year 1356F. What they require merely is the entry of a person's name as an occupant in the Khasra or Khatauni of 1356F.

In view of Expl. II and III to S. 20 unless the entry of the year 1356F had been corrected or ordered to be corrected before 1-7-1952, it would be taken to be correct and although an occupant means a person in possession, S. 20 requires not the fact of a person being an occupant but the fact of his being 'recorded' as an occupant.

Hence the right of an Adhivasi had accrued to N and the appeal before the Board of Revenue and the suit itself, in which the appeal was pending, were liable to be stayed under R. 4 and then to be abated under R. 5.

(ii) There was a clear error of law on the face of the judgment of the Board of Revenue, and the order must be quashed, 1955 A L J (Rev) 95, Dissented from. **AIR 1955 N U C (All) 3552 (DB).**

——Art. 226 — Error must be apparent on face of record—Election disputes—Municipal election—Election petition—Application for amendment—Discretion of Tribunal — Refusal to amend on ground that if amendment were not allowed, petition would be dismissed and if allowed it would deprive opposite party of rights accrued to him—There is error of law apparent on face of record—High Court can issue writ of certiorari—(Municipalities—U. P. Municipalities Act (2 of 1916), Ss. 20 and 23). (Civil P. C. (1908) O. 6, R. 17)—Election disputes — Municipal election) (Election). AIR 1955 N U C (All) 3542.

——Art. 226— Madras Village Panchayats Act (10 of 1950), S. 112—Rules for decision of Election Disputes Rr. 11, 12—Scope—Election challenged on ground of corrupt practice — Securing votes through bribery or improper inducement alleged—Offence under S. 171B of I. P. C. — Connection between the offence and the candidate or his agent must be established — Burden of proof — No finding given by the Tribunal about the existence of such connection — Effect—Setting aside of the elections, without such definite finding, is an error apparent on the face of the record —Certiorari issued. See Panchayats—Madras Village Panchayats Act (10 of 1950), S. 112. **(1962) 2 Andh L T 230.**

——Art. 226—Certiorari — Error apparent on face of record — Award of industrial Tribunal dealing separately with different claims—Award vitiated by error on face of record as regards one such matter but not as to others — Award may be set aside partially. (1959) 2 Lab L J 704: AIR 1960 Andh Pra 485 (486) (Pt A) (Pr 3).

—— Art. 226—Certiorari — Error apparent on face of record — Meaning — Award of Industrial Tribunal

holding that no balance for payment of bonus was available — Tribunal enumerating several heads of deductions from gross profit to find out surplus— Principles on which depreciation and rehabilitation are allowed not fully appreciated by Tribunal—Held, there was error apparent on face of record. (1959) 2 Lab L J 704 : A I R 1960 Andh Pra 485 (486, 487) (Pt B) (Pr 6).

——Art. 226 — Civil P. C. (1908), O. 47, R. 1 (1)— "Error apparent on face of record" — Failure to give proper effect to decision cited before Court or Tribunal is error on face of record — Further, if the Tribunal has the necessary jurisdiction and if in the exercise of that jurisdiction it has to decide for itself whether there is such an error as calls for its exercise, then the High Court will not in the exercise of its jurisdiction under Art. 226, which is not that of an appellate Court, decide whether there is such an error or not. See Civil P. C. (1908), O. 47, R. 1 (1). A I R 1960 Andh Pra 17.

——Art. 226—Certiorari—Error apparent on face of record.

Where the labour Appellate Tribunal remands the case to the Industrial Tribunal to decide an issue whether the interim relief should be continued to be paid to the workers either wholly or in part and the Tribunal does not consider the question whether the workers were entitled to the continuance at least of a part of the interim relief, there is an error apparent on the face of record and the writ of certiorari will issue. (1960-2) Lab L J 394 (Andh Pra).

——Arts. 226 and 311—Scope — Rules of procedure relating to disciplinary enquiries of District Board and Municipal employees—Contravention of— What amounts to.

Held, on facts that the petitioner was placed under Grade I. His probation was declared to have been completed satisfactorily and he was also given certain increments. The effect of what is, now alleged to be the re-fixation of seniority is undoubtedly demotion of the petitioner from Grade I to Grade II. The demotion of the petitioner, consequent upon the order, will operate as a 'reduction in rank'. The post he was holding as a teacher in Grade I was a substantive post. The order of the Director as affirmed by the Government is one of a reduction in rank of the petitioner and has been made in contravention of the procedure prescribed. It is an error of law apparent on the face of the record. The writ of certiorari shall be issued. A I R 1959 Mad 1, Disting.; A I R 1958 S C 36, Applied. (1960) 2 Andh W R 218 : (1960) 2 Lab L J 387.

——Art. 226—Error apparent on face of record—Mistaken view of law — (Madras Hereditary Village Offices Act (3 of 1895), S. 10 (5)).

Where the Collector has on a mistaken view of the qualifications necessary for the appointment of a deputy under S. 10 (5) of Madras Act (3 of 1895), refused to uphold the order of appointment made by the Divisional Officer, there is an error apparent on the face of the record and the exercise of the revisional powers by the Collector are not a proper exercise of the jurisdiction vested in him and his order can be quashed by certiorari. 1958 Andh L T 847 : (1951) 2 Andh W R 692.

——Art. 226 — Notification under—Necessary elements —Absence of — Notification was vitiated by an error of law apparent on the face of the record—Minimum Wages Act (1948), S. 4 (1). A I R 1957 Andh Pra 565.

——Art. 226 — Error apparent on face of record — Meaning of — Departmental action—Necessary document not referred to—Effect.

It cannot be defined precisely or exhaustively as to what is an error apparent on the face of the record. Having regard to the element of indefiniteness inherent in its very nature, it must be left to be determined judicially on the facts of each case.

Thus where a grain purchase Tahsildar who was directed to check the stock in a certain mill sent his report without withholding any necessary information from his superior officers and had also suggested therein that an action should be taken against the miller, but this report was not filed in the criminal proceedings against the miller and no reference to it was even made in the judgment of the Tribunal in the departmental action against the Tahsildar.

Held, that the omission was an error apparent on the face of the record which attracted the provisions of Art. 226 vitiating the judgment of Tribunal. A I R 1955 S C 233 and A I R 1953 Bom 133 and A I R 1956 Cal 273, Rel. on. (1957) 2 Lab L J 238 : A I R 1956 Andh 203 (206) (Pt B) (Pr 13).

——Art. 226 — Error on face of record — Election Commissioner ignoring Fundamental Principles of Law — High Court can interfere under Article. A I R 1955 N U C (Andhra) 5846.

——Art. 226—Certiorari—Error on face of record.

Even when there is no error of jurisdiction or of procedure, a certiorari may issue when there is a manifest error on the face of the proceedings, as when the decision is based on clear ignorance or disregard of the provisions of law. But this is subject to the limitation that the Court granting a certiorari acts not in an appellate but only in a supervisory capacity and does not substitute its own views for those of the inferior tribunal. A I R 1955 N U C (Andhra) 3624 (DB).

——Art. 226—Certiorari — Error on face of record — Finding based on no evidence — Held, there was manifest error of law committed in passing that order. A I R 1958 S C 398 and (1922) 2 A C 128, Expl. and Disting.; A I R 1958 All 532 and A I R 1953 All 641 and (1952) 2 All E R 100 (101), Rel. on.

Held, also that the two parts of the order were not severable and so the entire order must be set aside. A I R 1957 S C 628, Applied. 1960 Cri L J 1307 : ILR (1960) 12 Assam 271 : A I R 1960 Assam 150 (158) (Pt B) (Pr 19) (DB).

——Art. 226—Rule is mandatory — Breach of rule — Error apparent on face of record—Writ of certiorari. See Representation of the People Act (1951), S. 100 (2) (c). A I R 1955 Assam 163 (DB).

——Arts. 226 and 227—High Court's power of interference — Application under S. 15, Payment of Wages Act made beyond limitation — Condonation of delay — Authority postponing decision on such question till consideration of claim on merits — Amounts to flagrant disregard of rules of procedure — Patent error of jurisdiction — Order quashed. ILR (1963) Bom 856 : 1963 Mah L J 361 : 65 Bom L R 401 : (1963) 7 Fac L R 156 : (1963) 2 Lab L J 257 : A I R 1964 Bom 89 (93, 94) (Pt B) (Prs 17, 18) (DB).

——Art. 226 — Review under S. 15 (3), M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, I of 1951 — Finding of Reviewing Officer not supported by evidence on record — Error is one apparent on the face of the record—Hence order set aside and case sent back for fresh decision after due inquiry. 1960 Nag L J 282 : 62 Bom L R 617 : ILR (1960) Bom 644.

——Art. 226—Error on face of record—Held, on facts that the order of the Income-tax Commissioner rejecting the plea that the order of the I. T. O. was without jurisdiction was erroneous in law and that it was an error apparent on the face of the record. See

Income-tax Act (1922), S. 18-A (6). (1959) 36 ITR 538 (Bom).

——Art. 226—Error apparent on face of record—Corrupt or illegal practice affecting result of election—Finding not based on evidence—Setting aside election on wrong inference—Effect. See Panchayats—C. P. and Berar Panchayats Act (1 of 1947), S. 144 (2) (ii). 1959 Nag L J (Notes) 67.

——Art. 226—Error apparent on face of record. Agreement of sale of certain survey numbers between A and B on 17-12-1948—A registered sale deed in pursuance of agreement by A in favour of B on 20-4-1949—Sale in contravention of S. 64 (3), Bombay Tenancy and Agricultural Lands Act — Revenue Tribunal holding, on construcition of S. 89 (2) of the Act that the sale was not saved—Held that there was no error apparent on face of record—At most it could he said that there was wrong interpretation put by officer upon S. 89 (2)—But this did not entitle High Court to interfere under Art. 226 or Art. 227. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 64 (3). AIR 1954 Bom 511 (DB).

——Art. 226—Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (1948), Ss. 14 (1) (a) (l) and 29 (2)—Notice of termination of tenancy—Failure of tenant to pay rent—It is not incumbent on landlord to give notice of termination of tenancy—Tribunal trying to import its own idea of what was right and proper and imposing condition on landlord to maintain application under S. 29 which finds no place in the Act — Tribunal was not only in error but order was manifestly wrong in as much as Tribunal acted in conscious violation of the Act. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 14 (1) (a) (l). AIR 1953 Bom 207.

——Art. 226—Industrial Disputes Act (1947), S. 2 (s)—Certiorari — Error apparent on face of record — Tribunal finding that Ss. 25-F and 25-FFF are not applicable to workers concerned without any finding whether they were 'workmen' within S. 2 (a) of Industrial Disputes Act—Error is apparent on face of record—Held, award must be quashed — Industrial Disputes Act (1947), S. 2 (s). (1963) 2 Lab L J 340: (1964) 9 Fac L R 56 (Cal).

——Art. 226—Error apparent on the face of the record—Industrial award—Tribunal misappreciating facts and law — Award can be quashed — Industrial dispute—Award when can be quashed in writ proceedings.

Mere want of appreciation of evidence would not be sufficient to quash the award. There must be an error apparent on the face of the record if it is to be quashed. Where the entire approach of the tribunal has been based on a mis-appreciation of the facts and of the law the award cannot stand. 68 Cal W N 730: (1964) 2 Lab L J 347.

——Art. 226—Certiorari, Writ of—Error apparent on face of record—Administrative Tribunal—Disciplinary procedure—Natural justice—Fair hearing—Bias—Calcutta Dock Labour Board — Disciplinary proceedings against registered dock workers for acts of indiscipline or misconduct—Proof — Termination of service solely on basis of their preventive detention for alleged complicity in riotous and disorderly behaviour is against rules of natural justice and illegal—Dock Workers (Regulation of Employment) Act (1948), S. 4 (1)—Calcutta Dock Workers (Regulation of Employment) Scheme (1956), Cls. 45 (5) and (6)—Natural Justice — Administrative Tribunal.

Held, that, however eminently constituted the Advisory Board might have been, it was an outside authority. The scheme under which the Administrative Body is charged with the duty of giving its decisions on complaints of indiscipline or misconduct, directs a fair hearing to be given which must conform to rules of natural justice. Natural justice dispenses with technicalities but abhors a decision based on suspicion.

Preventive detention alone cannot justify orders of termination of employment. Even an Administrative Body, untrammelled by technical rules of evidence or procedure, cannot be permitted to act entirely on extraneous material provided by the opinion of an outside authority.

The Authorities of the Dock Labour Board proceeded wholly on the footing that the workers' continued detention on the recommendation of the Advisory Board was proof enough of their complicity in charges of violent activity, establishing misconduct or indiscipline on their part. This was an error on the face of the record which would justify interference by a writ of certiorari. A I R 1955 S C 233, Rel. on. A I R 1962 Cal 411 (415, 416, 417) (Pt B) (Prs 23, 24, 26, 27, 29) (DB).

——Arts. 226 and 265—Error apparent on face of record—Assessment of tax made on wrong basis—Writ will issue. (1961) 42 I T R 288 : 65 Cal W N 706 : AIR 1961 Cal 649 (652) (Pt D) (Pr 9).

——Art. 226—Error on face of record — Question of fact—Interference—Decision of lower Court in disregard of well settled principles.

The question as to whether there is sufficient cause or not for condoning the delay under S. 15 (2) of the Payment of Wages Act is a mixed one of fact and law. Whether there was a sufficient cause or not is certainly dependent on facts, but once the facts have been related, the question as to whether they constitute 'sufficient cause' within the second proviso to sub-s. (2) of S. 15 must be a question of law. If the lower Court decides the question in disregard of the above principles its decision is vitiated by errors of law on the face of the record. AIR 1960 S C 260 and A I R 1954 Bom 537, Foll. (1961-62) 20 FJR 380 : (1961) 2 Lab L J 297 : (1961) 3 Fac L R 334 : AIR 1960 Cal 603 (608, 609) (Pt F) (Pr 11).

——Art. 226—Error on face of record — Managerial enquiry by employer into conduct of employees—Reference under S. 10, Industrial Disputes Act — Tribunal approaching case in wrong manner, ignoring principles laid down for the purpose—There is error on face of proceedings—Principles laid down with reference to Ss. 33 and 33-A, Industrial Disputes Act, are applicable to case of reference under S. 10—(Industrial Disputes Act (1 of 1947), Ss. 10, 15, 33 and 33-A)—(Industrial Disputes (Appellate Tribunal) Act (1950), Ss. 22 and 23) (AIR 1959 S C 529, followed). (1960) 1 Fac L R 229 : 64 Cal W N 304 : ILR (1960) 2 Cal 889 : (1960-61) 18 F J R 157 : (1960) 2 Lab L J 175 : AIR 1960 Cal 249 (252, 256, 257) (Pt A) (Prs 7, 21, 22).

——Art. 226—Error apparent on face of record—Refusal to grant permit under Motor Vehicles Act, on extraneous consideration—Order refusing to grant permit quashed by issue of certiorari. See Motor Vehicles Act (1939), S. 47 (1) (a). A I R 1959 Cal 447 (DB).

——Art. 226—Error apparent on face of record—Confiscation of vessel by Collector of Customs under S. 167 (12-A)—Writ of certiorari.

Where the Additional Collector of Customs passed an order of confiscation of a vessel under S. 167 (12-A), Sea Customs Act, and payment of fine in lieu thereof without taking into consideration certain factors such as a knowledge or intention of the owner which were certainly material in imposing the penalty of confiscation, the error is one on the face of the

impugned order, and the High Court will issue a writ of certiorari quashing the order of the Additional Collector of Customs only in respect of the confiscation of the ship and payment of a fine in lieu thereof and direct that the matter may be re-considered in accordance with law. ILR (1960) 1 Cal 182 : 1959 Cri L J 439 : 63 Cal W N 986 : AIR 1959 Cal 237 (243) (Pt D) (Pr 34).

——Art. 226—Error on face of record—Industrial Tribunal erroneously rejecting entire proceedings before enquiring officer—Effect.

Where the Industrial Tribunal as a result of erroneous decision in law that the enquiry held by the General Manager into certain charges against certain workmen was against principles of natural justice, rejects the entire proceedings before the enquiring officer including the charge-sheet and the evidence given before him, the error vitiates the whole award. It is not only an error on the face of the award but it goes to the root of the very substance of the decision. (1959) 1 Lab L J 605 (Cal).

——Art. 226—Error apparent on face of record—Dismissal of workman—Award refusing to reinstate—Order of reinstatement on second reference—Legality—(Industrial Disputes Act (1947), S. 2 (k)).

A discharged workman raised an industrial dispute which was refered to tribunal. The tribunal held that the dismissal was proper and the workman was not entitled to re-instatement. A second reference was made at the instance of the same workman on the allegation that he was not re-employed in spite of an assurance given by the company to re-employ him after the award and that it constituted a fresh dispute. The tribunal ordered his re-instatement on the ground that he was not given an opportunity of defending himself in the previous hearing and was prejudiced.

Held, that the order of reinstatement was bad on the face of the record. When the order of dismissal was upheld by the Industrial Court, the workman could no longer be considered as a workman of the Company. Therefore, such a dispute could not possibly be called an industrial dispute. AIR 1958 Cal 456 (458) (Pt D) (Pr 3).

——Art. 226—Industrial Tribunal—Order of— Manifest error apparent on face of proceedings — Interference. See Industrial Disputes Act (1947), S. 33-A. AIR 1958 Cal 273.

——Art. 226—Certiorari — Error apparent on face of record — Election disputes — Wrong rejection of nomination paper of candidate for election of Municipal corporation — (Municipalities — Hyderabad Municipal Corporation Act (2 of 1956), Ss. 22 (1) (h), 22 (b) (i)).

Where the nomination paper of a candidate for election to the councillorship of Hyderabad Municipal Corporation is rejected by the election authorities on the ground that he had taken on lease malgies belonging to the Municipal Corporation and was thus disqualified under S. 22 (1) (h) of the Hydarabad Municipal Corporation Act (2 of 1956) from being elected as a councillor, the rejection of the nomination paper on the ground on which the order proceeds is clearly wrong, as the case clearly falls within the exceptions given in S. 22 (b) (i) of the Act. The error on which they are based is so patent and manifest that issue of writ is justified. ILR (1956) Hyd 624 : AIR 1957 Hyd 27 (28, 29) (Pt F) (Pr 4) (DB).

——Art. 226—Houses and Rents — Hyderabad Rent Control Order (1353 F), Cl. 8 — Order of eviction based on personal knowledge and without due regard to interests of parties — Writ of certiorari held lay—Error apparent on face of record. See Houses and Rents — Hyderabad Rent Control Order (1353-F), S. 8. AIR 1953 Hyd 66.

——Art. 226—Error apparent on face of record — Allotment by Provincial Rehabilitation Officer — Revision under Cabinet Order No. 578-C of 1954. R. 17 — Cancellation of allotment without hearing allottee is error in law apparent on face of record—J. and K. Land Revenue Act (12 of 1996), S. 15, Proviso. 1963 Kash L J 17 : AIR 1963 J & K 54 (54, 55) (Prs 2, 4).

——Art. 226 — Error apparent on face of record — Election Tribunal misinterpreting challan and provisions of law, commits clear error of law apparent on face of record in exercise of its jurisdiction and by virtue of error it fails to exercise jurisdiction vested in it by law. See Constitution of Jammu and Kashmir, S. 103. AIR 1958 J and K 54 (DB).

——Art. 226—State Transport Appellate Authority basing his decision on applications for grant of permit under S. 47, Motor Vehicles Act on considerations extraneous to matter in issue — This amounts to gross error apparent on face of the record—Certiorari will issue. A I R 1959 Mad 492 and A I R 1956 Madh B 231 and AIR 1956 Cal 490, Relied on. 1960 Ker L T 1058 : 1960 Ker L J 1214 : ILR (1960) Ker 1408 : AIR 1961 Ker 77 (83, 84) (Pt D) (Prs 24, 25, 28) (DB).

——Art. 226—Assessee doing business within municipal area and also outside—Basis for assessment of profession tax—Orders of assessment based on income estimated by Commissioner not supportable—Error apparent on face of record — Order quashed. See Taxation and Finance Rules (1114), S. 18 (2). 1961 Ker L T 127.

——Art. 226—Error of law—Judgment of Appellate Authority under Motor Vehicles Act—Interference—Motor Vehicles Act (1939), S. 13.

The power under Art. 226 is available only on limited grounds. One is error of jurisdiction, i. e., where the authority, whose order is challenged, acts without or in excess of jurisdiction. The next is where the error of law be apparent on the face of the record, and the last is where the order is made in violation of fundamental principles of natural justice.

Held, that the order by the Appellate Tribunal under the Motor Vehicles Act was vitiated not only on the technical grounds of making a judgment that has been reversed, part of the fresh judgment but also on the ground that in disposing of the appeal it had not considered, as it was directed to do afresh by the High Court the entire case of the appellant before it and that case covered both why the permit should not be given to the appellant and why it should be given to the respondent, and the Tribunal in deciding the appeal dealt only with the former, without weighing what part of the earlier order could stand consistently with the conclusions reached in the later. After all a party having the statutory right of appeal was entitled to claim from the authority vested with the appellate jurisdiction a fair and comprehensive adjudication of his grievances and not piece-meal decisions, that were contradictory. Such an approach amounted to substantial error of law which could be corrected in exercise of powers under Art. 226. 1960 Ker L J 1266 : 1960 Ker L T 1243.

——Art. 226 — Error of law — Interference with — Order of Government under Cl. 16 of T. C. Rent Control Order — Disregard of law — Quashing of order — (Houses and Rents — Travancore-Cochin Buildings (Lease and Rent Control) Order (1950), Cl. 16).

The High Court has jurisdiction to interfere with an error of law provided it exhibits a clear ignorance or disregard of law. Thus, where an order of the Government under Cl. 16 of the T. C. Rent Control

Order shows that the interpretation placed upon it by the Government is not warranted by law, the High Court has jurisdiction to quash the order. 1958 Ker L T 710 : 1958 Ker L J 994.

——Art. 226 — Error apparent on face of record — Claim for exemption on basis of succession—Evidence of succession not sufficient—Omission to give relief — Not an error apparent on face of record — Income-tax Act (1922), S. 25 (4) and (5) — Travancore Income-tax Act (23 of 1121), S. 35 (4) and (5). (1958) 33 I T R 111 : 1957 Ker L J 212 : 1957 Ker L T 247 : AIR 1957 Ker 25 (27) (Pr 10) (DB).

——Art. 226—Powers of High Court — Industrial dispute—Interim relief—Prima facie case not made out — Error on face of record — Interference—Certiorari. See Industrial Disputes Act (1947), S. 15. 1957 Ker L J 301.

——Art. 226—Tax levied under repealed Act — Continuance — Held, illegality was apparent on the face of record and therefore the Court should interfere under Art. 226 See General Clauses Act (1897), S. 6 (c). AIR 1954 Kutch 50.

——Art. 226 — Error apparent on face of record — Regional Transport Authority and Appellate Authority under Motor Vehicles Act (1939) — Functions of.

The Regional Transport Authority and the Appellate Authority under the Motor Vehicles Act are administrative bodies exercising quasi-judicial functions in matters of granting permits. They are statutory bodies and have, in considering the questions of granting permits to act according to the provisions of the Motor Vehicles Act. An error on the face of the proceeding has been recognized as one of the grounds for the issue of a writ of certiorari. If a judicial or quasi judicial tribunal acts on material which is not on record or acts on assumption contrary to the facts on record, its order is liable to be set aside by a writ of certiorari. If the Appellate Authority proceeded on the assumption that the facts on record support them, and there is no foundation for this assumption it must be held that in assuming these facts there was an error apparent on the face of the record. AIR 1952 S C 192, Foll. Madh B L R 1956 Civil 253 : 1956 Madh B L J 855 : AIR 1956 Madh B 231 (233) (Pt A) (Prs 18, 19, 20, 21, 24) (DB).

——Art. 226 — Error of law apparent on face of record.

If the taxing authorities have misconstrued the agreements, on the basis of which they made the assessment, then there is clearly an error of law apparent on the face of the record. It is well settled that the question of the legal effect of words and expressions used in a document is a question of law. (1964) 15 STC 554 : 1964 Jab L J 320 : 1964 MPLJ 890.

—— Art. 226 — Error apparent on face of record — (Municipalities—Madhya Bharat Municipalities Act (1 of 1954), S. 208) - Supersession of Municipality—Interference.

Where the order of supersession of a municipality under S. 208, Madhya Bharat Municipalities Act is found based on charges majority of which are unrelated to the Municipal Council and also shows absence of application of its mind to relevant matters referred to in S. 208 of the Act, it should be held that there is an error apparent on the face of the record and the order ought to fall as a whole. 1958 M P C 655 : 1960 M P L J 559 : AIR 1958 Madh Pra 397 (406) (Pt H) (Prs 79, 81) (DB).

——Art. 226—Certiorari—Error apparent on face of record — Absence of employer in conciliation proceedings — Questions still open in petition under Art. 226. (1965-66) 29 F J R 214 : AIR 1966 Mad 87 (88) (Pt B) (Pr 7).

——Art. 226 — Error patent on face of record — Allegation that dispute is individual and backed by union—No finding by Labour Court that case was sponsored by substantial number of workers—Decision of Labour Court is vitiated on that ground—Error is error patent on face of record. See Industrial Disputes Act (1947), S. 2 (k). (1965) 1 Lab L J 95 (Mad).

——Art. 226 — Election petition — Representation to Head Clerk is proper — Dismissal by Election Commissioner held error apparent on face of record and quashed. See Panchayats — Madras Panchayats Act (35 of 1958), S. 178 (2) (ii). (1963) 2 Mad L J 381.

——Art. 226—Sea Customs Act (1878), S. 168—Confiscation of boat—Order passed without taking note of mitigating circumstances such as the factors having a bearing on knowledge or intention of offender in contravening provisions of Act — Defect amounts to an error apparent on the face of record and the High Court has jurisdiction to quash the order on that ground. See Sea Customs Act (1878), S. 168. AIR 1962 Mad 368.

——Art. 226 — Labour Court misconstruing provisions as regards retrenchment and holding termination of services of working journalist to be not retrenchment—It amounts to error of law apparent on face of the record—High Court has jurisdiction to quash the order. See Industrial Disputes Act (1947), S. 2 (oo). AIR 1962 Mad Mad 327 (DB).

——Art. 226—Error apparent on face of record —Order of quasi-judicial tribunal based on irrelevant, extraneous and illegal matter - Quashing of—Order by State Transport Appellate Tribunal based on illegal order by Government—Quashing of.

Held, on facts that (i) the order passed by the Government was bad because though purporting to be one under S. 43-A (2) of the Motor Vehicles Act it compelled a quasi judicial authority like the Regional Transport Authority to dispose of a case in a particular way i. e, it induced the authority to come to a particular decision in a given case. AIR 1959 S C 694, Rel on.

(ii) The order of the State Transport Appellate Tribunal was vitiated by a manifest error of law in that it not only took into account an irrelevant and extraneous matter in coming to a decision but also something which was neither legal nor valid and was liable to be quashed. W. A. No 35 of 1955 (Mad) and AIR 1920 P C 219, Rel. on. Swami Motor Transport (Private) Ltd. v. Raman & Raman (P.), Ltd, (1961) 2 Mad L J 127 : ILR (1961) Mad 110 : AIR 1961 Mad 180 (184, 185) (Pt C) (Prs 9, 12, 13, 14, 15, 17) (FB).

——Art. 226 — Error apparent on face of record — Orders can be quashed by writs of certiorari.

The question whether an employee fell within the ambit of S. 4 (1) (a) of the Madras Shops and Establishments Act 38 of 1947, is a question of law to be decided on proved facts, or at least a question of mixed fact and law. 1958 A C 14, Rel. on.

Where the Commissioner of Labour approaching the question from an erroneous point of view based on a wrong construction of S. 4 (1) (a) held that a certain employee did not fall within the scope of that provision, there is an error manifest on the face of the Labour Commissioner's order and where

as a result of such error, the Addl. Commissioner for Workmen's Compensation entertains an appeal under S. 41 (2) of the Act, the High Court has the power to issue writ or certiorari to quash their orders. AIR 1960 Mad 288. Reversed. 73 Mad L W 410 : (1960) 2 Lab L J 108 : ILR (1960) Mad 573 : 1960 Mad W N 440 : (1960-61) 19 F J R 18 : 1960 M L J (Cr) 824 : (1961) 1 M L J 3 : AIR 1960 Mad 425 (430) (Pt B) (Pr 12) (DB).

[Reversed in AIR 1965 S C 111].

——Art. 226—Executive Orders—Certiorari to quash such orders—Error of law—Effect.

The provisions regarding finality of the decisions of the Executive Officers have always been understood to refer to the proceedings before the officer. Such a provision cannot take away the jurisdictton of the High Court under Art. 226 of the Constitution to quash a decision of the District Forest Officer if it is based on a manifest error of law or the decision has the effect of the officer exercising a jurisdiction which is not vested in him.

If the District Forest Officer conducting the sale of the right to quarry minerals, was of the opinion that the probable amount for which the sale would be concluded is likely to exceed Rs. 1000 then he can insist on the bidder producing sales-tax clearance certificate even at the commencement of the auction. The construction placed by the officer on condition 3 (f) of the sale that even after deposit of the earnest money and at the stage when the bid exceeds the sum of Rs. 1,000 the officer can ask for the sales-tax clearance certificate from the bidders is a manifest error and the decision has to be quashed (1960) 1 M L J 434 : 73 Mad L W 191 : I L R (1960) Mad 500.

——Art. 226 — Madras Estates Land (Reduction of Rent) Act (1947), S. 3 — Burden of proof — Order of the Estate Abolition Tribunal upholding the Notification issued by Government under the Act, by wrongly placing onus quashed as it was a fundamental error on face of record—(Evidence Act (1872), Ss. 101, 104). See Tenancy Laws — Madras Estates Land (Reduction of Rent) Act (30 of 1947), S 3. AIR 1954 Mad 104.

——Art. 226—Error apparent on face or record.

Appeal against award of Industrial Tribunal presented on 25-2-1954 — Before that date another worker dismissed without permission of Appellate Tribunal—Tribunal, holding that there was contravention of S 22 since appeal was pending on the date of dismissal—Decision held was bad for error of jurisdiction apparent on face of record, and liable to be set aside (1957) 1 Mad L J (Cr) 729 : 70 Mad L W 946 : (1957) 2 Lab L J 680 : (1957) 2 Mad L J 557 : 1957 Mad W N 694.

——Art 226 — Certiorari, writ of — Error on face of record — Majority of the Estates Abolition Tribunal decided on no real evidence — Error is one apparent on face of record Error can be rectified in proceedings under Art. 226—(Madras Estates Land Act (1 of 1908), S. 3 (2) (d)). AIR 1955 N U C (Mad) 4333.

——Art 226—Award by Industrial Tribunal — Registered lease deed—Interpretation by reference to antecedent negotiation — Error apparent on face of record. See Transfer of Property Act (1882), S. 8. (1954) 2 M L J 447 : 67 Mad L W 669 : AIR 1954 Mad 1045.

——Art. 226 - Writ of certiorari—Error apparent on face of record—(Madras Hereditary Village Offices Act (3 of 1895), S. 14).

Where the Board of Revenue in an appeal against an order in a suit under S. 14 of the Madras Hereditary Village Offices Act wrongly assumed that S. 5 of the Limitation Act applied and therefore the delay in filing the suit could be excused.

Held, that the judgment of the Board was vitiated by an error apparent on the face of the record and as such was liable to be quashed. (1953) 2 Mad L J 644 : 66 Mad L W 700 : A I R 1953 Mad 972 (973) (Pt B) (Prs 2, 3).

——Art. 226—Error apparent on face of record — Manipur Land Revenue and Land Reforms Act (1960), S. 98 (2) — Application for review long after limitation — Fact of delay not noticed by Court — Held that there was error apparent on face of record. See Manipur Land Revenue and Land Reforms Act, S. 98 (2). AIR 1965 Manipur 3.

——Arts. 226 and 311 (2) — Departmental inquiry—Principles of natural justice sacrificed — Error apparent on face of record — Writ petition—Maintainability.

An order in departmental inquiry in which the principles of natural justice have been sacrificed can be called in question by means of a writ petition. If the petitioner was a Jailor or held the substantive post of Jailor at the time when the departmental inquiry was made, the inquiry should have been made by the Inspector General of Prisons and not by the Chief Commissioner, Manipur and this error was apparent on the face of the record. The dismissal without notice on the wrong assumption of a collateral fact is in violation of Art. 311 (2). A I R 1956 Manipur 34 (39) (Pt H) (Pr 17).

——Art. 226—Mysore Police Manual (Vol. 1), R. 181 (1) and (4)—Mysore Police Act (5 of 1908), S. 27—Supdt. of Police dismissing constable from service after due enquiry—In appeal, Dy. Commissioner setting aside order of dismissal — several months after, Inspector General of Police, purporting to act under R. 181 calling up records of case of constable and after giving him opportunity to make his submissions, setting aside order of Dy. Commissioner and restoring that of Supdt. of Police — I. G. P. neither saying that findings of Dy. Commissioner were unsupported by evidence nor giving any reason for his preference of prosecution evidence to that of defence — I. G. P. appearing to be of view that constable had to prove that he was not guilty and prosecution need not prove that constable was guilty — Held, I. G. P. had lost sight of even elementary principles of jurisprudence in assessing merits of case — That apart neither R. 181 (1) authorised I G. P. to revise order of Dy. Commissioner, who was not his subordinate, nor R. 181 (4) empowered him to reverse order of acquittal into order of conviction—Order of I. G. P. not only suffered from error of law apparent on face of record but same was also without jurisdiction. (1965) 2 Mys L J 319 : (1966) 2 Lab L J 493 (DB).

——Art 226 — Mysore Land Revenue Code (4 of 1888), Ss. 63 (1) and 63 (2) — P constructing building without permission under S. 63 (2) — Dy. Commissioner passing order of eviction of P on ground that building was not farm house and construction was illegal without prior permission under S 63 (2) — Appeal — Divisional Commissioner dismissing appeal on irrelevant grounds—Appeal — Revenue Appellate Tribunal dismissing appeal on ground that (i) P had made no application for permission under S. 63 (2) as contended (ii) building was not farm house and (iii) building should not have been constructed, as land under it was required for public purpose — Petition under Art. 227 challenging legality of order of R. T. A — Held though findings of R. T. A. contained in (i) and (ii) were conclusive, being findings of fact, that would not dispose of case until it was found whether case of P fell under S. 63 (1)—S. 63 (2)

was exception to S. 63 (1) and could be invoked only when S. 63 (1) was not applicable — Burden of proving that construction was illegal was on him who asserted it – S. 63 (1) contemplated not only farm house but also dwelling house for agriculturist and P's case fell in S. 63 (1) as there was prima facie ground to believe that he was agriculturist and building was put up as dwelling house for him — R. T. A was not required to arrive at finding mentioned in (iii) as land was neither notified under S. 4, Land Acquisition Act (1894) nor P was asked to remove construction on that ground — Order of Divl. Commissioner was clear proof of dangers inherent in entrusting executive officers with quasi-judicial powers — Dy. Commissioner had also not correctly understood scope of S. 63 (1) — All three orders therefore suffered from errors of law apparent on face of record and must be quashed. (1965) 2 Mys L J 321 : (1965) 4 Law Rep 86 (DB).

——Art. 226 — Error apparent on the face of record — Motor Vehicles Act (1939), S 47—Grant of permit on basis of previous proceedings — No fresh consideration of necessity of additional permits — Order granting permits contains an error apparent on the face of the record. See Motor Vehicles Act (1939), S. 47. AIR 1964 Mys 288 (DB).

——Art. 226—Certiorari — Error apparent on face of record — Motor Vehicles Act 1939) S. 57 (2) — Application under — Death of applicant — Applicant's wife as legal representative not allowed to prosecute application — There is a clear mistake on the face of the record attributable to an error of law—Refusal of permit on that basis justifies exercise of jurisdiction under Art. 226 1963 Mys L J (Sup) 180 : A I R 1963 Mys 278 (287, 288, 289, 290) (Pt D) (Prs 29, 30) (DB).

——Art. 226—Writ of certiorari—Mistake apparent on face of the record.

Apart from questions of jurisdiction, a writ of certiorari can also be issued where a Tribunal has committed mistakes apparent on the face of the record or committed flagrant violation of law. AIR 1950 S C 222 ; AIR 1951 S C 115 ; AIR 1952 S C 192 ; AIR 1953 S C 58 and AIR 1953 Mys 8, Rel. on.

The Election Tribunal declared the election of the petitioner to be void on the ground that there was an implied contract for the supply of goods between the petitioner and the Government of Mysore at the time when he filed his nomination paper, which disqualified him for membership to the Mysore Legislative Assembly under S. 7 (d), Representation of the People Act. The petitioner applied under Art. 226 for the issue of a writ of certiorari for quashing the proceedings of the Election Tribunal. The admitted facts before the Tribunal were that there was no subsisting contract between the petitioner and the Government of Mysore at the time of filing his nomination paper and that the alleged contract had already come to an end. The Tribunal however considered the question of the existence of an implied contract not alleged in the pleadings and not specifically put into issue and then gave a finding which was dead against the admitted facts The Tribunal inferred an implied contract from the mere fact that the firm of which the petitioner was a partner had supplied certain goods to the Government of Mysore after the filing of the nomination paper.

Held that the order of the Election Tribunal based on the finding that there was an implied contract, was both an error apparent on the face of the record and a flagrant error of law. The consideration of allegations not definitely pleaded and not specifically put into issue and a finding thereon was besides an excessive exercise of jurisdiction. The order of the Election Tribunal had resulted in grave and manifest injustice to the petitioner and therefore the proceedings should be quashed. 34 Mys L J 80 : ILR (1954) Mys 33 : AIR 1954 Mys 111 (113, 114) (Pt B) (Prs 12, 16, 17) (DB).

——Art. 226—Error on face of record.

For a tribunal to proceed on the view that adverse possession asserted by a licensee commenced prior to the death of the licensor is to commit a palpable error of law apparent on the face of the record within the meaning of the decision in AIR 1954 S C 440, Foll. 1956 Nag L J 73 : ILR (1955) Nag 842 : AIR 1956 Nag 11 (12, 15, 16) (Pt D) (Prs 6, 24, 41) (DB).

——Art 226—Error apparent—Writ of certiorari can be issued not only in case of illegal exercise of jurisdiction but also to correct error of law apparent on the record—Where the tribunal completely overlooks the explanation to a provision of law, it is an error on the face of the record. ('63) 29 Cut L T 322.

——Art. 226 — Error on face of record — Industrial Tribunal—Non-compliance with S 25-G, Industrial Disputes Act — (Industrial Disputes Act (1947), S. 25-G).

One of the grounds on which the jurisdiction of the High Court on writ petitions may be invoked is an error of law apparent on the face of record. AIR 1958 S C 398, Foll.

Where an Industrial Tribunal does not proceed in accordance with the essential requirements, of the law as contained in S. 25-G of the Industrial Disputes Act which it is meant to administer and his conclusions are on the face of the record contrary to his findings on facts, his finding with regard to the procedure for retrenchment is palpably wrong on the face of the record and his award is liable to be set aside. ILR (1960) Cut 424 : AIR 1960 Orissa 205 (215, 216) (Pt D) (Prs 22, 23) (DB).

——Art. 226—Error on face of record—Order under S. 3, Orissa Estates Abolition Act (1 of 1952)—On face of record or on admitted facts, property not falling within definition of estate—High Court can quash order—(Tenancy Laws—Orissa Estates Abolition Act (I of 1952), S 3). ILR (1956) Cut 335 : 22 Cut L T 444 : AIR 1956 Orissa 214 (215) (Pt C) (Pr 3) (DB).

——Arts. 226 and 227 — Error apparent on face of record.

Where the Board of Revenue in revision set aside the order passed by the Deputy Commissioner prior to the remand of the case by Excise Commissioner:

Held, that the decision of the Board of Revenue was patently erroneous and illegal inasmuch as it overlooked the fact that the order of Deputy Commissioner passed before the remand had already been set aside and his subsequent order though identical in effect with the earlier order was a fresh order and the Board ought to have considered the validity of this order. 1961 Pat L R 22 : 1961 B L J R 550.

——Art. 226 — 'Error apparent on face of record' — Issue of writ — (Panchayats — Bihar Panchayat Raj Act (7 of 1948), S. 56).

Where the Full Bench of a Gram Panchayat permitted one of the accused himself, who was a panch, to sit on the Full Bench while hearing an appeal from his own conviction :

Held, that it was a flagrant breach of law, e. g., S. 56, Bihar Panchayat Raj Act. The error committed by the Full Bench of the Gram Panchayat was an error apparent on the face of the record and had to be corrected. AIR 1955 S C 233, Foll. 1958 Cri L J 69 : AIR 1958 Pat 7 (7, 8) (Pr 4) (DB).

——Art. 226—Certiorari, writ of—Error apparent on face of record—Writ will issue.

It is now well settled that a writ of certiorari will issue in respect of an error of law which is apparent on the face of the record.

Hence, where the order of the Commissioner dismissing landlord's application under S. 11 (3), Bihar Act (3 of 1947) is based on an erroneous finding of fact which is apparent on the face of the record and is also based on a manifestly wrong interpretation of the expression "his own occupation" in S. 11 (3) (a), the order will be quashed by a writ of certiorari. AIR 1955 S C 233; (1951) 1 K B 711; (1952) 1 K B 338, Rel. on. 1955 B L J R 654 : ILR 34 Pat 876 : AIR 1955 Pat 496 (498, 499) (Pt B) (Prs 7, 10, 11) (DB).

——Art. 226 — Writ of certiorari—Powers of High Court.

Where the Commissioner committed a patent error of law in misconstruing the Keraynama executed by one B in favour of the mortgagee and as a result of this manifest error, the Commissioner reached the finding that there was relationship of landlord and tenant between the parties and he had jurisdiction to pass an order of eviction against the mortgagees a writ in the nature of certiorari should be issued quashing the order of the Commissioner. AIR 1951 Pat 529, Distinguished. 1955 B L J R 55 : AIR 1955 Pat 357 (359, 360) (Pt A) (Prs 11, 13) (DB).

——Art. 226—Certiorari—Error apparent on face of record—Want of jurisdiction—(Tenancy Laws—Bihar Privileged Persons Homestead Tenancy Act (4 of 1948), Ss. 6 (1) and 8).

Application under S. 6 (1) of Bihar Act (4 of 1948) for assessment of fair rent in respect of land pertaining to plots Nos. 1, 2 and 3 — Collector finding plot No. 1 not homestead of applicants and, therefore, outside scope of Act—Applicants being found in possession of plots Nos. 2 and 3 as their homestead, order assessing fair rent in respect of these two plots passed — Meanwhile landlord claiming to be in possession of plot No. 1 obtaining confirmation of possession and also recovery of plots 2 and 3 through decree of civil Court in title suit—Proceedings by applicants under the Act for being restored to possession over the three plots—Order of Collector directing landlord to put applicants in possession of these three plots:

Held, that Collector had committed error apparent on face of record because in passing the order for restoration he had assumed that in passing the previous order for assessment, plot No. 1 was treated as homestead of the applicants. Order for restoration in respect of this plot was, therefore, without jurisdiction and should be quashed by writ in the nature of certiorari. AIR 1954 Pat 334 (336) (Pt B) (Prs 8, 9) (DB).

——Art. 226—Sale of evacuee property confirmed by Custodian — Effect of Ss. 40 and 41 of Act 31 of 1950 as amended in 1953 — Retrospectivity of Act 31 of 1950—Held, High Court could grant a writ of certiorari for quashing the order of the Custodian as he had committed a serious error of law which was apparent on the face of record. See Administration of Evacuee Property Ordinance (27 of 1949), S. 38 (1). **AIR 1954 Pat 238 (DB).**

——Art. 226—Writ petition—Error apparent on face of record—Election to Panchayat Samiti—Returning Officer not permitting correction of clerical error in nomination paper though allowed by rules—Order quashed — Punjab Panchayat Samitis Primary Members (Election), Rules, R. 9(1), Proviso (a). **67 Pun L R 946: AIR 1966 Punj 33 (34) (Pr 4).**

——Arts. 226 and 14—Displaced Persons (Compensation and Rehabilitation) Rules (1955) (as amended in 1960), Rr. 25, 34 B and 34 C — Proceedings under R. 34-B are quasi-judicial—Right of displaced person to acquire by allotment land to which Chapter V-A applies—Necessity to give opportunity to show cause against valuation — Opportunity not given — Orders are vitiated by errors apparent on their face—Natural justice — Civil Writ No. 465-D of 1957, dated 16th December, 1958 (Punj.) and Civil Writ No. 313-D of 1959, dated 28th December, 1960 (Punj.) and Civil Writ No. 118 of 1960, dated 2nd November, 1964 (Punj.), **Overruled**; Civil Writ No. 685 of 1960 dated 25th April, 1961 (Punj.), Foll. **1965 Cur L J 655 : 67 Punj L R 1072 : A I R 1965 Punj 484 (485, 489, 490) (Prs 1, 20, 21, 22, 26) (DB).**

——Art. 226 — Error apparent on the face of the record—Election petition—Refusal of votes alleged—'Materially affected the result of the election'—Finding as to—Basis of — Finding not stating how refusal to vote affected the result — Cannot be sustained — There is error apparent on the face of the record—Finding set aside under powers conferred by Art. 226 of the Constitution. See Panchayats—Punjab Gram Panchayat Act (1953), S. 13-O(1)(d). **1965 Cur L J 772 : 67 Pun L R 1211.**

——Art. 32—Retrospective operation of S. 15(2) of Delhi Land Reforms Act (1954) (as amended)—Collector dismissing appeal in view of S. 15(2) — Revision after coming into force of amendment—Revision Court has power under S. 187 to make such order as it thought fit, or power to review any order made by it—Glaring mistake of law patent on record should be rectified. See Tenancy Laws — Delhi Land Reforms Act (1954), S. 15(2) (as amended by Act 4 of 1959). ('65) 67 Punj L R 612

——Art. 226 — Minimum Wages Act (11 of 1948), Ss. 20, 21 and 2(i) — "Employee" does not include an ex employee — Finding of the Authority under the Act that the application by ex-employees could be maintained under Ss. 20 and 21 is vitiated by an error of law apparent on face of record — Hence must be set aside—Words and Phrases — "Employee". (1965-66) 28 F J R 472 : (1966) 1 Lab L J 674 : I L R (1965) 2 Punj 837 (DB).

——Art. 226 —Punjab Minimum Wages Rules (1950), Rr. 24(1) and 25—Appointed authority allowing overtime charges to employees of Municipal Committee on basis of calculating normal working hours at 8 hours in a day — **Held**, there is an error of law apparent on face of record and hence order must be set aside — Normal working day is of 9 hours under R. 24(1) and not of 8 hours as the case is covered under R. 25(2)—Rule 25(1) has no application as the Committee is not governed by provisions of Factories Act though its employees are in a schedule I employment. (1965-66) 28 F J R 472 : (1966) 1 Lab L J 674 : ILR (1965) 2 Punj 837 (DB).

——Art. 226 Error of law apparent on face of record — East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), Ss. 21 and 42 — Scheme for consolidation providing that any correction of khasra girdawari thereafter would not affect major portion of a right holder — Correction of khasra girdwari by collusion after repartition —Application under S. 42—Order allowing changes on basis of such correction being in contravention of scheme has to be quashed as being erroneous in law and resulting in prejudice. **1965 Cur L J 807 : 68 Pun L R 124.**

——Art. 226 — Application for exchange of land already allotted—No limitation—Application rejected as time barred—Error apparent on face of record. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 19. **1965 Cur L J 817 (Punj) (DB).**

—Art. 226—Error apparent on the face of record—Writ challenging election petition accepted by Prescribed Authority under Gram Panchayat Act—Allegation of impersonation and consequent polling of illegal votes in favour of returned candidate — Evidence—Burden of proof — Burden of proving impersonation on person alleging the same — Prescribed authority adopting incorrect approach in reviewing evidence — There is an error apparent on face of record—Consequently finding arrived at on such illegal approach cannot be sustained. **1965 Cur L J 815 (Punj).**

—Art. 226—Error patent on record—Articles capable of being used as component parts of manure mills and rice mills — Confiscation — There is error patent on record — (Sea Customs Act (1878), S. 19—Imports and Exports Act (1947), S. 3).

Where articles are capable of being used as component parts of manure mills as well as rice mills, if the articles can be used as component parts of manure mills not of the banned type, they can be legitimately imported on the basis of the import licence because it is nowhere laid down that the imported articles should only be capable of being used in the manure mills and not in any other machinery such as rice mills. Where such articles are confiscated, there is an error patent on the record. **1965 Pun L R (Supp) 132.**

—Art. 226—Displaced Persons (Compensation and Rehabilitation) Act (1954), Ss. 19 and 40 — Displaced Persons (Compensation and Rehabilitation) Rules, 1955, R. 102 (d)—Cancellation of erroneous allotment—Power of Managing Officer and Chief Settlement Commissioner—Failure to exercise such power—Constitutes error, apparent on face of record. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 19. **65 Pun L R 59.**

—Art. 226 - Error of law on face of record—Matter involving correct interpretation of R. 7 (g) of Punjab Municipal Election Rules, 1952—Rule not capable of two interpretations—Error of law being apparent on face of record, High Court should interfere. **I L R (1962) 1 Punj 176.**

—Art. 226 — Error apparent on face of record—Industrial disputes—Bonus—Calculation of available surplus for distribution of bonus — Full Bench formula—Duty of Labour Court to apply — Partnership concern — Deduction on account of income-tax must be made irrespective of whether income tax is actually payable or not — Award not indicating any deduction—There is error apparent on face of record. **(1962-63) 22 F J R 179 (Punj).**

—Art. 226—Error of law on the face of the record — Board of Trustees of a newspaper passing resolution appointing committee for enquiry into conduct of employee, to enable them to take disciplinary action against him — Enquiry committee framing charges — —Employee putting in written statements contesting all charges—No objection taken as to the jurisdiction of the committee to enquire on any of the charges, on ground that they were beyond the scope of the resolution of the Trustees—Report submitted to Trustees—Trustees adopting report and terminating services of the employee—Industrial dispute raised — Award of Industrial Tribunal in favour of employee — Writ petition by Board of Trustees—Employee cannot raise the contention that the Enquiry Committee appointed by Board of Trustees acted beyond the scope of resolution appointing it by enquiring into some of the charges — Industrial Tribunal held committed serious mistake of law in grossly misreading the resolution of the Board of Trustees and holding that the Enquiry Committee had no power to enquire into certain charges. **I L R (1961) 2 Punj 704 : (1962) 1 Lab L J 526 : 1961 Cur L J 22 : (1961-62) 21 F J R 93 : AIR 1961 Punj 515 (517, 518) (Pt A) (Pr 6).**

—Art. 226 — Error apparent on face of record—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), Ss. 42 and 21).

The respondent was given under the scheme a larger area of inferior land in lieu of his land of superior quality. The matter having come before the Director of Consolidation of Holdings, the parties including the petitioners were heard and the Director in his order under S. 42 stated that the respondent could not have agreed willingly to accept area of inferior quality.

Held, (i) that the order of the Director was of a quasi-judicial nature and could be challenged by certiorari. AIR 1958 Punj 302, Expl. and Disting.

(ii) that the finding that the respondent had not agreed willingly to accept the area of inferior quality was an error apparent on the face of the record and that the order will be quashed. **I L R (1958) Punj 1026 : AIR 1958 Punj 305 (307, 308, 309) (Prs 4, 8, 11, 13, 14).**

—Art. 226 — Error apparent on face of record—Application by company under S. 33, Industrial Disputes Act — Application dismissed on ground that Standing Orders were not binding on workman—(Industrial Disputes Act (1947), S. 33)—(Industrial Employment (Standing Orders) Act (1946), S 5).

Where a petition of a company under S 33 of the Industrial Disputes Act is dismissed on the ground that the Standing Orders are not binding on the workman concerned as he was employed by the company before the Standing Orders came into force, the decision of the Tribunal goes to the root of the validity of all authenticated Standing Orders so far as their applicability to workmen in employment before the date of authentication is concerned. The matter affects the basic principles underlying the Act and it is an error apparent on the face of it. The High Court will, therefore, exercise its discretion under Art. 226 in favour of the company and quash the order of the Tribunal. **(1957-58) 13 F J R 429 : (1958) 2 Lab L J 243 (Punj).**

—Art. 226 — Administration of Evacuee Property Act (1950) S. 27—Scope of power under — Power if abridged by executive instructions—Defiance of such instructions — Error apparent on face of record—Interference by High Court See Administration of Evacuee Property Act (1950), S. 27. **AIR 1957 Punj 206.**

—Art. 226—Error of law — Permanent lease jointly in favour of two sons — One of them surrendering in favour of father and migrating to Pakistan — Father and the other son not migrating — Rights under surrender — Surrendered share taken over as evacuee property—Error apparent on face of record. See T. P. Act (1882), S. 11. **I L R (1957) Punj 1146 : AIR 1957 Punj 197.**

—Art. 226 — Error on face of record — Additional Settlement Commissioner wrongly rejecting claim on ground that it was not made — Order liable to be quashed (Displaced Persons (Claims) Supplementary Ordinance (1954), S. 51). **59 Punj L R 143 : AIR 1957 Punj 24 (25) (Pt A) (Pr 5).**

—Art. 226—Certiorari—Error apparent on face of record — Collector's order under Treasure-trove Act—(Treasure-trove Act (1878), Ss. 11, 12 and 15).

Sections 11 and 12 come into operation only when the property is declared ownerless under S. 9. Section 15 becomes operative only when a claimant other than the finder files a suit in a civil Court and obtains a decision Where no claimant has obtained a decision from a civil Court it must be held that the order of the Collector holding that the treasure recovered belonged to a certain person or that it was

recovered from the land belonging to that person is vitiated by errors apparent on the face of the record. AIR 1956 Punj 235 (237) (Pt B) (Pr 6).

[Reversed on another point in AIR 1960 Punj 82 (DB).]

——Art. 226 — Purchaser of property becoming evacuee—Suit challenging validity of sale—Civil Court's jurisdiction to entertain suit — Compromise decree — Repudiation of — Custodian holding decree to be nullity — Error apparent on face of order — Grant of certiorari. See Administration of Evacuee Property Act (1950), S. 46. A I R 1956 Punj 163.

——Art. 226—Certiorari—Error apparent on face of record — First appellate Court entertaining appeal though barred by limitation — Second appellate Court not entertaining plea of limitation on ground that plea was not raised in first appeal — There is error on face of record and certiorari will issue. 1964 Raj L W 517: ILR (1964) 14 Raj 990: AIR 1965 Raj 38 (40) (Pt B) (Pr 7) (DB).

——Art. 226 –Court giving incorrect interpretation to O. 2, R. 2, Civil P. C. and dismissing suit on ground that it was barred under that rule — Error apparent on face of record—Held, that Court failed to exercise jurisdiction in not deciding suit on merits and writ application could be allowed. 1964 Raj L W 55 : ILR (1964) 14 Raj 208 : A I R 1964 Raj 114 (118) (Pt D) (Pr 14) (DB).

——Art. 226—Certiorari — Error apparent on face of record — Quasi judicial proceedings — Proceedings under S. 32 of Rajasthan Act 6 of 1952 for determination of compensation payable to expropriated Jagirdar — Jagir Commissioner, in deciding compensation claims has to act in quasi judicial manner—Neither Evidence Act nor Civil P. C. applies — Board of Revenue disallowing claim by erroneously holding that it was not proved according to S. 34 of Evidence Act which was attracted — Certiorari can issue — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), Ss. 39 and 32. A I R 1957 Raj 39 and A I R 1960 Raj 25, Rel. on. Evidence Act (1872), Ss. 1, 34 and 114. ILR (1964) 14 Raj 90 : 1964 Raj L W 33.

——Art. 226 — Error on face of record — Revenue Board relying on previous Full Bench decision of Board even though it was quashed by High Court, as being without jurisdiction — It is error on face of record. Prem Ballabh Shebait v. Board of Revenue, Rajasthan, 1961 Raj L W 178 : ILR (1961) 10 Raj 1808 : AIR 1961 Raj 85 (87) (Pt A) (Pr 7) (FB).

——Art. 226 — Error apparent on face of record — Application for permit under Motor Vehicles Act — Regional Transport Authority inviting fresh applications—Order is not one of refusal to grant permit—No appeal lies—Appellate Authority entertaining appeal acts without jurisdiction — There is error patent on the very face of the record –Interference by certiorari is called for. See Motor Vehicles Act (1939), S. 64 (a). AIR 1960 Raj 105 (DB).

——Art 226–Error on the face of the record—S. 13, Rajasthan Panchayat Act prescribing standard of literacy for candidates to Sarpanchship is not vague —Simple qualification of reading and writing Hindi is intended—Hindi includes dialects also — Standard of literacy applied higher than prescribed — It is an error on face of record – Certiorari justified. See Panchayats — Rajasthan Panchayat Act (21 of 1953), S. 13 (1). ILR (1960) 10 Raj 1600.

——Art. 226 –Error on face of record—Stay-in-strike without notice — Industrial Tribunal not considering this aspect in deciding justifiability of strike — Error apparent on face of record — Interference by High Court under Art. 226. See Industrial Disputes Act (1947), S. 22. A I R 1958 Raj 202 (DB).

——Art. 226 — Error of law apparent on face of record—Director of Local Bodies not considering whether notice has been served under S. 164 (1) (a), Rajasthan Town Municipalities Act — Tender of notice –Effect — (Municipalities–Rajasthan Town Municipalities Act (23 of 1951), Ss. 164 (1) (a), (d) and 12 (5)).

Where, the Director of Local Bodies, acting under S. 12 (5) holds that the peon did not follow the procedure under S 164 (1) (d) without considering whether the notice had been served as provided by S. 164 (1) (a), he commits an error of law which is apparent on the face of the record. 1957 Raj L W 500 : ILR (1957) 7 Raj 993 : AIR 1958 Raj 91 (92) (Pt B) (Pr 7) (DB).

——Art. 226 –Panchayat—Rajasthan Panchayat Elections Rules (1954) R. 20—Setting aside of election — Grounds for—Power of Collector — Collector setting setting aside elections on ground that they were not held in a state of peacefulness—Reason held did not come under R. 20, namely misconduct, corrupt practice or such irregularity as influenced the result of election — Error was of law patent on record. See Panchayats — Rajasthan Panchayat Elections Rules (1954), R. 20. A I R 1958 Raj 84.

——Art. 226 — Error apparent on face of record — There is nothing in S. 7, Rajasthan Buildings (Lease and Rent Control) Ordinance, 1948, which exonerates the landlord from giving notice, before applying under S. 7 (2) to Controller for eviction of tenant— When the District Magistrate and the Rent Controller held that no notice was necessary as provided in the contract or in any law for the time being in force, they commit an error of law apparent on the face of the record See Houses and Rents — United States of Rajasthan Buildings (Lease and Rent Control) Ordinance (22 of 1948), S. 7. ILR (1958) 8 Raj 137.

——Art 226 — Error on face of record — Revenue Board dismissing suit relying on previous rulings and without interpreting provisions of law –(Tenancy Laws — Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), Sch. I, Group B, Items 10 and 12.

Where the Board of Revenue has committed an error in construing Items Nos. 10 and 12, Group B of Schedule I of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act by relying on its previous decisions and on examining those decisions it turns out that they instead of being any authority for the proposition laid down by the Board in the case as a matter of fact, supported the petitioner, the error is one apparent on the face of the record : A I R 1955 S C 233, Foll. 1958 Raj L W 590

——Art. 226 — Error apparent on the face of the record—Interference by High Court under Art. 226 (Tenancy Laws — Rajasthan (Protection of Tenants) Ordinance (9 of 1949), S. 7) – Wrong application under S. 7 of Rajasthan (Protection of Tenants) Ordinance 1949 — High Court will interfere. AIR 1955 N U C (Raj) 1627.

——Art. 226 — Order dismissing appeal as incompetent – Order of Custodian-General incorrect owing to application of a provision of law not applicable — Error apparent on face of the record — Powers of High Court to interfere.

The petitioner applied under Art. 226 against the order dismissing his appeal as not maintainable and barred by time. Junagadh Administration of Evacuee Property Act (12 of 1948) was in force at the time of the purchase by the petitioner—Subsequently after the handing over of powers to Central Government, Saurashtra Ordinance 7 of 1948 was enforced which was later amended making ineffectual a transaction made after 20-1-1949 if unconfirmed by Cus-

todian. This was the law applicable to the former territory of Junagadh. The Custodian-General applied the provisions of 1948 Ordinance and held the sale of 1948 was not confirmed within 2 months and the application under 1949 Ordinance was barred.

Held: There is more than an error of law in the decision of the Custodian-General. If the order is allowed to stand the petitioner will be wrongfully deprived of his property under Ordinance 8 of 1948 which was inapplicable and which did not render the transaction ineffective. The propriety of the order is not in question but the correcting of an apparent error on the face of record which made him exceed his jurisdiction.

The jurisdiction of the High Court is not affected by S. 46 of the 1950 Act (31 of 1950) barring the jurisdiction of Courts where the Custodian-General applied a law which did not apply to the transaction.

He should be directed to rehear the appeal. **A I R 1952 Sau 123 (123, 124) (Pr 4) (DB).**

——Art. 226 - Interference — Grounds — Error apparent on the face of the record—(Houses and Rents—Travancore-Cochin Buildings (Lease and Rent Control) Order (1950).

Where eviction of tenant is sought on the sole ground of default in payment of rent and Rent Controller had found on evidence that the tenant tendered the rent but the landlord refused it and that point was decisive but the Appellate authority did not give a finding on the question whether there was tender and refusal the absence of finding on the question so crucial is a manifest error apparent on the face of the proceedings. The appellate order is liable to be quashed. 1955 Ker L T 392 : I L R (1955) Trav-Co 572 : A I R 1957 Trav-Co 177 (179) (Ft A) (Pr 9) (DB).

——Art. 226 — Certriorari — Error apparent on the face of the record—(Municipalities—Cochin Municipal Act (18 of 1113), S. 115 — Rules under, R. 18 (1) (c).)

Sub-cl. (a) of sub-r. (1) of R. 18 refers to the assessment to income-tax under S. 10, Cochin Income-tax Act as the basis for levying tax on professions in a case to which sub-r. (1) applies. In the case of a resident assessee tax is leviable on his income not merely in respect of the business transacted by him within a municipality or within anywhere in the State but also in respect of business transacted outside in so far as the income proportionate to the quantum of the contribution to the business made within the State That is to say business transacted outside the State by a resident assessee is not altogether and in all cases immune from assessment to income-tax though the Cochin Income-tax Act has no extra-territorial operation.

It follows that if the assessee does business within a municipality as also outside a municipality whether within or without the limits of the State the first sub-rule of R. 18 will not apply. Sub-r. (2) will apply to cases where the Company or person transacts business partly inside the municipality and partly outside such area, whether the area outside be within or without the limits of the State.

Where the assessee company does business within the area of the Ernakulam Municipality as also in other places outside the State though they have no business in any other place in the State outside the area of the Ernakulam Municipality the Company's case comes within the application of sub r. (2) of R 18 and the proper basis of assessment to professional tax is the percentage of the turnover as prescribed by the Government in cl. (b) of sub-r. (1). The only basis of the assessment of the company to professional tax being the percentage of their turnover as prescribed by the Government the orders of assessment to professional tax based on the income estimated by the Commissioner cannot be supported. This being an error apparent on the face of the record and the order made being speaking order admits of judicial review and is liable to be quashed in certiorari. A I R 1955 S C 233, Foll. **A I R 1955 Trav-Co 121 (124) (Pt A) (Pr 4) (DB).**

——Art. 226— Error apparent on record — Mistake patent on face of labour award—Certiorari—Issue of mandamus.

Where the Industrial Tribunal applies model standing orders in the case of dismissal of employees in an establishment engaging less than 100 workers and the case is not approached from a correct angle, it is a case where there is an obvious mistake patent on the face of the record and it is well established that in such a case a writ of certiorari can issue to quash the order, and mandamus can issue directing the Court to proceed according to law, and make a further investigation. **A I R 1959 Tripura 8 (10, 11) (Pt E) (Pr 13).**

——Art. 226 — Land not in personal cultivation of Jagirdar—Order of allotment—Error of law apparent on face of it—Writ of certiorari—Jurisdiction to issue —See Tenancy Laws—Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 22. AIR 1956 Vin Pra 12.

——Art. 226—Election petition—Amendment—Setting aside of election — Decision erronenous on face of it. See Representation of the People Act (1951), S. 83 (3). AIR 1954 Vin Pra 44.

139 (i). No error apparent on face of record —Illustrative cases.

● ——Art. 226 —Error apparent on face of record — What is—No general test can be laid down.

It is inexpedient to lay down any general test to determine which errors of law can be described as errors apparent on face of record. AIR 1964 S C 477, Rel. on. Where the Labour Commissioner after enumerating the proper tests applied them after considering the entire material on record and came to his conclusion about status of the appellant, it cannot be said that his order is vitiated by an error apparent on face of record. A I R 1960 Mad 425, Reversed. T. Prem Sagar v. M/s. Standard Vacuum Oil Co. Madras, (1964) 5 S C R 1030 : (1964) 1 Lab L J 47 : (1964-65) 26 F J R 1 : (1964) 8 Fac L R 247 : **A I R 1965 S C 111 (113) (Pt B) (Pr 5).**

● ——Art. 226—Certiorari — Error apparent on face of record — Error in appreciation of documentary evidence or in drawing inferences—Effect of.

A finding based on no evidence is an error of law apparent on record but errors in appreciation of documentary evidence or errors in drawing inferences cannot be said to be errors of law, and can be corrected only by a Court sitting as a Court of appeal and not under Art. 226.

Where the Deputy Custodian-General took into account all the reports, proposals and orders appearing on the record which he was entitled to do and came to the conclusion that an order of cancellation of allotment must have been passed on a certain date though such order did not appear on the record it could not be held that this conclusion of fact was based on no evidence or on no relevant evidence. There was no error of law apparent on the face of the record which would justify interference by the High Court under Art. 226. A I R 1958 S C 398 and AIR 1955 S C 233, Rel. on. Kaushalya Devi v. Bachittar Singh, **A I R 1960 S C 1168 (1171, 1172) (Pr 8).**

■——Art. 226—Error on face of record — Regional Transfer Authority granting permit to appellant applying G. O. issued under S. 43-A, Motor Vehicles Act (Madras Amendment) — On appeal Central Road Traffic Board setting aside order and granting permit to respondent following another order issued under same section — Held that orders made and directions issued under S. 43-A covered only administrative field and direction issued thereunder was not law regulating rights of parties—Nature of order discussed —Order held did not disclose error on face of record. See Motor Vehicles Act (1939) :(As Amended by Motor Vehicles (Madras Amendment) Act (20 of 1948), S. 43-A. (1959) 2 Andh W R 236 ; (1959) 2 M L J (S C) 236 : 1959 M L J (Cr) 844 : 1959 S C J 1150 : AIR 1959 S C 694.

■——Art. 226 — Deputy Custodian General in revision, cancelling allotment — No error on face of record — No certiorari. See Administration of Evacuee Property Act (1950), S. 27. AIR 1957 S C 804.

■ ——Art. 226—Certiorari—Decision of election tribunal — Error apparent on face of record — [Representation of People Act (1951), S. 100 (2) (c)].

A petition for declaring the election of the successful candidate void and holding the petitioner elected was presented and the allegation made was that but for the corrupt practices of the successful candidate the petitioner would have secured the majority votes, the difference between him and the successful candidate being only thirty four votes. He further alleged that the irregularity in commencing polling at one of the centres half an hour later than the due time had materially affected ths results because many people who had come at the proper time and out of whom many would probably have voted for the petitioner had returned without voting. There was evidence to show that some voters went away without voting because the polling did not commence at the scheduled time but there was no positive evidence as to the number of persons who had gone away without voting and it was also not possible to have any evidence as to how many of such persons would have voted for the petitioner. Tne Tribunal declared the petitioner elected on the specific finding that but for the corrupt practices of the successful candidate the petitioner would have got the majority of votes. It however discussed the matter relating to the date of commencement of polling only in connection with the question as to whether there was violation of any statutory rule or order in the holding of election which would entitle it to declare the election of the successful candidate void under S. 100 (2) (c) of the Act.

Held, that if the Tribunal had on the basis of the facts relating to late commencement of polling alone declared the petitioner to be the duly elected candidate holding that he could have secured more votes than the successful candidate obviously that would have been an error apparent on the face of the record, as such conclusion would rest merely on a surmise and nothing else. But as the Tribunal declared the petitioner to be duly elected upon the specific finding that, but for the corrupt practices of the successful candidate the petitioner would have got majority of the votes it cannot be said that by the discussion of the question relating to late commencement there was any error apparent on the face of the record which would entitle the High Court to interefere by a writ of certiorari. The tribunal was entitled to consider the question whether there was any violation of the statutory rules and orders which would entitle it to declare the election of the successful candidate void under S. 100 (2) (c) of the Representation of People Act, 1951 and in doing so to take into consideration the circumstances and probabilities of the case. Basappa v. T. Nagappa, 1955 S C R 250 ; 1954 S C J 695 ; I L R (1954) Mys 235 : 1954 S C A 620 : 67 Mad L W 613 ; A I R 1954 S C 440 (446) (Pt E) (Pr 21).

■——Art. 226—Certiorari, writ of — Error apparent on face of record—Two views possible in interpreting panchayat election law—Election Tribunal adopting one view—Order of authority in question cannot be said to suffer from error apparent on face of record, to warrant interference under Art. 226. Per N. U. Beg J., (in the dissenting judgment) AIR 1955 S C 233 and AIR 1960 S C 137 and AIR 1960 S C 1168 and A I R 1957 S C 804, Rel. on. Budha Pitai v. Sub-Divisional Officer Malikabad, Lucknow, 1965 All L J 123 : I L R (1965) 1 All 662 : 1965 (2) Cri L J 306 : A I R 1965 All 382 (398) (Pt C) (Pr 71) (FB).

——Art. 226—Certiorari — Eviction suit by landlord with permission from District Magistrate pending—Tenant gratuitously informing Rent Control Authority of its intention to vacate accommodation in near future and suggesting allotment be made in favour of its nominee—Without hearing landlord, Authority passing allotment order under S. 7 (2), U. P. (Temporary) Control of Rent and Eviction Act — Order is imprudent and improper — Yet passing imprudent order is not manifest error of law — Certiorari does not lie. 1964 All W R (H C) 656 : 1964 All L J 1089.

——Art. 226 — Powers of High Court to interfere with finding of quasi-judicial authority — Finding under S. 28 (1) (c) of the Income-tax Act that petitioner had concealed particulars of his income.

The finding that can be interfered with by the High Court must be a finding suffering from a manifest error apparent on the face of the record of the proceedings which were before the quasi-judicial authority which passed the impugned order. Where the question that has to be decided is whether on the facts, which were before the Income-tax Officer, there was enough material to record the finding under S. 28 (1) (c) of the Income-tax Act that the petitioner had concealed particulars of his income, this is a question of fact which requires a detailed examination and therefore the High Court cannot go into the question when exercising its jurisdiction under Art. 226 of the Constitution. (1960) 39 I T R 617 (All).

——Art. 226—Limitation under S. 34 (3), Income-tax Act (1922), applies to order of assessment and does not affect validity of prior proceedings — Finding by Income-tax Officer that S. 28 (1) (c) applies to the case — Finding cannot be interfered with under Art. 226 of the Constitution except on ground of error apparent on the face of record. See Income-tax Act (1922), S. 34 (3). (1960) 39 ITR 617 (All).

——Arts. 226 and 227 — Error of law apparent on face of record — (Administration of Evacuee Property Act (1950), S. 50 (2)).

Where on the question as to the applicability of S 50. Administration of Evacuee Property Act, the Civil Judge took an erroneous view, but that was not the sole basis for deciding that the Assistant Custodian should not be impleaded in the suit, for he gave two other reasons, namely that the Custodian was not a necesssary party and that the plaintiffs were not agreeable;

Held, that the order read as a whole did not disclose a patent error of law and so no interference under Arts. 226 and 227 of the Constitution was possible. 1958 All L J 550 ; 1958 All W R (H C) 658 : A I R 1959 All 574 (576) (Pt E) (Pr 18).

——Art. 226 — Error of law or jurisdiction — Objection under S. 12, U. P. Consolidation of Holdings

Act, not presented by authorised agent — Deputy Director recommending case for consideration of objection—There is no error of law or jurisdiction. See Civil P. C. (1908), O. 4, R. 1. AIR 1959 All 487 (DB).

——Art. 226—Writ of certiorari — When issued — (U. P. Panchayat Raj Act (26 of 1947), S. 110—Rules under—R. 95)

The defect of not explaining the complaint to the accused in compliance with R. 95 is one of procedure and not jurisdiction, and cannot justify the issue of certiorari. AIR 1953 All 531, Ref.

Further, if a Panchayati Adalat having jurisdiction over the subject matter and the accused does not follow the correct procedure, that would be no ground for setting aside an order, which was within its jurisdiction to pass, by certiorari. That would not be an error on the face of the record and no certiorari can issue. (1952) 1 All E R 122, Ref. 1953 All L J 586 : 1954 Cri L J 282 : A I R 1954 All 159 (160) (Pt C) (Pr 3).

——Art. 226—Certiorari, writ of— Error apparent on face of record—Labour Court — Management seeking to adduce evidence after conclusion of enquiry — Labour Court refusing to receive evidence at that stage and to re open case—No error of law apparent on face of record — Nor view opposed to principles of natural justice. (1960) 1 Lab L J 761 (Andh-Pra).

——Art. 226 — Error apparent on face of record — Evidence on record for tribunal to arrive at conclusion that the change was brought home to the petitioner—There is no error on face of record, to justify interference. (1959) 2 Lab L J 261 (Andh-Pra).

——Art. 226 — Error on face of record — Enquiry under S 20 Madras Estates (Abolition and Conversion into Ryotwari) Act — Some evidence omitted—Effect—Issue of writ.

Where in an inquiry under S. 20, the Revenue Board had considered the entire material placed before it and had come to the conclusion which it did, the mere fact that some pieces of evidence had been omitted or some circumstances had not been adverted to by the Board cannot be said to be an error apparent on the face of the record. In such a case a petition under Art. 226 is misconceived. (1958) 1 Andh W R 459 : I L R (1958) Andh Pra 289 : A I R 1958 Andh-Pra 522 (528) (Pt C) (Pr 13) (DB).

——Art. 226 — Error on face of record — Municipal election petition.

The question that under S. 49 (2) (g) of the District Municiplities Act a firm is a different legal entity from the persons constituting it and therefore the arrears due by the firm cannot disqualify any of the partners from standing for a Municipal election is a difficult question. A wrong decision on the said question cannot be said to be an error apparent on the face of the record. The point that the Commissioner declared the one out of the two candidates as duly elected without considering the crucial question whether the votes cast in favour of the other were thrown away is an error apparent on the face of the record. I L R (1956) Andh-Pra 664 : 1956 Andhra W R 1026 : A I R 1957 Andh Pra 658 (660) (Pt A) (Pr 7) (DB).

——Art. 226 — Nature and scope of High Court's power — Judgment of Election Commissioner — No error apparent on face of judgment High—Court will refuse to issue writ of certiorari. A I R 1955 N U C (Andh Pra) 4178.

——Art. 226 — Power of High Court — Assessment under S. 11, Bengal Finance (Sales Tax) Act—Sufficiency of materials before Commercial Tax Officer—Question cannot be determined by High Court—No error of law apparent on face of record — (Sales Tax — Bengal Finance (Sales Tax) Act (6 of 1941), S. 11). ('57) 61 Cal W N 763 : A I R 1958 Cal 171 (175) (Pt B) (Pr 8).

——Art 226 — J. and K. Land Revenue Act (12 of 1996) (1939 A.D.), S. 15 — Financial Commissioner remanding case for fresh appointment of Headman holding that the appointment was not in accordance with spirit of Lumberdari Rules and instructions conveyed to Revenue Officers—Order held was in proper exercise of powers vested in him under law — No error apparent on face of record — High Court has no power to interfere in writ proceedings. A I R 1955 S C 233; A I R 1957 S C 804; A I R 1958 S C 398; A I R 1960 S C 137 : A I R 1963 S C 114, Rel. on. 1965 Kash L J 47 : A I R 1965 J & K 85 (86, 87, 88) (Pt A) (Prs 12, 20, 21).

——Art 226 — Error apparent on face of record—Error in drawing inferences from documentary evidence or in appreciation thereof — Error cannot be said to be error apparent on face of record. See Constitution of Jammu and Kashmir, S. 103. 1965 (2) Cri L J 212 : A I R 1965 J & K 75.

——Art. 226 — Error apparent on face of record—Election Commissioner authorising Assistant Election Commissioner to receive election petitions in his absence—Order not signed by Election Commissioner—Order published in Government Gazette—Draft of order put up before tribunal signed by Election Commissioner—Election Commissioner himself appearing before tribunal and stating that he had passed the order — Statute not in terms requiring such order to be signed—Order held not invalid because it was not signed — Even if it was required to be signed, there was no error of law apparent on face of record — No interference by writ. A I R 1961 J & K 16 (20) (Pt E) (Pr 21) (DB).

——Art. 226 — Certiorari — Administrative instructions — Breach of — Infringement of administrative instructions for assignment of marks for grant of stage carriage permit—No error of law — No interference under Art. 226—Motor Vehicles Act (1939), S. 43. A I R 1959 S C 896, Rel. on. 1962 Ker L J 493 : 1962 Ker L T 49.

——Art. 226—Certiorari—Issue of—Error of law on face of record — (Administration of Evacuee Property Act (1950), Ss. 28, 2 (d) (i)).

Where on the facts established, the tribunal's finding about migration could not be said to be without jurisdiction, in excess of it or in violation of the principles of natural justice, no writ can be issued to quash it under Art. 226.

Where a person leaves India for Pakistan on a temporary permit issued on 26-8-1949, valid upto 25-8-1950 and he does not come back this is a valid ground for declaring him an evacuee under S. 2 (d) (i) of the Act. The order is covered by the latter portion of the section. Since the High Court does not sit in judgment on the impugned order as an appellate authority, and there is no error of jurisdiction or any error apparent on the face of the record, no writ could be issued to quash it. 1959 M P L J 377 : 1959 Jab L J 348 : 1959 M P C 384 : A I R 1959 Madh Pra 256 (259) (Pt B) (Prs 13, 14) (DB).

——Art. 226 — Error apparent on the face of the record — Contention that a particular G. O. having been superseded by another G. O. during pendency of appeal before State Transport Appellate Tribunal, the authority should have followed the later G. O.—Held, that since the Transport Authority had applied the earlier G. O. the appellate authority, which had to see whether the Transport Authority had acted within jurisdiction, and in accordance with law, had

necessarily to apply the earlier G. O. and there was thus no error apparent on the face of the record. See Motor Vehicles Act (1939), S. 43-A. (1964) 1 Mad L J 92.

——Art. 226 — Certiorari — Error apparent on face of record — Selection of applicants for stage carriage permit on the basis of marking system — Appraisal of evidence by tribunal for satisfaction regarding applicant's experience — No error of law involved - Motor Vehicles Act (1939), S. 64. A I R 1963 Mad 292 (294) (Ft B) (Fr 11).

——Art. 226 — Error apparent on record — Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 87 — Certificate in derogation of record - If could be quashed.

It is of course open to the Deputy Commissioner acting under S. 87 of the Madras Hindu Religious and Charitable Endowments Act to construe the documents placed before him to decide whether any party is entitled to be in possession of the temple properties. And merely because the construction put by him is erroneous the High Court would not interfere under Art. 226 of the Constitution. Where it appears to be manifestly erroneous it would amount to an error apparent on the face of the record and can be quashed by the Court under Art. 226 of the Constitution. (1958) 2 Mad L J 555 : 1959 Mad W N 42.

——Art. 226 - Certiorari — Exercise of discretion by Central Road Traffic Board — Reduction of number of permits issued to person — No apparent error on face of order — Interference with discretion exercised—Motor Vehicles Act (1939), S 64.

Where the Central Road Traffic Board in the exercise of its discretion reduces the number of bus permits issued to a person the High Court, in the absence of error apparent on the face of the order, cannot interfere with the discretion exercised even if the grounds given in support of the order are such as would not have appealed to it, if it were considering the matter for the first time. 1952 Mad W N 738 : 65 Mad L W 839 : 1952-2 Mad L J 361 : I L R (1953) Mad 367 : A I R 1953 Mad 1 (2) (Pt A) (Fr 5) (DB).

——Art. 226 — Error apparent on face of record— Order of dismissal supported by materials on record —No error apparent on face of record — Master and servant—Government servant — Dismissal. (1965) 1 Lab L J 349 (Orissa).

——Art. 226—Error apparent on face of record — No clear finding by lower Courts of fact that tenant was dispossessed on certain date - Revision Court holding that landlord was not in possession on the particular date — No error apparent on face of record — High Court will not interfere — Orissa Tenants Reliefs Act (5 of 1955), Ss. 4 (3) and 9 (1) (d). I L R (1964) Cut 425 : 30 Cut L T 569.

——Art. 226 — Writ of certiorari — Issue of — Error apparent on face of record — Chancellor refusing to allow certain life members to participate in senate meeting — Writ application by them against refusal — Members participating as per High Court's interim order — Question whether High Court's final order refusing grant of writ could relate back to make participation illegal — Question being debatable, Chancellor's view on question is not error apparent, AIR 1964 S C 477 and A I R 1952 S C 319 and (1953) 1 All E R 601, Ref. A I R 1966 Pat 47 (50) (Pt B) (Pr 14) (DB).

——Art. 226 — Orders passed by Additional Deputy Commissioner or by Deputy Commissioner in appeal are intra vires and are within their competence and power and they are not vitiated by any error of law — No interference by High Court. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 2, Cl. (i). 1963 B L J R 921.

——Art. 226 — Certiorari — High Court's powers — Election Tribunal - Findings by — Interference — Panchayats — Bihar Panchayat Raj Act (Bihar Act 7 of 1948), S 84-B and Bihar Panchayat Election Rules, 1959. R. 82 (1).

The election of the petitioner as a Mukhiya of a gram panchayat was set aside by the Election Tribunal on a finding that he was guilty of corrupt practice at the previous election and therefore he was disqualified for election as a Mukhiya under S. 79 (1) of Bihar Act 7 of 1948 at the subsequent re-election and as such his election was void under R. 82 (1). He thereupon filed a petition under Arts. 226 and 227 of the Constitution for issuance of a writ of certiorari:

Held, that the finding of the Election Tribunal was based on relevant evidence and if in the appreciation of the evidence, the Election Tribunal committed any error it could not be called an error of law apparent on the face of the record which would justify interference by High Court under Art. 226 of the Constitution. The Election Tribunal had undoubted jurisdiction to deal with the matter under R. 82 (1) of 1959 Rules read with S. 84-B of the Bihar Panchayat Raj Act, 1947 and he did not exceed the jurisdiction or fail to deal with the matter in accordance with the essential requirements of law which he was required to administer. The order of the Election Tribunal was therefore correct and could not be interfered with (Principles laid down in A I R 1958 S C 398 and A I R 1960 S C 1168 with regard to High Court's power to interfere on a writ of certiorari re-stated and applied.) 1961 B L J R 86.

——Arts. 226 and 227 — Error of law — Order of Assistant Collector of Central Excises giving reasons for not allowing entire claim on account of storage losses under R. 49 of Central Excise Rules (1944) — Collector agreeing with his decision but not giving elaborate reasons — Interference by High Court.

An Assistant Collector of Central Excises gave reasons for not allowing the entire claim on account of storage losses made by the licensee under R. 49 of Central Excise Rules (1944). He made an order demanding duty under R. 160 of the Central Excise Rules (1944).

In appeal the Collector passed an order under S. 35, Central Excises and Salt Act (1944) without giving elaborate reasons for agreeing with the conclusions of the Assistant Collector.

Held, that in a case of judgment of affirmance it was not necessary to repeat the reasons in the decision which the Assistant Collector came to. In such circumstances, it could not be said that the Collector committed any error of law apparent on the face of the record so as to entitle the High Court to interfere with his order. I L R 36 Pat 1 : A I R 1957 Pat 650 (653 654) (Pt C) (Pr 23) (DB).

——Art. 226 — Grounds for interference — Error of law or fact — (Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1957), S. 11).

The question of non-payment of rent, or the question of subletting, are mixed questions of fact and law, and therefore, even if the Rent Control authorities have committed any error of law, or error of fact in arriving at their finding, the High Court will not interfere on an application under Art. 226 unless the petitioner is able to show further that such an error of law, or of fact, is apparent on the face of the record. 1956 B L J R 658 : ILR 35 Pat 894 : AIR 1957 Pat 206 (209) (Pt E) (Prs 29, 30, 31) (DB).

—— Art. 226 — Order passed on review by Custodian of Evacuee Property on an order by his predecessor — Absence of fresh material or absence of mistake or error on face of record — Writ of certiorari. See Administration of Evacuee Property Act (1950), S. 26 (2). 32 Pat 630 : 1953 B L J R 494 : A I R 1954 Pat 43 (DB).

——Arts. 226 and 286 (1), Explanation (a) — Certiorari — (Bihar Sales Tax Act (19 of 1947), Ss. 13, 2 (g), Second Proviso).

The Commissioner has jurisdiction under S. 13 to make assessment. In fact the section imposes on him the duty to make assessment of the Sales Tax. Therefore, if the assessment is made under the machinery of the Sales Tax Act, the assessment is manifestly made in exercise of the Commissioner's jurisdiction. And the circumstances that the Commissioner has relied upon an ultra vires provision, e. g., S. 2 (g), Second Proviso of the Act in making the assessment will not invalidate the assessment like an order of Court lacking jurisdiction. For, assuming though not affirming that the Second Proviso to S. 2 (g) is in conflict with the Constitution, the inference does not by any means follow that the assessment made by the Commissioner is void and without jurisdiction. If the Commissioner had relied upon an ultra vires provision of the Sales Tax Act in making the assessment such reliance is not an excess of jurisdiction but a mistake of law made in the course of exercise of jurisdiction. AIR 1947 P C 78 and AIR 1948 P C 102, Foll.

Held, further that the petitioner has a complete and equally efficacious alternative remedy by way of appeal and revision to the authorities constituted under the machinery of the Sales Tax Act (Ss. 24 and 25 of the Act). AIR 1952 S C 192, Rel. on.

Obiter : When an error of law is apparent in the face of the record notwithstanding the tribunal had not acted without or in excess of its jurisdiction a writ of certiorari under Art. 226 is available only if the order of the tribunal was speaking order. (1952) 1 T L R 161, Expl. 1953 B L J R 45 : 32 Pat 36 : AIR 1953 Pat 78 (79, 80) (Prs 5, 6) (DB).

——Art 226 - Certiorari—Error apparent on face of record — What is — Erroneous interpretation as to computation of time for filing nomination papers under R. 4 of All India Bar Council (First Constitution) Rules, 1961 — Error not apparent on face of record. ILR (1963) 2 Punj 571 : AIR 1963 Punj 378 (382) (Pt B) (Pr 12).

——Art. 226—Certiorari — Error apparent on face of record — Concurrent findings of facts by Tribunals — Misconstruction of documents by Tribunal alleged —Interference not permissible. ('62) 64 Pun L R 155.

——Arts. 226 and 227 — Industrial disputes—Preliminary issue—Decision of preliminary issue along with merits—Labour Court has jurisdiction to order —No interference — Industrial Disputes — Decision of preliminary issue along with merits — Labour Court, if can order—Industrial Disputes Act (1947), S. 11.

In an industrial dispute, where a preliminary issue is involved, the Labour Court instead of deciding the preliminary issue can pass an order that it would be more proper and feasible that the issue be decided when the entire evidence of the parties including that relating to the merits is also recorded. The order is within the Labour Court's jurisdiction, and there is no such glaring mistake of law apparent on the face of the record which would justify interference on the extraordinary side of the High Court.

It is true that generally speaking, a preliminary issue which involves only a question of law should be decided in the first instance, but if a preliminary issue requires evidence to be led, then it is a question for determination in each case as to how far it is desirable or proper to isolate that issue from those on the merits. The Court has in each case to determine which would be the better course to adopt; to decide the preliminary point first or to decide all the issues at the same time after recording the entire evidence.

Where the preliminary issue is decided first, the aggrieved party can assail the decision in the High Court under Arts. 226 and 227. But the party is not deprived of this opportunity even if the preliminary objection is decided along with the merits. An aggrieved party can, if permitted by law come to the High Court even after the final determination of the disputes and he can attack the award on the ground that the preliminary issue being wrongly decided, the award is vitiated. (1962-63) 23 F J R 204 (Punj).

——Art. 226 — Certiorari — Writ of — When to be issued.

Where an order passed under S. 33 of the Displaced Persons (Compensation and Rehabilitation) Act (1954) by the Central Government confirming the order in revision passed by the Deputy Chief Settlement Commissioner is sought to be quashed the petitioner, in order to succeed, must show that there is a manifest error of law in the order passed. It would not be appropriate for the High Court to embark on an enquiry or investigation into questions of fact on which it would be necessary to adjudicate before coming to a conclusion that there is an error on face of the record which alone would give jurisdiction to the High Court to interfere in certiorari proceedings. Even if the powers under S. 33 are regarded as quasi-judicial, the omission of the Central Government to have heard the case without notice to the petitioner is not a defect which would justify interference of the High Court in a writ of certiorari as a detailed 'speaking order' is not required under S 33. Neither the requirement of natural justice nor the phraseology of S. 33 justifies the inference that it was incumbent on the Central Government to hear the petitioner before passing a final order, and the order cannot be quashed under Art. 226 on that ground. A I R 1957 S C 648 and A I R 1951 Mad 276, Rel. on. AIR 1961 Punj 387 (389, 390) (Pt A) (Prs 7, 11, 12).

——Art. 226 — Error apparent on record—(Motor Vehicles Act (1939), S. 47 (1), Proviso).

Where two co-operative societies applying for grant of permit are equally efficient and equally qualified choice of one of them by the authority even if without any cogent reason could not be quashed in proceedings under Art. 226 as it could not be said that it was an error apparent on the record. Preference of one over another in such circumstances cannot be interfered with by issue of a writ of certiorari. 61 Punj L R 647 : I L R (1959) Punj 1644 : AIR 1959 Punj 473 (475) (Pt E) (Pr 14).

——Art. 226—Error on face of record—(Administration of Evacuee Property Act (1950), S. 27).

A writ of certiorari is issued primarily with the object of securing an inspection of the record of the proceedings of an inferior tribunal in order that the High Court may determine from the face of the record whether the inferior tribunal has acted without or in excess of jurisdiction or has not proceeded according to the essential requirements of the law.

Where the order passed by the Deputy Custodian-General of evacuee property in exercise of his powers under S. 27, Administration of Evacuee Property Act, complies with the essential requirements of law then a mere failure on his part to give effect to an

executive instruction of Government cannot be deemed to be an error on the face of the record. The error on the face of the record which justifies the issue of an order of certiorari must be an error of law. 59 Punj L R 272 : ILR (1957) Punj 1521 : AIR 1958 Punj 168 (170) (Pt C) (Prs 8, 9) (DB).

——Art. 226—Question of fact—Decision on question whether strike was justified is a mixed question of fact and law—No interference by High Court under Art. 226 unless there is an apparent error of law in the judgment of the Tribunal—Industrial Disputes Act (1947), Ss. 22 and 24. (1958-59) 15 F J R 96 : (1958) 2 Lab L J 628 : ILR (1958) 8 Raj 866 : AIR 1958 Raj 202 (204) [Pt A) (Pr 7) DB).

——Art. 226 (1)—Revenue Courts not exceeding their jurisdiction or failing to exercise jurisdiction vested in them—No error of law patent on face of record committed by them—High Court will not issue writ of certiorari. 1953 Raj L W 411 : ILR (1953) 3 Raj 199 : A I R 1953 Raj 155 (157, 158) (Pt C) (Pr 16) (DB).

——Art. 226—Assesssment to income-tax—Grounds not discussed — Error apparent on record—(Travancore Income-tax Act (23 of 1121), Ss. 3, 4 and 9)—(Income-tax Act (1922), S. 23).

If the law of Income-tax enjoins upon the officer to write a judgment giving not merely the conclusion but the grounds therefor, it may be contended that the absence of those grounds is a defect. But there is no provision of law under which the assessing officer is bound to discuss the pros and cons on the question of taxability or otherwise of a particular fund. In the absence of any such provision, the omission of the officer to support his conclusion by a discussion of the grounds, though materials supporting his conclusion are mentioned, is not a defect in the order of assessment such as to regard it as containing an error apparent on the face of the record which would be a ground for the interference of the High Court in certiorari. I L R (1953) Trav-Co 173 : A I R 1953 Trav Co 298 (297, 298) (Pt A) (Pr 4).

140. Executive and ministerial orders.

See also Note 126.

——Art. 226—Executive orders—Writ against — No writ of certiorari to be granted—(Motor Vehicles Act (1939), S. 43-A—Order under—Madras Government Order No. 1298, dated 28-4-1956).

Section 43-A of the Motor Vehicles Act has been enacted to enable the State Government to issue administrative or executive orders or directions. Reading the Government Order of the Madras Government under S. 43-A (1), issued on 28-4-1956 as a whole, by this Order the State Government has issued executive instructions for the guidance of the transport authorities; and the said instructions are not in the nature of statutory rules having the force of law. As the Government Order contains merely executive or administrative directions, their breach, even if patent, would not justify the issue of a writ of certiorari. C. A. No. 783 of 1957, dated 6-2-1958 (SC), Rel. on R. Abdulla Rowther v. State Transport. Appellate Tribunal, Madras, AIR 1959 SC 896 (899, 901) (Prs 11, 16, 17).

——Art. 226—Order in respect of entry in character-roll of Government servant — Jurisdiction of High Court to quash order. See Ibid, Art. 311. AIR 1954 Ajmer 22.

——Art. 226—Interference in ministerial acts—Cancellation of existing permit for purpose of giving effect to approved scheme. See Motor Vehicles Act (1939), S. 68-F (2). AIR 1962 All 551 (DB).

——Art. 226—Writ of certiorari against presiding officer of a meeting discharging only administrative function,

Where the presiding officer of a meeting of a Municipal Council who had no right of voting or speaking merely forwarded to the Government the minutes of the meeting together with a copy of the no-confidence motion and the result of the voting:

Held, that in so doing he did not perform any judicial or quasi-judicial function but merely acted in a ministerial or administrative capacity. 1956 Andh W R 627 : AIR 1957 Andh Pra 891 (894) (Pt B) (Pr. 8) (DB).

——Art. 226—Writs—Power of High Court to issue when to be exercised—English and American decisions—Reference to.

Ordinarily in issuing writs contemplated by Art. 226 of the Constitution of the various kinds specified therein the same rule of interpretation should be applied, but even so, the distinctions which flow from the nature and character of the writs themselves and which must, in consequence regulate and govern the issue of these writs, have to be borne in mind. Art. 226 does not define the scope or character of the various writs to which it refers and for that purpose, one has to examine the English and American precedents in order to determine whether in given circumstances, a particular writ is justified. ILR (1955) 7 Assam 159 : AIR 1955 Assam 163 (167, 168, 169) (Pt C) (Pr 13) (DB).

——Art. 226—Procedure of executive bodies—(Houses and Rents—Bombay Land Requisition Act (33 of 1948), S. 6).

The State Government has to make an enquiry before making an order under S. 6 (4) (a), Bombay Land Requisition Act that the premises specified in the order has become vacant by a certain date. If in fact no inquiry is held the declaration would be vitiated but where an inquiry in fact has been held the Government are the sole judges as to the nature, extent and scope of the enquiry. The words "inquiry shall be such as it deems fit" clearly negative the suggestion that the inquiry is of a judicial nature and the principles of natural justice shall not necessarily apply thereto.

But at the same time the Government cannot in the exercise of that discretion pretend to hold an enquiry whilst in fact holding none and where the facts of the case justify the interference that such was the position the declaration made as a result of such inquiry may be vitiated. AIR 1951 Bom 131, Rel on. 1925 A C 578, Ref. 57 Bom L R 748 : AIR 1955 Bom 433 (433, 434 (Pt A) (Prs 3, 5).

——Art 226—Executive order—Writ of certiorari cannot be issued.

Rule 9 of Citizenship Rules (1956) requires Collector to satisfy himself on several matters mentioned in the rule, before registering person under S. 5 (1) (a) of Citizenship Act—He may inform himself in any manner he thinks fit—He is not required to make inquiries in case he rejects application under S. 5 (1) (a)—Even if he is satisfied that all conditions of R. 9 are satisfied, he may still refuse the certificate of citizenship—His action is executive and political act—Subject to orders of Central Government his orders are final and are not amenable to writ of certiorari. AIR 1965 Cal 160 (161) (Pt A) (Pr 2) (DB).

——Art. 226—Nature of jurisdiction.

In dealing with Art. 226 of the Constitution the Courts in India still think consciously and unconsciously in terms of high prerogative writs. Art. 226 is a plain constitutional right and an inexpensive

efficacious and quick constitutional remedy given by the Constitution of India to her High Courts. Naturally in England with the Crown as the fountain head of justice, the high prerogative writs like Habeas Corpus, Mandamus, Prohibition, Certiorari or Quo Warranto depend on the course of favour of the Crown and it is in that light that the British Courts administer such a 'high prerogative'. The concept of constitutional jurisprudence will be dangerous to adopt here in the Indian Constitution. Article 226 provides that the High Court shall have power to issue these writs. The discretion which the High Court may have in granting or refusing such writ is as much a discretion as a solemn obligation cast by the Constitution upon it. **AIR 1964 Cal 340 (343) (Pt D) (Pr 21).**

——Art. 226—Ministerial act—Collector acting under Act ministerially—No certiorari or mandamus can issue. See Debt Laws — Kerala Agriculturists Debt Relief Act (31 of 1958), Rules under, R. 3. **1960 Ker L T 146.**

——Art. 226—Plea of de facto authority—If available.

Even assuming the doctrine of de facto authority can be applied to proceedings, under Art. 226, as the only safeguard which is asked for on its basis is an immunity against a collateral attack on the acts of the Authority concerned, there is no scope for the application of the doctrine to the proceedings under Art. 226 for certiorari where they directly raise the question of the validity of the order of the Authority. **1959 Ker L J 410 : 1959 Ker L T 521 : 1959 Ker L R 1107 : ILR (1959) Ker 1124 : AIR 1959 Ker 347 (349) (Pt C) (Pr 5).**

● **——Art. 226—Travancore Public Safety Measures Ordinance (5 of 1125), S. 19 — Order cannot be impeached on ground that opinion was not based on proper grounds.** See Public Safety—Travancore Public Safety Measures Ordinance (5 of 1125), S. 19. **1950 Ker L T 675 (FB).**

——Art. 226 — Certiorari writ of—If can be issued against a ministerial act.

A writ may lie against the judicial acts of the Govt. i. e, acts done by a competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights of others. In such acts the authority has a discretion after considering all the facts whether to proceed further or not. But no writ will lie against a ministerial act which merely carries into effect orders already made. The person doing the act has no discretion in the matter. It is this absence of discretion which distinguishes a ministerial from a judicial act. **AIR 1951 Kutch 73 (74) (Pt B) (Pr 10).**

● **——Art. 226—C. P. and Berar Revocation of Land Revenue Exemption Act (57 of 1948), Ss. 3, 5—Resumption of maufi grant under S. 3— No obligation to pay compensation—Grant of pension or money under S. 5 is discretionary — Proceeding under S. 5. is not quasi-judicial—No certiorari.** Govindrao Krishnarao Bhuskute **v.** State of Madh Pra., **1959 M P L J 639 : 1959 Jab L J 407 : 1959 M P C 421 : AIR 1959 Madh Pra 339 (341, 342) (Prs 9, 13, 16, 17) (FB).**

[Reversed in AIR 1965 S C 1222].

——Art. 226—Certiorari—Proceedings of Magistrate under S. 176, Criminal Procedure Code — No writ to quash will issue. ILR (1959) Mad 12 : (1959) 1 Mad L J 71 : 1959 M L J (Cr) 71 : 1959 Cr L J 856 : 1958 Mad W N 665 : **AIR 1959 Mad 294 (312, 316) (Pt B) (Prs 35, 55) (DB).**

——Art. 226—'Certiorari'—Interference with electoral process—Municipalities—Madras District Municipalities Act (5 of 1920), Ss. 7 and 43).

Interference with electoral process is not warranted by Art. 226 — Redistribution of wards is a matter purely within ambit of executive power—Matter is not justiciable and cannot be brought up for writ of 'certiorari' before High Court. (1946) 328 U S 549; (1950) 339 U S 276 and W. P. No. 568 of 1952 (Mad), Rel. on. **(1953) 1 M L J 252 : AIR 1953 Mad 510 (513) (Pt E) (Pr 14).**

——Art. 226—Award directing reinstatement but not determining specific sum as payable on account of back wages—Amount payable left to the discretion of employer—State Government or its delegate has no jurisdiction to determine amount of back wages while issuing certificate for its recovery under S. 33-C (i) — Quashing of certificate. See Industrial Disputes Act (1947), S. 33-C (i). **AIR 1963 Mys 250 (DB).**

——Art. 226—Certiorari — Jurisdiction to issue writ —If exercisable in case of acts of "Courts" only—Judicial act of inferior tribunal or body — Writ—Issue of.

The writ of certiorari does not issue to correct purely executive or ministerial acts, but, on the other hand, its application is not narrowly limited to inferior "Courts" in the strictest sense. If the act done by an inferior tribunal or body is a juridical act as distinguished from a ministerial act, an application for certiorari will lie and a writ will issue if the act is beyond the powers of the tribunal or body making it. ILR (1944) Mad 347 (PC), Ref. **ILR (1951) Mys 99 : AIR 1951 Mys 66 (67) (Pt D) (Pr 2) (DB).**

——Art. 226—Interference under.

Procedure prescribed by Registrar under R. 14 (4) of the Rules framed under S. 43 of the Co-operative Societies Act (1912), being with jurisdiction—High Court cannot interfere under Art. 226. **ILR (1954) Nag 76 : 1954 Nag L J 91 : AIR 1954 Nag 203 (204) (Pt D) (Pr 8) (DB).**

——Art. 226 — Government order—Quashing of, by writ of certiorari.

A writ of certiorari can only be issued to a Judge or other officer of an inferior Court and consequently where an order is made by the Government in exercise of the executive authority which the law vests in it it is not competent for the High Court to quash the order by a writ of certiorari. AIR 1950 S C 163, Disting. **ILR (1952) Patiala 110 : AIR 1952 Pepsu 69 (73) (Pt C) (Pr 14).**

——Art. 226—Defence of India Rules (1962), R. 125 (2)—Punjab Government Order D/- 6.11.1963 prohibiting production of Gur by power crushers in mill supply areas—Validity — Proclamation of emergency in operation when order passed—Art. 19 (1) (g) cannot be invoked to invalidate Order — Constitution of India, Art. 19 (1) (g), 226, 352 and 358. See Defence of India Rules (1962) R. 125 (2). **AIR 1964 Punj 307.**

——Art. 226—Displaced Persons (Compensation and Rehabilitation) Rules (1955), Rr. 87 and 90—Scope—Rule contemplates a sale in favour of non-evacuees by a method other than by public auction when there is general or special order — Scheme for disposal of rural evacuee property — Nature of—Private sale in favour of local occupant in pursuance of scheme—Chief Settlement Commissioner has no power to cancel such sale and order fresh sale by public auction—Such order did not confer jurisdiction to disturb the rights of petitioner in property and petitioner cannot be denied his legitimate right to invoke extraordinary jurisdiction of High Court. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 20. **AIR 1964 Raj 260 (DB).**

——Art. 226—Rajasthan Appeals and Petitions (Discontinuance) Ordinance (1949), Ss. 4 (1), 3 — Law in force in covenanting State — Statement of Powers

(Bikaner), Appendix A, Head 1, Item 1; Head 2, Item 17—Re-opening of jagir succession in Bikaner—Case pending till merger of Bikaner State in Rajasthan—Power of State of Rajasthan to pass orders—This was not judicial or quasi-judicial matter but was purely executive matter—Personal hearing by Rajpramukh held was not necessary. See Rajasthan Appeals and Petitions (Discontinuance) Ordinance (40 of 1949), S. 4 (1). AIR 1958 Raj 12.

——Art. 226—Fixation of minimum wages — Nature of Act—Interference with under Arts. 226 and 227. See Minimum Wages Act (1948), S 5 (2). AIR 1955 Trav-Co 97 (DB).

141. Futile or unnecessary writ.

See Note 53.

142. Government, against.

See also Note 54.

● ——Art. 226—Bombay Land Requisition Ordinance (5 of 1947), S. 3—Provincial Government — Writ of certiorari, if lies against—Constitution of India, Arts. 139 and 226—Government of India Act (1935), Ss. 176 and 306 (1).

Per Mahajan and Mukherjea JJ.—A writ of certiorari falls within the expression "sue" used in S. 176 of the Government of India Act and the remedy therefore is within the express terms of the statute. Further, immunity from suits given by S. 306 (1) of the Government of India Act is given to the Governor and not to the Provincial Government, though the Governor may be one of the component parts of the Provincial Government. A writ of certiorari, therefore lies against the Provincial Government in respect of its decision under S. 3 of the Ordinance. Province of Bombay v. Khushal Das S. Advani, 1950 Mad W N 802 : (1950) 2 Mad L J 703 : 1950 S C J 451 : 56 Cal L J 330 : 1950 S C R 621 : 53 Bom L R 1 : AIR 1950 S C 222 (236, 246, 248, 249) (Pt C) (Prs 51, 106, 114, 124).

——Art 226 — Administrative order — Government appointed ad hoc committee for selection of Text Books — Government informed petitioners that their books had been selected, subject to their executing agreement with Government but cancelled this order, even before agreement was concluded—Held that this being purely administrative order, without involving infraction of vested right of petitioner, Government cannot be rendered answerable in Courts. (1965) 2 Andh W R 383 : A I R 1965 Andh Pra 425 (431) (Pt B) (Pr 10).

——Arts 226 and 14 — Rules under S. 26, Trav. Abkari Act have force of law — Rules are not inconsistent with S. 14 of Act — Power to accept or reject bid not given to Government—Order of Government directing resale violates Art. 14 of Constitution—Order is liable to be quashed—(Travancore Abkari Act (4 of 1073), Ss. 14 and 26). See Ibid, Art. 14. AIR 1960 Ker 164.

——Art. 226 — Applicability — Motor Vehicles'—Direction to extend existing route — Direction restricting number of buses that could ply on extended route—Government if exceeds jurisdiction—Writ of certiorari or mandamus if can issue against Government. See Motor Vehicles Act (1939), S. 43-A (2). AIR 1957 Mad 536.

——Art. 226 — Bombay Municipal Boroughs Act (18 of 1925), S. 219 (1) — Order of supersession — Necessity to furnish reasons for — Failure—Effect — Order held without jurisdiction and liable to be quashed — Power of High Court to examine basis of order. See Municipalities — Bombay Municipal Boroughs Act (18 of 1925), S. 219 (1). (1964) 1 Mys L J 147.

——Art. 226—Illegal order—Occupancy right acquired by continuous possession for above 12 years—Settlement with another person—Interference.

Where the petitioner's case was that he had taken oral raiyati settlement of the entire plot of land from the sixteen annas proprietors in 1928 and had acquired occupancy right by continuous possession for more than 12 years since then, and there was no counter-affidavit on behalf of the State Government, the petitioner's claim must be taken as correct and the State Government cannot make the settlement of fishery rights of the plot with another person. Any such settlement can be quashed by a writ of certiorari in favour of the petitioner and mandamus can be issued against the State Government. 1960 B L J R 15 (1).

——Art. 226 — Bihar Hindu Religious Trusts Act (1951), S. 59 — Calling of accounts by State, from a trustee of a private trust, whether legal—Certiorari—Issue of. ('54) ILR 33 Pat 942.

[Reversed in AIR 1959 S C 957].

——Art. 226 — (Municipalities—Travancore District Municipalities Act (1116), S. 323) — Rules under, R. 40 (1) — Question of interpretation of rules — Jurisdiction of Government — Government deciding that question of interpretation of Rules does not arise—No certiorari—See Municipalities—Travancore District Municipalities Act (23 of 1116), S. 323. AIR 1953 Trav-Co 386.

143. Government servant, order of dismissal or reduction in rank.

See also Ibid, Arts. 310 and 311.

● ——Arts. 226 and 311—Certiorari—Writ against Government Quasi-judicial orders — Order of dismissal of public servant — High Court can enquire whether the order is based on no evidence — Mala fide exercise of power need not be shown to prove that the order is based on no evidence. L. P. A. No. 27-D of 1959, dated 2nd August 1960 (Punj), Affirmed. Union of India v. H. C. Goel, (1964) 1 S C W R 28 : 66 Pun L R 305 : (1964) 9 Fac L R 161 : 1963 Cur L J (SC) 153 : (1963-64) 25 F J R 159 : (1964) 1 Lab L J 38 : AIR 1964 S C 364 (369) (Ft B) (Prs 20, 22).

——Art. 226 — Reduction of rank of Government employee — Reduced pay during suspension — Jurisdiction of High Court. See Ibid, Art. 311. AIR 1954 Ajmer 22.

——Art. 226 — Certiorari — Finding of a Domestic Tribunal though recommendatory and not a final order, could be quashed in a suitable case. (U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947). AIR 1950 S C 188, Foll.; (1937) A C 898 and (1924) 1 K B 171, Ref.; (1921) 2 A C 570 and (1925) 3 C L R 518, Not foll. ILR (1963) 1 All 432 (DB).

——Arts. 226, 311—Government servant — Expiry of period of probation—Effect—Petitioner appointed to a substantive post in clear vacancy — Termination of service treating him as probationary officer for alleged misconduct during period after probation — Held, that whether he was confirmed or not, a lien on his post ripened in his favour on expiry of the period of probation and that Art. 311 applied—R. 55 (3) of Civil Services (Classification, Control and Appeal) Rules and R. 23 of U. P. Civil Services (Executive Branch) Rules held not applicable to the case. I L R (1959) 1 All 226.

[Overruled in AIR 1961 All 450 (FB).]

——Art. 226 — Writ of certiorari — Petition for quashing order of Superintendent of Police removing petitioner from service—Petitioner can urge that

there was no proper authority given under para. 479 (f) of the Police Regulations.

In a petition under Art. 226 for a writ of certiorari quashing the order of the Superintendent of Police removing the petitioner from service it is open to the petitioner to urge that there was no proper authority given to the Deputy Superintendent of Police under para. 479 (f) of the Police Regulations. The failure to raise that point before the Deputy Inspector General or the Superintendent of Police is no bar to the applicant to raise the question of the power of the Deputy Superintendent of Police to hold enquiry, in a petition under Art. 226 Constitution of India. **1955 All L J 748 : AIR 1956 All 172 (175) (Pt B) (Pr 8).**

——**Art. 226** – Administrative order — Order of Government under Madras Hereditary Village Offices Act, reinstating respondent as Acting Village Munsif— Order causing summary ouster of petitioner from office of Village Munsif — Petitioner not given opportunity to make his representations — 'Action is administrative action' and does not mean that authority has not to observe ordinary rules of fairplay—**Held**, order could not be upheld. AIR 1950 S C 107 and (1964) A C 40, Rel on. (1965) 1 Andh L T 283 : **A I R 1966 Andh Pra 11 (13, 14) (Pt B) (Pr 7).**

——**Art. 226** — Administrative orders—Conditions of service of Government servants – Can be regulated by administrative orders – Time scale given to appellant under misconception—On discovery of error order fixing pay and depriving him of benefits under previous scale passed – **Held**, the administrative order was valid and binding on appellant — No remedy under Art. 226. See Ibid, Art. 309. **AIR 1963 Cal 563 (DB).**

——**Art. 226** — Certiorari – Issue of writ — Departmental proceedings under Bengal Subordinate Services (Discipline and Appeal) Rules, 1936.

Proceeding by way of departmental enquiry as contemplated by the Bengal Subordinate Services (Discipline and Appeal) Rules, 1936, do partake of the character of quasi-judicial proceedings and an order made in such proceedings can be interfered with by a writ of certiorari, **55 C W N 605 : ILR (1952) 2 Cal 254 : AIR 1953 Cal 316 (318) (Pt A) (Pr 24).**

——**Arts. 226 and 311 — Order of reversion of civil servant is administrative.**

An order of reversion of a civil servant (terminating a temporary or officiating occupancy) is so palpably of an administrative nature that no writ of certiorari or mandamus can lie to quash it (1892) 2 Q B 21, Foll. [Distinction between quasi judicial and administrative orders pointed out.]

A dismissal, removal or reduction in rank of a civil servant adumbrated in Article 311 is purely an administrative act for the reason that there is nothing in the language of Article 311 to suggest that in issuing such an order the authority is obliged to act judicially. No doubt, Art. 311 (2) prescribes a notice; but sub-Art. (3) of Art. 311 dispenses with the notice, if, for some reason to be recorded, it is not reasonably practicable to give to that person the notice or an opportunity to show cause. This very fact makes it clear that the act is an administrative act. A I R 1945 F C 47, AIR 1948 P C 101, A I R 1952 M B 105, Rel on; AIR 1952 Raj 17, Ref. **I L R (1952) Hyd 976 : AIR 1953 Hyd 98 (98, 99) (Pt B) (Pr 3) (DB).**

——**Art. 226** – Natural justice – Dismissal of employee without following provisions of Art. 311— Quashing of order of dismissal.

Held, on facts that the respondent was not a body corporate so as to be able to possess a separate entity. The State Government owned the undertaking though the business continued under its original name. The petitioner held permanent civil post under the State Government when the undertaking was taken over and the order of dismissal was in flagrant disregard of the provisions of Art. 311 (2) of the Constitution; AIR 1957 Pat 10, Dist. AIR 1958 Mys 23, Foll. **1959 M P L J (Notes) 55.**

——**Art. 226**—Powers of High Court — "Suspension" with retrospective effect when civil servant was on duty—Petition for quashing order, if one for enforcing claim for money. See Ibid, Art. 311. **AIR 1958 Madh Pra 44 (DB).**

——**Art. 226** — Administrative order—Order of removal passed by Administrator — Interference. See Territorial Councils Act (1956), S. 22 (2). **AIR 1960 Manipur 25.**

——**Arts. 226, 311 and 309** — Appointment of Civil servant to permanent post on probation — Effect — Expiry of probationary period — Civil servant does not continue as probationer but becomes permanent employee — Subsequent order extending probationary period or discharging servant held invalid and quashed — (Mysore Civil Service Rules (1958)). See Ibid, Art. 311. AIR 1960 Mys 65 (DB).

——**Art. 226**—Government servant – Irregularities in promoting him — Reduction in rank — Art. 311 does not apply—Departmental and administrative order— No writ under Art. 226. See Ibid, Art. 311. **AIR 1956 Orissa 113.**

——**Arts. 226, 311**—Order dismissing public servant —Application for writ of certiorari—Scope of enquiry under.

In a petition for a writ in the nature of certiorari under Art. 226 of the Constitution against an order of dismissal of a Government servant the High Court is not concerned with the merits or otherwise of the dismissal ILR (1956) Cut 29 : **AIR 1956 Orissa 99 (102) (Pt A) (Pr 9) (DB).**

——**Arts. 226, 310, 311**—Reduction in rank—Art. 311 (2) has to be followed – Procedure not followed — High Court can interfere under Art. 226. See Ibid, Art. 310. **AIR 1952 Orissa 285 (DB).**

——**Arts. 226, 311**—Removal proceedings.

Even if the law declares that a public servant may be removed at the will and caprice of the appointing power but at the same time requires that his services should not be terminated unless he has been afforded a reasonable opportunity of being heard, the proceeding would be executive or ministerial in character. As an officer conducting a removal proceeding under Art. 311 of the Constitution is not acting in a judicial or quasi-judicial capacity, the orders passed by him cannot be reviewed on certiorari. **58 Punj L R 512 : ILR (1957) Punj 198 : AIR 1957 Punj 42 (44, 45) (Pt C) (Prs 15, 19, 20) (DB).**

[**Overruled** on another point in AIR 1958 S C 36.]

——**Art. 226**—Certiorari—Executive Orders — Decision to retire public servant — No writ can issue.

Where there has been no enquiry and the Government had only arrived at a decision in their exercise of the option granted by the Covenant between the Kathiawar States before formation of State of Saurashtra regarding absorption of civil servants, that the applicant should not be absorbed but be given compensation the order is only an executive order, and an application for writ of certiorari does not lie Writ of certiorari lies only to revise Orders of a Judicial or quasi judicial tribunal or authority. AIR 1953 Hyd 201, Disting. **6 Sau L R 534 : AIR 1954 Sau 90 (91) (Pt B) (Pr 5) (DB).**

——Arts. 226 and 311 — Certiorari — Wrongful dismissal or termination of service—Proper writ—Writ to compel reinstatement to post.

The proper writ in a case of wrongful dismissal or termination of service is a writ of certiorari, and the scope of certiorari is limited to the quashing of the impugned order, and that is why no writ to compel reinstatement to a post is issued. No such right is available to the petitioner, under the Fundamental Rights guaranteed in Part III of the Constitution. AIR 1959 Tripura 27 (29) (Pt B) (Prs 13, 14).

144. Grounds.

See also Note 69.

(a) Authority acting without jurisdiction.

See also Note 148.

(b) Fundamental error.

(c) Orders contrary to law.

(d) Errors on face of record.

See also Note 139.

(e) Absence of reasons for decision.

(f) Bias and mala fides.

See also Note 129.

(g) No ground.

144. Grounds.

See also Note 69.

——Art. 226—U. P. Panchayat Raj Act (1947), S. 49—Contravention of—Effect—There is no power given under the Act to cure the irregularity which is one affecting jurisdiction of Panchayati Adalat — Writ of certiorari will issue — See Panchayats—U. P. Panchayat Raj Act (26 of 1947), S. 49. AIR 1953 All 118.

——Art. 226 — Writ of certiorari — Jurisdiction of High Court — Nature of — High Court, when could interfere.

In a petition under Art. 226 of the Constitution it is not open for the High Court to review a case as if it were a Court of appeal and it is not within the compass of jurisdiction of the High Court to interfere with errors of facts even if they should exist. The objections that the High Court can normally entertain in an application for the issue of a writ of certiorari are: (1) that the impugned order is vitiated by error of excess of jurisdiction; (2) that there was an error of law apparent on the face of the record and (3) that in the procedure adopted in passing the impugned order or proceeding there had been a violation of principles of natural justice. A I R 1958 S C 398 and A I R 1955 S C 233, Ref. **(1962) 2 Andh W R 416.**

——Art. 226 — Writ of certiorari — Conditions for issue of.

Before a writ of certiorari can go, it has to be established that the authority concerned had no jurisdiction to act or acted in excess of jurisdiction, or that there was violation of natural justice or that there was error of law apparent on the face of the record. AIR 1955 S C 233 and A I R 1954 S C 440 and A I R 1952 S C 192 and AIR 1958 S C 398, Rel. on.

Held, that the order of confiscation was not made in excess of or without jurisdiction, that as the appellant was given a personal hearing by the officer before imported goods were confiscated there was no violation of the rules of natural justice and that the arguments based on a laborious research of the schedule and appendices of the Import Trade Control Policy demonstrated that there was no error apparent on the face of the record. **AIR 1963 Cal 26 (34, 35) (Pt C) (Prs 42, 44) (DB).**

——Art. 226—Certiorari—When to issue.

Certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. The jurisdiction in certiorari is, however, not appellate but only supervisory. By its exercise, only a patent error can be corrected. The legislature in constituting a tribunal may vest such tribunal itself with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts on which its jurisdiction to proceed further depends exists. In such a case, the rule that a tribunal cannot give itself jurisdiction by a wrong decision as to the existence of the preliminary facts does not apply and accordingly certiorari shall not go to correct such a decision. In the case of an appellate tribunal, the jurisdiction to decide whether an appeal to it lies or not is such jurisdiction. **(1956) 2 Lab L J 328: 60 Cal W N 602: AIR 1957 Cal 560 (565) (Pt B) (Prs 16, 17) (DB).**

——Art. 226—Writ of certiorari.

Writ of certiorari is granted if it is shown that a tribunal or body or officer has acted wholly without jurisdiction or in excess of it or has acted in violation of the principles of natural justice or committed an error apparent on the face of the record and such act, or omission, or error has resulted in manifest injustice. **I L R (1953) Hyd 311 : A I R 1953 Hyd 222 (224) (Pt C) (Pr 8) (DB).**

——Art. 226—Writ of certiorari—Writ when may be issued—(Natural justice).

In A I R 1954 S C 440 (444) the Supreme Court almost limited the scope of certiorari to the two heads which were recognized in (1922) 2 A C 128. But a more elaborate discussion of the matter is to be found in A I R 1955 S C 233 where more than those two heads are mentioned. Even in the former case it is stated that the two heads which the Privy Council laid down in (1922) 2 A C 128 'normally' cover the exercise of certiorari in most cases. The word 'normally' denotes that there may be other occasions on which certiorari may issue. And one such occasion for the exercise of the high prerogative writ of certiorari in England (as also in India) is where the principles of natural justice have not been followed. **1956 Nag L J 66 : A I R 1956 Nag 235 (237) (Pt B) (Prs 8, 9) (DB).**

[Reversed on another point in AIR 1957 S C 232.]

——Art. 226 — Nature and scope of High Court's power.

Per Sinha, C. J. and Hidayatullah, J.:—The essential feature of a writ of certiorari is not appellate jurisdiction and the High Court will not, in the exercise of its functions under Art. 226 of the Constitution construe evidence and reopen findings of fact. Interference can ordinarily be if a question of jurisdiction is invoked or where the inferior tribunal has not observed the law in the course of the exercise of its jurisdiction. AIR 1954 S C 440, Foll. **I L R (1953) Nag 842 : 1956 Nag L J 73 : A I R 1956 Nag 11 (12, 13, 14) (Pt A) (Prs 5, 14) (DB).**

——Arts. 226, 227—Jurisdiction under, when can be invoked—Tribunal acting without jurisdiction, violation of principles of natural justice, or manifest injustice, necessary. 1964 Cur L J 311 : AIR 1964 Punj 455 (456) (Pt C) (Pr 8) (DB).

——Art. 226—Certiorari—Grounds.

The Court is slow to interfere with the findings of tribunals when their decisions are liable to be cor-

rected by appellate authorities. It is only where a statutory tribunal is called upon to decide or interpret questions of law from which no appeal or revision is provided, that the High Court in the exercise of its inherent powers would quash the proceedings if the order of a tribunal discloses, or 'speaks' of, an error of law. The aid of the Court can only be invoked where it is required to keep the Tribunal within the bounds of its authority or there is a manifest error of law in its proceedings and not when the matter agitated by the petitioner, is pre-eminently one of fact on which there may be differences of opinion. AIR 1958 S C 398, Rel. on. **63 Punj L R 606 : AIR 1961 Punj 476 (477) (Prs 3, 4).**

——Art. 226—Writ petition—When High Court will interfere.

It must be shown, before a writ is issued, that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. A palpable and gross error of law apparent on the face of the record may also justify interference but there must in addition be manifest or grave injustice. A I R 1952 S C 319 and AIR 1952 S C 192, Rel. on. **AIR 1960 Punj 58 (61, 62) (Pt F) (Pr 5).**

——Art. 226—Certiorari—When can issue.

A writ of certiorari lies when the inferior Court or tribunal has exceeded its jurisdiction or when such Court or tribunal has proceeded illegally and no appeal lies. It can be issued only to restrain the exercise of judicial functions as distinguished from ministerial and executive acts. It can be issued to Courts and to officers, boards and tribunals who possess judicial or quasi-judicial powers, and to ministerial bodies when they usurp judicial functions.

It cannot extend to the questioning or annulling of acts which are ministerial, executive or legislative. It is the nature of the act sought to be restrained and not the general character of the tribunal or officer proceeded against which determine the propriety of this writ. **58 Punj L R 512 : ILR (1957) Punj 198 : AIR 1957 Punj 42 (43) (Pt A) (Pr 6) (DB).**

[Overruled on another point in A I R 1958 S C 36.]

——Art. 226 (1)—Certiorari.

In determining an application for a writ of certiorari it is not the function of the High Court to sit in appeal on the judgments of the tribunals in the cases which those tribunals have jurisdiction to decide. What it has to see before issuing a writ of certiorari is (1) if the tribunal has acted wholly without jurisdiction or in excess of it, or (2) it has failed to exercise jurisdiction vested in it or (3) it has acted in violation of the principles of natural justice, or (4) whether there is a patent error of law on the face of the record which has resulted in manifest injustice or (5) the determination of the tribunal is mala fide. **1953 Raj L W 460 : ILR (1953) 3 Raj 208 : A I R 1954 Raj 30 (32) (Pt A) (Pr 8) (DB).**

144 (a). Authority acting without jurisdiction.

See also Note 148.

● **——Art. 32—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (Punj. Act 50 of 1948), Ss. 42, 41 and 21 (4)—Power of revision of State Government under S. 42 — Power to hear appeal given to State Government under S. 21 (4) — Such powers delegated to officer — Order made by such officer cannot be revised by State Government under S. 42 — Its order is nullity which can be set aside under Art. 32.**

Per Majority : Where the State Government has, under S. 41 (1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its power given under S. 21 (4) to hear appeals to an officer, an order passed by such officer is an order passed by the State Government itself and not an 'order passed by any officer under this Act' within the meaning of S. 42. The State Government, therefore, is not entitled under S. 42 to call for and examine the record of the case disposed of by the officer acting as delegate. An order passed by the State Government under S. 42 in such a case is a nullity and deserves to be set aside under Art. 32 of the Constitution of India. A I R 1959 Punj. 157, Overruled.

Per Kapur and Hidayatullah, JJ. (Contra) : The power of the State Government under S. 42 is distinct from the powers under S. 21 (4) and is in the nature of revision. This gives an overall control to the State Government to see that the appellate orders passed by its officers under S. 21 (4) are legal and are proper. Roop Chand v. State of Punjab, **(1963) Supp (1) S C R 539 : 65 Punj L R 576 : AIR 1963 S C 1503 (1505, 1506, 1508, 1509, 1510, 1511) (Pt A) (Prs 9, 10, 11, 21, 30, 31).**

● **——Art. 32 — Quasi-judicial authority acting without jurisdiction by deciding collateral fact wrongly — Petition under Art. 32 is competent.** A I R 1962 S C 1621, **Distinguished.** State Trade Corporation of India, Ltd. v. State of Mysore, **(1963) 1 S C W R 81 : (1963) 3 S C R 792 : (1963) 2 S C J 131 : (1963) 14 S T C 188 : AIR 1963 S C 548 (550) (Pt B) (Pr 12).**

——Art. 226—Certiorari—Want or excess of jurisdiction or manifest error of law are only grounds for issue of certiorari — Improper findings of fact by inferior tribunal is no ground for interference. 1964 All W R (HC) 666 : 1964 All L J 1054 : A I R 1965 All 366 (367) (Pt B) (Pr 4) (DB).

——Art. 226 — Administrative order—Writ of certiorari — Order of Commissioner condoning delay in filing revision under U. P. (Temp.) Control of Rent and Eviction Act is without jurisdiction — It is amenable to writ jurisdiction irrespective of whether it is administrative or quasi-judicial. 1965 All L J 211.

——Art. 226—Grounds of certiorari—Jurisdiction — Error of law or jurisdiction, however gross, not sufficient—Manifest injustice as a result must be shown. (1963) 47 I T R 501 (All).

——Art. 226—Relief under—When open.

In order to entitle a petitioner to obtain relief in a writ petition it is not sufficient that there has been an error of law or that there is want of jurisdiction. It has to be shown in addition that there has been manifest injustice. A I R 1960 All 93, Rel. on. (1962) 4 Fac L R 163 : (1962) 1 Lab L J 682 (All).

——Art. 226—Erroneous decision resulting in refusal to exercise jurisdiction properly vested — Question of jurisdiction is involved — Issue of writ of certiorari quashing the wrong orders—Error manifest and apparent on the face of the record—U. P. Tenancy Act (17 of 1939), S. 180—U. P. Agricultural Tenants' (Acquisition of Privileges) Act (10 of 1949), Ss. 6 and 7-C. A I R 1949 P. C. 239, Rel. on. **1962 All W R (HC) 539 : 1962 All L J 596.**

——Art. 226 — Motor Vehicles Act (1939), S. 47 — Grant of permit under S. 47 on extraneous considerations — Amounts to illegal exercise of jurisdiction — Order can be quashed under Art. 226. See Motor Vehicles Act (1939), S. 47. 1962 All L J 269.

——Art. 226—Error in exercise of jurisdiction—Writ is not issued as matter of right.

No one can, as a matter of right, claim a writ of the nature of Art. 226. High Court can in suitable cases

refuse to issue a writ even when the subordinate authorities had committed some error in the exercise of jurisdiction. What is necessary is that some manifest injustice must be caused to the person. AIR 1961 All 169 (172, 173) (Pt D) (Pr 16).

——Art. 226—U. P. Disciplinary Proceedings (Administrative Tribunal) Rules (1947), R. 4 (1)—Matter not covered by rules — Reference and report by tribunal are without jurisdiction and are liable to be quashed. See U. P. Disciplinary Proceedings (Administrative Tribunal) Rules (1947), R. 4 (1). A I R 1960 All 754.

——Art. 226 — Criminal P. C. (1898), S. 476—Applicability — Tribunal hearing election petition under Panchayat Raj Act — Not a criminal or Civil Court — Action under S. 476 is without jurisdiction and is liable to be quashed. See Criminal P. C. (1898), S. 476. A I R 1960 All 561.

——Art. 226—Certiorari—Issue of writ of — Refusal to person of permission by District Magistrate to hold cattle market on his own land—This is unwarranted interference with person's right to use his own land — Order quashed. See Ibid, Art. 19 (1) (f). 1960 All Cr R 358 : 1960 All L J 761.

——Art. 226 — Industrial dispute — Application for permission to dismiss employee—Refusal — Failure to exercise jurisdiction.

The conciliation officer was approached by the employer for permission to dismiss an employee. The application was made on two grounds namely of negligence in discharge of work and of insubordination and disobedience to lawful orders. On the first ground he found that the mistakes were bona fide because the employee was new although the mistakes had been repeated in a matter which did not require any skill. As regards the second ground he held that they were not important because they were subsequent to the charge-sheet relating to the first item and therefore were merely subsidiary to that charge. He therefore refused the necessary permission.

Held, that on both the matters his conclusions were not warranted by the facts and hence in refusing the permission he had failed to exercise a jurisdiction which he should have exercised. AIR 1959 All 406 (407) (Pt B) (Pr 7).

——Art. 226—Certiorari—Writ to quash order of suspension passed against municipal employee.

Where an order of suspension passed against a municipal employee was sought to be quashed in a petition for a writ of certiorari and there was no material in the affidavits filed in the case to show that the petitioner was prima facie guilty of serious offence or that his conduct was so reprehensible as to disentitle him to get any relief from the Court or that there were good grounds for suspending him:

Held, that if an order was without jurisdiction it must be quashed by a writ of certiorari and the mere fact that a similar order might later on be passed after legalising the proceedings should not stand in the way of the Court quashing that order : (1787) 100 E R 98, Disting. 1958 All L J 891 : (1959) 1 Lab L J 460 : AIR 1959 All 230 (232, 233) (Pt C) (Pr 8).

——Art. 226—Who can apply—(U. P. Land Reforms (Supplementary) Act (29 of 1952), S. 4).

The enquiry under Act (31 of 1952) affects the rights of parties. A person found to be in cultivatory possession in the year 1359 Fasli gets certain specified rights of tenancy even though these rights are liable to be questioned in separate proceedings. Hence an order by the Sub-Divisional Magistrate reviewing previous order and holding that an enquiry shall be done on an application under S. 4 of Act (31 of 1952) can be challenged by means of a writ petition.

Further if the Sub-Divisional Officer had no jurisdiction to review the previous order his order setting aside that order is clearly vitiated and the enquiry which he is holding as a result of quashing the previous order is also being held without jurisdiction. It calls for the exercise of jurisdiction of the High Court to issue writs of certiorari and prohibition under Art. 226. 1956 A W R (HC) 29 : 1956 All L J 13 : A I R 1957 All 67 (68, 69) (Pt A) (Prs 9, 10) (DB).

——Art. 226—Rules framed under Madras Elementary Education Act, 1920 — Withdrawal of recognition under Rr. 14 and 28 to 28-B—Nature of order of the order withdrawing recognition—Order is without jurisdiction—Order liable to be quashed. See Madras Elementary Education Act (8 of 1920), S. 58. (1962) 1 Andh W R 263.

——Art. 226—Industrial Disputes Act (1947), Ss. 10 (1) (c) and 2 (k)—Power of Government to make reference—Jurisdiction of Tribunal—Basis for—Dispute by individual worker when can be referred—Dispute in instant case held was not industrial dispute—Reference invalid — Subsequent proceedings were therefore without jurisdiction and illegal — (Words and Phrases—'Industrial dispute'). See Industrial Disputes Act (1947), S. 10 (1) (c). A I R 1957 Assam 111.

——Art. 226—Administrative order—Order passed without jurisdiction—Order will be set aside.

The High Court is competent to test the validity of an administrative order in order to give relief to the petitioner; and if it is held that the order was incompetent and passed without jurisdiction by a public body or an individual purporting to act under the authority of law, then the High Court is entitled to interfere and set aside such an order. ILR (1956) 8 Assam 511 : AIR 1956 Assam 162 (164) (Pt D) (Pr 5) (DB).

——Art. 226 — Settlement of ganja shop in Assam by Extra Assistant Commissioner on recommendation of Advisory Board constituted by himself—Validity—Settlement Officer has no authority to make the settlement or to nominate an Advisory Council — Order is without jurisdiction. See Eastern Bengal and Assam Excise Act (1 of 1910), S. 8. AIR 1955 N U C (Assam) 1778.

——Art. 226—Assam Municipal Act (1923), S. 89 — Effect of non-compliance—Review application under S. 88—Sub committee required by S. 89 not constituted—Town committee itself deciding matter in Special meeting—S. 89 is not directory in nature—Non-compliance with it affects jurisdiction—Town committee in disposing of review petitions acted in excess of its jurisdiction. See Municipalities — Assam Municipal Act (1923), S. 89. A I R 1953 Assam 132.

——Art. 226—General Clauses Act (10 of 1897), S 9—Scope—Order granting time to tenant to deposit rent by particular date—Failure to deposit—Permission to eject tenant granted on that date — Order is without jurisdiction—Rent controller should have waited till the expiry of that day, within which the rent could be deposited—Order should be set aside—(C. P. and Berar General Clauses Act (1 of 1914), S. 8). See General Clauses Act (1897), S. 9. AIR 1957 Bom 154.

——Art. 226—Sea Customs Act (1878), S. 30 — Real value of imported goods—Asecrtainment of — Value aserttained by Customs Officer under S. 30 without any basis or evidence—It is illegal and without jurisdiction—It is liable to be reviewed by way of certiorari.

The correctness of the decision of a Customs Officer on the real value of imported goods is not open to review. But when the valuation under S. 30 (b) is arrived at, without any finding as to importation and the cost of the imported goods at which goods of the like kind and quality could be delivered at the place of importation the decision is illegal and without jurisdiction. In such a case the decision is liable to reviewed by the High Court by way of certiorari. AIR 1961 Cal 636, Rel. on. , **(1963) 1 Cri L J 749 : AIR 1963 Cal 331 (335) (Pt C) (Pr 18).**

——Art. 226 — Interference — Grounds — Inferior authority considering matters extraneous to issue — Certiorari.

Certiorari and mandamus will lie if the inferior authority has taken into consideration matters outside the ambit of its jurisdiction and beyond the matters which it was entitled to consider in arriving at its decision. **62 Cal W N 842 : ILR (1960) 1 Cal 83 : (1958) 2 Lab L J 705 : AIR 1959 Cal 1 (7) (Pt C) (Pr 25) (DB).**

——Art. 226 — Jurisdiction — Wrong assumption by Industrial Tribunal — Interference.

If the firm of solicitors cannot be said to carry on an industry, then the Industrial Tribunal has no jurisdiction over them to determine a dispute between them and their employees. If the tribunal has claimed jurisdiction, then this assumption of jurisdiction whether by the legal process of construction of, statute or by the determination of what is known as "jurisdictional fact," can be supervised under certiorari jurisdiction of the High Court under Art. 226 **ILR (1959) 2 Cal 211 : 62 Cal W N 484 : (1958) 2 Lab L J 183: (1958) 14 F J R 486 : AIR 1958 Cal 465** (466) (Pt A)**(Pr 3).**

——Art. 226 — Interference — Order without jurisdiction — Interference — Objection under S. 9, Public Demands Recovery Act — Hearing by person having no powers — Effect.

If a party has availed himself of the ordinary remedies provided for by a special Act, he cannot thereafter turn round and begin once again from the bottom by challenging the original order under Art. 226 of the Constitution If however in the proceedings under the special Act there is found to be an initial lack of jurisdiction the position is different and the High Court can interfere. Where the objection filed by the petitioner under S. 9 of the Public Demands Recovery Act was considered by a person who was not a Certificate Officer, he is to be considered not a judicial body or tribunal. In such a case the application under Art. 226 must succeed. **AIR 1957 Cal 430 (431) (Pt B) (Prs 3, 4).**

——Art. 226 — Jurisdiction — Absence of — Industrial Tribunal proceeding to decide dispute which was not industrial dispute under Industrial Disputes Act — Writ of prohibition or certiorari upon Tribunal — Writ of mandamus upon Government — (Industrial Disputes Act (1947), Ss. 7 and 10).

Where a dispute which was not an industrial dispute was referred to an Industrial Tribunal by the Government under S. 10, Industrial Disputes Act and the Industrial Tribunal has no jurisdiction to try such a dispute under the Act and yet the Tribunal was proceeding with the matter and the petitioner files his objection to the jurisdiction before the Tribunal there is no difficulty in issuing a writ in the nature of prohibition or certiorari upon the tribunal. Nor is there any difficulty in issuing a writ in the nature of mandamus upon the Government. It is true that there must be a demand for justice and its denial before entertaining an application for a writ in the nature of mandamus. But where it would be futile to make such a demand, it would not be a bar to relief. AIR 1952 S C 16 Rel. on. **I L R (1957) 3 Cal 484 : 60 Cal W N 856 : (1957) 1 Lab L J 505 : (1956-58) 12 F J R 309 : A I R 1956 Cal 545 (549, 550) (Pt D) (Pr 20).**

——Art. 226 — Scope — West Bengal Food Grains (Intensive Procurement) Order, 1952, Para. 5.

The granting of a right of appeal under Para. 5 of W. Bengal Food Grains Order means that the producer must be given an opportunity to show that the estimate of the Director regarding surplus yield is wrong and consequently the amount of grain that the producer has been asked to deliver as based on that estimate, is also wrong. Where a large number of appeals were decided all together ignoring many of the points raised by individual producers, the Court below must be held to have failed to exercise jurisdiction and to dispose of the cases properly. The High Court can intervene in such cases and can quash the orders by a writ of certiorari and issue a writ of mandamus directing the tribunal to decide the cases according to law. **57 Cal W N 798 : A I R 1954 Cal 97 (97, 98) (Pt B) (Prs 3, 4).**

——Art. 226 — Industrial Disputes (Appellate Tribunal) Act (48 of 1950), S. 12 (1) — Order for costs against stranger to proceeding — When can be made — Order against stranger without jurisdiction — Remedy is by application under Art. 226, Constitution of India, and not by appeal under S. 12—Civil P. C. (1908), S. 35 — (Industrial Disputes Act (1947), S. 11 (7)). See Industrial Disputes (Appellate Tribunal) Act (1950), S. 11 (7). **AIR 1953 Cal 37.**

——Art. 226 — Application for a writ setting aside the order of the Civil Judge (Senior Division) transferring the election petition to the Joint Civil Judge (Junior Division) for disposal according to law. There was only one Court in Mehsana and that of the Civil Judge (Senior Division) who has jurisdiction to dispose of all proceedings of a civil nature. A Civil Judge (Junior Division) was posted by the High Court only for purpose of assisting him in the disposal of matters filed in the Court of Civil Judge (Senior Division). A civil Judge (Junior Division) so posted as a joint judge at a place where there is no Court of civil Judge (Junior Division) has no independent Court where proceeding can be filed. The Civil Judge (Senior Division) before whom the election petition was filed is a persona designata and he cannot transfer that petition to the joint judge. Writ granted and order set aside. (1962) 3 Guj L R 803.

——Art. 226 — Issue of writ of certiorari.

Under Art. 226 a writ of certiorari can be issued when the person or the Tribunal acts in excess of jurisdiction or fails to exercise jurisdiction which is conferred upon it or in the exercise of its jurisdiction contravenes principles of natural justice. **ILR (1953) Hyd 412 : A I R 1953 Hyd 235 (237) (Pt D) (Pr 10) (DB).**

——Art. 226 — Certiorari — When issued.

The issue of writ of certiorari which is discretionary in nature may be granted when the Court below has refused to exercise jurisdiction or there is an absence of jurisdiction. The fact of want of jurisdiction may arise from the nature of the subject matter or from the absence of some essential preliminary proceedings. Mere formal or accidental errors on the face of the proceedings do not afford grounds for certiorari and where the proceedings are regular upon their face and the Court has jurisdiction the superior Court will not grant the writ of certiorari on the ground that the Court below has merely misconceived a point of law nor will it hear evidence impeaching the decision on the facts, but where there was no evi-

dence proper to be considered in support of the point that would be a ground for issue of writ of certiorari.

The fact that a medical certificate was not substantiated by oral evidence can at the most be said to be a material irregularity in the exercise of jurisdiction in not taking evidence and is not a sufficient ground for interference by way of certiorari proceedings : AIR 1936 Mad 969, Rel. on. ILR (1953) Hyd 191 : AIR 1953 Hyd 209 (211) (Pt C) (Pr 6).

——Art. 226— Writ of certiorari is justified when there is failure to exercise jurisdiction. AIR 1951 Bom 853, Rel. on. ILR (1952) Hyd 791 : A I R 1953 Hyd 79 (85, 86) (Pt D) (Pr 27) (DB).

[Reversed on another point in AIR 1956 S C 319.]

——Art. 226—Certiorari—Writ of—Order of Custodian of Evacuee Property—Power of High Court to Interfere—Administration of Evacuee Property Act 1950, S. 7.

Where the foundation of jurisdiction for the Custodian to declare certain property as the property of the evacuee is that the evacuee was in adverse possession and the conclusion that the evacuee was in adverse possession is void in law, there being no material in law to justify that conclusion, the order is ultra vires. The High Court can interfere in such case and quash the order of the Custodian by issuing a writ of certiorari. A I R 1951 Mad 876 ; A I R 1951 Simla 171 and A I R 1949 Mad 535, Rel. on. I L R (1951) Hyd 788 : A I R 1951 Hyd 137 (138) (Pt A) (Prs 6, 7) (DB).

——Art. 226—Certiorari—Writ of, to quash decision of appellate authority under Hyderabad Rent Control Order — Civil P. C. (1908). S. 115.

Where the decision of the Appellate Authority under the Hyderabad Rent Control Order, about the application of the doctrine of res judicata is incorrect then the High Court can, in exercise of its extraordinary powers quash his decision on the ground that he has failed to exercise jurisdiction vested in him.

[Power to issue writ compared with power contained in S. 615, Hyderabad Civil P. C. (corresponding to S. 115, Indian Civil P. C.)]. I L R (1951) Hyd 112 : AIR 1950 Hyd 59 (61) (Pt A) (Pr 10) (DB).

——Art. 226—Certiorari — Writ of — Decision as to refusal to exercise jurisdiction under Civil P. C., S. 115—Value of — Precedents.

Any decision on S. 615 (b), Hyderabad Civil P. C. (corresponding to S. 115, Indian Civil P. C.) may be taken as an authority for holding what amounts to improper refusal of exercise of jurisdiction for purpose of exercising power to issue writ of certiorari. ILR (1951) Hyd 112 : AIR 1950 Hyd 59 (61) (Pt C) (Pr 10) (DB).

——Art. 226—Travancore City Municipal Act (4 of 1116), S 91 (1) — Charges of irregularities against corporation officer — Order of acquittal passed by Mayor after enquiry—Subsequent direction by Government to revive disciplinary action — Order taking action on same charges, held in excess of authority and quashed. See Municipalities — Travancore City Municipal Act (4 of 1116), S. 91 (1). ILR (1960) Ker 519.

——Art. 226 — Error apparent on face of record — Order under Motor Vehicles Act in appeal decided which had become infructuous—Liable to be quashed as being without jurisdiction. 1956 Madh B L J 187 : Madh B L R 1956 Civil 33 : A I R 1956 Madh B 175 (176) (Pt B) (Pr 4) (DB).

——Art. 226—Applicability—Action proposed to be taken in excess of statutory authority—Interference —(Central Civil Services (Safeguarding of National Security) Rules (1953), Rr. 3 and 4 (a)).

The High Court has undoubtedly power to interfere where the provision under which the action was intended to be taken was ultra vires the State Legislature. But even where the limits of a valid statutory provision are contravened, there is as much lack of authority in the action proposed as where the statute itself is void. AIR 1954 S C 403, Rel. on. 1957 Nag L J 75 : 1957 M P L J (Nag) 115.

——Art. 226—Certiorari—Writ—Issue of—Failure to exercise jurisdiction — (Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 12 (a) — (Tenancy Laws — Madras Estates Land Act (1 of 1908), S. 3 (10) (a)).

Where the Tribunal misconceived the scope of S. 3 (10) (a) of the Madras Estates Land Act and S. 12 (a) of Madras Act (26 of 1948), when it in effect applied the test of cultivation in the past as the only and conclusive test, in determining whether the land in question was private land and therefore refused to grant patta under S. 12 (a):

Held that it really amounted to a failure to exercise jurisdiction to decide the issue before it after taking into account all the relevant factors and that the order of the Tribunal had, therefore, to be set aside by the issue of a writ of certiorari. 69 Mad L W 859 : ILR (1957) Mad 436 : 1956 Mad W N 911 : (1956) 2 M L J 595 : AIR 1958 Mad 74 (78) (Pt B) (Pr 25) (DB).

——Art. 226—Certiorari—Writ—Grounds of—Order without jurisdiction—Setting aside.

Where the order which is impugned is one passed without jurisdiction and is complained of by a party as prejudicial to his interests and this complaint is not frivolous or without substance it is the duty of the High Court to set aside that order under Art. 226 of the Constitution 70 Mad L W 489 : (1957) 1 Mad L J 244 : 1957 Mad W N 383.

——Art. 226 — Certiorari — Rejection of appeal amounting to refusal to exercise jurisdiction—(Motor Vehicles Act (1939), Ss. 64 and 64-A).

Applications for the renewal of a permit and for the issue of a permit, are in effect applications for the grant of a permit. Where on that route only one permit could be granted the granting of the application for renewal would automatically mean the refusal of a permit to the other. The appeal by the other would therefore be perfectly competent as an appeal against the order of the Regional Transport Authority, refusing to grant a permit. The Central Road Traffic Board errs in presuming that it was not open to them in the appeal to consider the merits of the order granting renewal of the permit. The filing of the appeal by the appellant sets at large the order of the Regional Transport Authority granting the renewal. Therefore, the Central Road Traffic Board wrongly rejected the appeal as incompetent and thus refused to exercise a jurisdiction which they had and the Government committed an error which related to jurisdiction in confirming that order. 1955 Mad W N 464 : (1955) 2 M L J 130 : 68 Mad L W 391 : ILR (1956) Mad 24 : AIR 1955 Mad 386 (387) (Prs 2, 3) (DB).

——Art. 226—Order under S. 10 (5), Madras Hereditary Village Offices Act by District Collector appointing a deputy to a post registered in name of minor — Board of Revenue has no jurisdiction to interfere — Order set aside by Board of Revenue—Quashing of See Madras Hereditary Village Offices Act (3 of 1885), S. 10 (5). AIR 1955 Mad 305 (FB).

——Art. 226—Certiorari — Failure to exercise jurisdiction — (Madras Pawnbrokers Act (23 of 1943), S. 22—Rules under - Rule 15).

What has to be considered by the Commissioner of Police under R. 15 of the Rules framed under S. 22 of

the Madras Act (22 of 1943) in granting a licence to conduct the business in auction sale of pledges is the auctioneer's suitability, such as reliability, character and other matters and not the suitability of the place where the auction is held. Hence where the Commissioner of Police inquires into the suitability of the building for conducting the auction he fails to exercise a jurisdiction vested in him by law, and his order refusing approval on ground of unsuitability of building can be quashed.

The application for licence was remanded to the Commissioner of Police for reconsideration. **1954 Mad W N 458 : (1954) 1 Mad L J 557 : AIR 1954 Mad 736 (738) (Pr 9).**

——Art. 226 – Writ of certiorari—Power to issue when to be exercised.

Whenever any body of persons having legal authority to determine questions affecting the rights of subject and having the duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of the High Court exercised in issuing writs under Art. 226 ; (1924) 1 K B 171 ; (1931) 2 K B 215 and AIR 1950 S C 222, Foll. 64 **Mad L W 882 : 1951 2 Mad L Jour 411 : 1951 Mad W N 882 : 1952 Cri L J 616 : AIR 1952 Mad 276 (277) (Pt A) (Pr 2).**

——Art. 226 — Motor Vehicles Act (1939), S. 64 — Powers of appellate authority—Order of appellate authority without jurisdiction — Order upheld by Government in revision—Writ of certiorari held could be issued as fundamental principles of jurisprudence were violated. See Motor Vehicles Act (1939), S. 64. **AIR 1952 Mad 39.**

——Art. 226 –Order without jurisdiction—Power of High Court to quash. See Ibid, Art. 311. AIR 1965 Manipur 46.

——Art. 226 — Assam Land and Revenue Regulation (1 of 1886), Ss. 50, 51, 52, 53, 54, 126, 129, 124, 123, 125, 127—Powers of Sub-Deputy Collector—He cannot act under Ss. 50 to 54 and S. 126 (1)—Exercise of jurisdiction not vested—Order quashed. See Tenancy Laws — Assam Land and Revenue Regulation (1 of 1886), S. 50. AIR 1962 Manipur 14.

——Art. 226 –Rules for recruitment—Rules by Mysore Government published under Notification No. G. A. D 114 S. R R. 61, dated 27-12-1962—Rules 3 (2), 4 — Constitution of State Level Recruitment Committee —Word 'may' in R. 3 (2) (iv) means 'shall' — Non-compliance with R. 3 (2) (iv) — Committee is not properly constituted — Order of recruitment made by such committee is invalid and can be quashed under Art. 226. See Ibid, Art. 309. (1965) 2 Mys L J 160 : AIR 1966 Mys 36 (DB).

——Art. 226 –Rectification of mistake apparent from the record — Record contemplated by S. 61, Estate Duty Act is record relating to assessment of estate duty and not any other record—Order of assessment to estate duty fixing valuation of estate at certain figure —Enhancement of valuation after three years on basis of valuation in probate proceedings—Held, not justified either by S. 61 or S. 59. Writ of certiorari issued to quash the order. See Estate Duty Act (1953), S. 61. **AIR 1964 Mys 202 (DB).**

——Art. 226 — Mysore Land Revenue Code (4 of 1888), S 233 — Rules under R. 98—Sale of property by Revenue Inspector—Value of property more than Rs. 200—Exercise of wrong jurisdiction—Interference. See Mysore Land Revenue Code (4 of 1888), S. 233. (1963) 1 Mys L J 301.

——Art. 226 –Refusal to exercise jurisdiction vested by law — Order liable to be quashed. See Houses & Rents—C. P. and Berar Letting of Houses Control Order, Cl. 13 **1951 Nag L J (Notes) 105 (DB).**

——Art. 226 –Certiorari — Jurisdiction — Failure to consider question of limitation—There is assumption of jurisdiction not vested — See under Houses and Rents — C. P. & Berar Letting of Houses and Rent Control Order, Cl. 25 (1). **1951 Nag L J (Notes) 101 (DB).**

——Art. 226 — Industrial Disputes Act (1947), Ss. 2 (k) and 10 (1) — Definition of 'Industrial dispute' contemplates existing industry — Bona fide closure of business — Subsequent reference under S. 10 (1) is illegal—Reference quashed. See Industrial Disputes Act (1947), S. 2 (k). **AIR 1960 Pat 288.**

——Arts. 226 and 227 — Reference of dispute to Industrial Tribunal—Dispute not industrial dispute —Jurisdiction of Tribunal to adjudicate—(Industrial Disputes Act (1947), S. 10).

Government can only make a reference if in its opinion any industrial dispute exists or is apprehended. The pre-requisite of the jurisdiction is the existence of industrial dispute within the meaning of the Industrial Disputes Act, 1947. If there was no industrial dispute as contemplated by that Act, the Government of India has no jurisdiction to make any reference and a fortiori the Tribunal does not derive any jurisdiction to entertain and dispose of the reference. AIR 1957 Assam 111, Rel. on **(1959) 2 Lab L J 639 : (1959.60) 16 F J R 25 : 1959 B L J R 172.**

——Art. 226 –Right to apply — Bihar Sales Tax Act (19 of 1947), S. 14-A, Proviso—As amended by Bihar Finance Act (4 of 1955) — Order of forfeiture directing petitioner to deposit into Government Treasury amount of sales tax illegally recovered by him from his customers held invalid as proviso to S. 14 A was unconstitutional — Order quashed by a writ of certiorari. **1956 B L J R 562 : (1956) 7 S T C 609 : 1956 Pat L R 371 : I L R 35 Pat 757 : A I R 1957 Pat 1 (4) (Pt B) (Pr 10) (DB).**

——Art. 226 –Certiorari – Issue of writ against Cess Deputy Collector — Bengal Cess Act (9 of 1880), S. 72.

Where the petitioners wrote to the Cess Deputy Collector explaining that the mines and the quarries belonged to a Corporation and the petitioners were only contractors, and, therefore, not liable to submit a return of the annual net profits under S. 72, but in spite of this letter the Cess Deputy Collector served a notice under S. 72 upon the petitioners holding out a threat that if the petitioners did not supply the return within the time given, they would be liable to a penalty of Rs. 50 for every day after the expiry of the time until the return was furnished.

Held, that there had been a virtual determination by the Cess Deputy Collector as to the existence of the collateral fact and therefore the petitioners were entitled to the grant of a writ of certiorari. **1956 B L J R 223 : A I R 1956 Pat 100 (104) (Pt B) (Pr 8) (DB).**

——Art. 226 –Bengal Ferries Act (1 of 1885), S. 9 — Lease of tolls of ferries by public auction — Power of District Board to debar intending bidder to bid at the auction — Right of bidder so prevented to claim relief under Art. 226 of the Constitution.

Where powers exercisable by the Magistrate of a District under the Bengal Ferries Act have been conferred upon the District Board under S. 35 and the Chairman decides to lease the tolls of the ferries, S. 9 or for the matter of that, any provision of the Bengal Ferries Act, does not confer any power upon the District Board to debar any person from bidding at the auction. It is open to the Chairman of the District Board to refuse to accept the highest bid, of course for sufficient reason to be recorded in writing.

In such a case he may either accept any bid however low it may be, or may withdraw the tolls from auction and manage the ferries khas. He has, however, no authority to determine, before the auction is held, the suitability or otherwise of the intending bidders and to select those who, in his judgment, are fit, howsoever sound and justifiable his decision may be. Where the Chairman debars an intending bidder (the petitioner) from making any bid, the Chairman violates the provisions of S. 9 and alters the manner prescribed by the statute for conducting the auction. AIR 1954 S C 592, Rel. on.

The action of the Chairman in preferring the other prospective bidders to the petitioner ran counter to the provisions of S. 9 and was, therefore, arbitrary and without jurisdiction.

The discretion vested in the Chairman to refuse to accept any bid after the auction is held, does not entitle him to anticipate the results of the auction and to prevent persons who, in his wisdom, were not desirable from bidding at all.

It follows that the petitioner is clearly clothed with a right to bid at the auction for the settlement of the tolls of the disputed ferries—a right which, by virtue of his conforming to the terms of the notification of the auction is his personal right under the Act, as distinguished from the general right as a member of the public and is thus entitled to a writ under Art. 226 of the Constitution to enforce the performance of a duty imposed by the statute on the Chairman so that he may not exceed his powers.

It is undeniable that no writ can legally issue against the person whose bid has been accepted as the auction for the settlement of the tolls of the disputed ferries, but when the impugned order of the Chairman is set aside, all actions and proceedings taken subsequently in consequence of the said illegal order must automatically fall with it or the position will be simply anomalous and the writ will be in effectual.

In this view, the settlement with such a bidder being clearly without jurisdiction must be set aside. A I R 1953 Pat 370, Foll. **A I R 1955 Pat 483 (484, 485, 486) (Prs 3, 4, 5, 6) (DB).**

——**Art. 226**—Certiorari—When can be issued—Gram cutchery assuming jurisdiction to try case and passing orders — Order is without jurisdiction — High Court will interfere — (Bihar Panchayat Raj Act (7 of 1948), S. 62). **A I R 1954 Pat 194 (195) (Pt B) (Pr 4) (DB).**

——**Art. 226**—Right of Badli workman to permanent post — Requirements — Must have worked for 240 days in twelve calendar months — Ss. 25-B and 25-C of Industrial Disputes Act held not applicable — Direction to employer to absorb Badli workmen on permanent posts held without jurisdiction. See Industrial Dispute. **AIR 1962 Punj 553.**

——**Art. 226 — Writ of certiorari — Failure to exercise jurisdiction by lower appellate Tribunal which it has — Writ can be issued — (Motor Vehicles Act (1939), S. 64).**

Where by declining to go into the merits of the case the Appellate Tribunal of the State Transport Authority fails to exercise jurisdiction in a case where it certainly has that, a writ of certiorari will be issued by the High Court for correcting errors of jurisdiction, as where an inferior Court or Tribunal fails to exercise the jurisdiction it possesses. A I R 1959 Raj 41; A I R 1955 S C 233, Rel. on. **1959 Raj L W 571 : ILR (1959) 9 Raj 625.**

——**Art. 226 — Jurisdiction — Failure to exercise — Revenue Courts failing to exercise jurisdiction vested in them — Direction by High Court.** See Civil P. C. (1908), S. 11. **AIR 1957 Raj 281 (DB).**

——**Art. 226 — Writ of certiorari — Failure to exercise jurisdiction by lower appellate Tribunal which it has — Writ can be issued — (Motor Vehicles Act (1939), S. 64).**

Where by declining to go into the merits of the case the Appellate Tribunal of the State Transport Authority fails to exercise jurisdiction in a case where it certainly has that, a writ of certiorari will be issued by the High Court for correcting errors of jurisdiction, as where an inferior Court or Tribunal fails to exercise the jurisdiction it possesses. A I R 1959 Raj 41; A I R 1955 S C 233, Rel. on. **1959 Raj L W 571 : ILR (1959) 9 Raj 625.**

——**Art. 226 — Jurisdiction — Failure to exercise — Revenue Courts failing to exercise jurisdiction vested in them — Direction by High Court.** See Civil P. C. (1908), S. 11. **AIR 1957 Raj 281 (DB).**

——**Art. 226** — Duty of Custodian to give notice under S. 7, Administration of Evacuee Property Act—Object of notice — Defective notice — Subsequent proceedings are without jurisdiction and are liable to be set aside. See Administration of Evacuee Property Ordinance (27 of 1949), S. 7. **A I R 1952 Raj 162.**

——**Art. 226 — Executive heads wrongly usurping appellate authority and passing orders — Writ of certiorari can issue to quash the orders — (Municipalities—Jodhpur Municipal Act (1943), S. 27).**

Where a person without authority sets himself as a judicial tribunal and decides some matter a writ of certiorari will not be granted by the High Court to set aside such a person's order because the order has no force and effect in law and it is unnecessary to set it aside. But the position, is somewhat different in cases where the unauthorised persons who have usurped the jurisdiction to set aside the order of the Officer in charge of the elections are the Additional Commissioner and the Minister in charge to whom the Officer in charge of the elections is certainly subordinate on the executive side. It is possible for the Officer in charge of the elections to think that he is bound by the orders of the superior authorities who have purported to act as appellate authorities. In such a case, therefore, writ of certiorari can be issued under Art. 226. **1952 Raj L W 199 : ILR (1952) 2 Raj 18 : AIR 1952 Raj 104 (106) (Pt D) (Pr 14) (DB).**

——**Art. 226— Certiorari, writ of against Board of Revenue —Board of Revenue Ordinance (22 of 1949), S. 13 (2)—Rules under R. 6 —Validity.**

A second appeal was filed before the Board of Revenue. It was set for hearing before a single member, Board of Revenue, who after hearing the parties passed judgment as follows: "For these reasons as given above, I would, subject to the concurrence of my learned collegue, allow the appeal". The file of the case was passed on to the other member of the Board of Revenue who by his order agreed with the first member. The second member recorded his opinion concurring with the opinion of the first member without hearing the parties or giving notice of hearing to them.

Held that the Board of Revenue had acted in excess of the jurisdiction conferred upon it. Rules or general or Special order of the Government could only be those consistent with the provisions of the Ordinance. Rule 6 purported to authorize two members to hear a case without forming a bench. This rule was contrary to the provisions of Sub-s. (1) of S. 13 which provided only two modes of hearing, either by a member of the Board sitting singly, or by a bench of the Board consisting of two or more members, and was therefore, invalid. Further, R. 6 even as it stood did not say that the second member could express his opinion without giving a notice of hearing to the parties or hearing them should they appear and wish to be heard, and the procedure adopted was not authorized even according to the Rules as they were. The Rajasthan Board of Revenue was a body having two functions one of which was administrative and executive, and the other judicial. The matter that came before the Board was disposed of in the exercise of its judicial function. Hence a writ of certiorari could be issued. Case law discussed. 1951 Raj L W 478 : ILR (1951) 1 Raj 512 : AIR 1952 Raj 46 (47, 48, 49, 50) (Prs 6, 8, 10, 11, 19, 23) (D B).

——**Art. 226—Issue of writ of certiorari.**

Where any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, acts in excess of its legal authority, a writ of certiorari may issue. AIR 1950 S C 222; AIR 1953 Raj 71; AIR 1953 Sau 3, Rel. on. **AIR 1955 Sau 33 (35) (Pt C) (Pr 6) (DB).**

——Art. 226—Saurashtra Land Reforms Act (1951), Ss. 12, 13, 18, 46—Writ of certiorari against order of Revenue Tribunal lies only when it is without jurisdiction or when there is manifest error on record — (Constitution of India, Art. 226 — Certiorari). See Tenancy Laws—Saurashtra Land Reforms Act (25 of 1951), S. 12. AIR 1955 N U C (Sau) 4695.

——Art. 226—Civil P. C. (1908), S. 151—No inherent power to review apart from statute except to correct its own mistake — Refusal of application for stage carriage permit by Transport authority— Order confirmed by Government in appeal—Review application allowed on ground that certain mistakes were committed — Order on review held void for want of jurisdiction — (Motor Vehicles Act (1939), S. 64) — See Civil P. C. (1908), S. 151. AIR 1955 N U C (Trav-Co) 3463.

●——Art. 226 — Board's jurisdiction — Decision of Board beyond its competence — Decision quashed by certiorari. See T. C. Hindu Religious Institution Act (15 of 1950), S. 28 (3). AIR 1954 Trav-Co 470 (FB).

●——Art. 226 — Scope — (Income-tax Act (1922), S. 1).

The Income-tax laws do not form a self-contained Code affording the aggrieved assessee adequate remedies including a reference to the High Court, and the High Court has jurisdiction under Art. 226 if the action complained about is founded on a flagrant assumption of a non-existent jurisdiction. (1952) 2 K B 478, Ref. A. N. Lekshmana Shenoy v. Income-tax Officer, ILR (1953) Trav-Co 1232 : 1953 Ker L T 725 : AIR 1954 Trav-Co 137 (138) (Ft A) (Pr 6) (FB).

——Art. 226—Travancore-Cochin Shops and Establishments Act (9 of 1125), S. 41—Jurisdiction under—Labour Commissioner assuming jurisdiction not available under Act—Order liable to be quashed by certiorari—See Travancore Cochin Shops and Establishments Act (9 of 1125), S. 41. AIR 1953 Trav-Co 325.

——Art. 226—Order of reference under S. 10, Industrial Disputes Act clearly showing nature of dispute to be individual — Order is ultra vires — Proceedings quashed—See Industrial Disputes Act (1947), S. 2 (k). AIR 1952 Trav-Co 249 (DB).

144 (b). Fundamental error.

——Art. 226—Application under R. 6, U. P. (Temporary) Control of Rent and Eviction Rules (1949)—Rent Control officer must consider application before passing allotment order—Failure to consider application before passing order of allotment—Allotment order is liable to be quashed. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7. 1965 All L J 1030.

——Art. 226—Grounds for interference — Powers of Court—Sufficiency of evidence—If can be gone into.

While hearing a writ petition it is not open to the Court to meticulously scrutinise the evidence of the parties and to substitute its own findings for the findings of fact arrived at by the lower tribunal. Nor is it the function of the Court at the stage to go into the question of sufficiency or insufficiency of evidence. A Court would not issue a writ of certiorari unless it finds that the tribunal whose proceedings are impugned had committed a manifest error of law or procedure apparent on the face of the record or had acted in complete disregard of some principle of natural justice or had exceeded the prescribed bounds of jurisdiction. AIR 1956 All 715 (717, 718) (Pt B) (Fr 12) (DB).

——Art. 226—Certiorari— When can be issued.

It is now well established that if an order impugned by an application for a writ is vitiated by a patent illegality, such as a manifestly wrong view of the law or reliance upon materials procured without observance of the procedural laws applicable, such an order can be quashed by a writ of certiorari. A I R 1957 Cal 447 (448) (Ft B) (Pr 8) (DB).

——Art. 226—Interference—Grounds—Forfeiture of remission earned by prisoner—Punishment not based on proper evidence—Amounts to miscarriage of justice and order is liable to be quashed. See Prisons Act (1894), S. 46. 1957 Cri L J 758 : AIR 1957 Madh Pra 48 (DB).

——Art. 226—Minimum Wages Act (1948), S. 20 (2), Second Proviso—Condition of delay— Sufficient cause—Order condoning delay held vitiated by errors of law and jurisdiction—Order quashed. See Minimum Wages Act (1948), S. 20 (2), Second Proviso. A I R 1965 Mad 292.

——Art. 226 — Exercise of jurisdiction under — Grounds for industrial dispute relating to retrenchment—Fundamental errors committed by Tribunal—High Court can interfere.

Where the industrial tribunal substituted its own finding upon the justification for retrenchment, particularly as influenced or governed by the turn of events subsequent to the decision of the management, and had also permitted evidence on material not germane to the issue and which ought to have been excluded :

Held, that there was both a fundamental error in the criterion of the tribunal, and a failure to exclude extraneous and improper considerations. In the circumstances, the High Court had ample jurisdiction to interfere by the issue of the appropriate writ. A I R 1950 S C 188, Rel. on. 75 Mad L W 25 : (1961-62) 21 F J R 412 : 1962 Mad W N 41 : (1962) 4 Fac L R 346 : (1962) 1 Mad L J 240 : I L R (1962) Mad 554 : (1962) 2 Lab L J 99 : A I R 1962 Mad 226 (227) (Ft A) (Pr 4) (DB).

——Art. 226—Contravention of any compelling provision of Constitution — Interference is called for. (1954) 1 Mad L J 244 : A I R 1954 Mad 587 (591) (Pt D) (Pr 6).

——Art. 226—Order of tribunal manifestly erroneous and on misrepresentation of statutory provisions of Mysore Village Offices Act—Order held was liable to be quashed. I L R (1960) Mys 1177.

——Arts. 226 and 311 — Certiorari — Jurisdiction of High Court to issue—Nature of—If order of disciplinary authority is based on no evidence, certiorari will lie, without further proof of mala fides — But if based on any evidence jurisdiction cannot be invoked to question its adequacy. I L R (1965) Cut 147 : (1965) 1 Lab L J 510 : (1965) 7 O J D 136.

——Art. 226 — Election petition allowed on ground not mentioned in S. 100—Representation of the People Act. Decision is in excess of jurisdiction and is amenable to writ jurisdiction. See Representation of the People Act (1951), S. 100. A I R 1954 Vindh Pra 44.

144 (c). Orders contrary to law.

——Art. 226—Certiorari—Issue of — Order wrong in law but rendering substantial justice between parties—High Court will not interfere. 1964 All L J 240 and 1963 All L J 909, Foll. 1965 All L J 945 : 1965 All W R (H C) 708 : A I R 1966 All 156 (157, 158) (Pt B) (Fr 2).

——Art. 226 — Sales Tax Officer affixing notice of assessment on defunct business, knowingly that firm had ceased to exist and, passing ex parte assessment order — Subsequently adding petitioner's name in assessment order and notice of demand — Procedure adopted by him was curious one and in complete disregard of provisions of law — Hence assessment order and notice of demand must be quashed by writ of certiorari. (1965) 16 S T C 146 (All).

——Art. 226 — Certiorari, writ of — Proceedings for liquidation of decretal debt before Collector — U. P. Act 1 of 1951, coming into force during pendency and proprietary rights of J. D. vesting in State Government — Remedy under U. P. Acts, 25 of 1934 and 1 of 1951, for directing Compensation Officer to place compensation money at disposal of Collector, not availed of — Compensation bonds delivered to J. D.—Proceedings started by creditor before Collector to stop payment of compensation bonds and to attach properties of J. D.—Order by Board of Revenue in revision under inherent powers directing Collector to take such action — Writ to quash order of Board of Revenue. See Civil P. C. (1908), S. 151. A I R 1964 All 203.

[Reversed in A I R 1966 All 109.]

——Art. 226 — Income-tax Act (1922), S. 46 (2) — Recovery of tax—Attachment of property—Objections to, must be considered by Collector — Summary dismissal of objections — Order is erroneous and can be quashed. See Income-tax Act (1922), S. 46 (2). (1963) 47 I T R 527 (All).

——Art. 226 — Motor Vehicles Act (1939), S. 47—Scope—Interest of the public generally—Meaning of —Residence alone is no criterion for grant or refusal of permit—That the husband of applicant was a political sufferer being main ground for grant of permit — Tribunal's order held illegal and quashed. See Motor Vehicles Act (1939), S. 47. 1962 All L J 269.

——Art. 226 — Jurisdiction — Order by subordinate tribunal illegal and without jurisdiction — Power of Court to interfere. See Assam Local Self-Government Act, S. 89. A I R 1955 Assam 97 (DB).

——Art. 226 — Order unwarranted by law — Order directing stoppage of game of 'Housie' played in a member's registered Social Club — Order held unwarranted and illegal and must be quashed—(Public Gambling Act (1867), S. 5). A I R 1955 Assam 84 (85, 86) (Prs 3, 4) (DB).

——Art. 226—Issue of writ of certiorari — Cancellation of permit by Appellate Tribunal without hearing parties affected—(Motor Vehicles Act (1939), S. 64).

If an inferior Tribunal vested with power to exercise judicial or quasi-judicial functions, adopts a procedure which is contrary to principles of natural justice, its order may be quashed by a writ of certiorari. A I R 1952 S C 179, Rel. on ; A I R 1952 Mad 39, Ref.

Under the Motor Vehicles Act, 1939, the State Transport Authority has a judicial function to perform. It is a quasi-judicial body, and in the exercise of its appellate function, a judicial approach is contemplated. The fact that S. 64 of the Act does not expressly require that a person to whom a permit has been granted should be heard if his permit is to be cancelled, does not affect the obligation to observe principles of natural justice in proceedings before it. The Tribunal therefore exceeds its jurisdiction by cancelling a person's permit and granting it to another person in his absence and without giving him any hearing and the order is liable to be quashed. I L R (1953) 5 Assam 163 : A I R 1953 Assam 157 (158) (Pr 7) (DB).

——Art. 226—Grounds for interference—Order without complying with law — Effect—Order held nullity —Certiorari could issue—See Madras Local Boards Rules (1920), R. 5. AIR 1958 Mad 211.

——Art. 226 — Right to apply under—Order directing not to exercise right — Legality — (Master and servant).

The view that any authority can issue an order that a given person shall not exercise the right conferred upon him by the Constitution to move the Court under Art. 226 is not acceptable since such an order is not a lawful order. The disobedience of such an order cannot be viewed as disobedience of any lawful order.

A was the Headmaster of a school maintained by the Corporation of Madras. His pay was reduced and he was also reverted on certain charges. When he applied to the Commissioner of the Corporation for permission to move the High Court under Art. 226, the Commissioner called upon him to withdraw that application. A offered to withdraw if he was accorded an interview by the Commissioner. That was done but A did not withdraw his application. Thereupon fresh charge for disobedience was put against A and he was suspended and later on removed from the service. On appeal to the Standing Committee A was reinstated in service but his pay was reduced still further :

Held, that the Commissioner had no legal authority to direct A to withdraw the application. Even if A had undertaken that he would withdraw and subsequently failed or even refused to withdraw the Commissioner had no authority to countermand his exercise of the rights of the petitioner under Art. 226. Since the basis of the whole disciplinary enquiry was an unlawful order issued by the Commissioner, the entire proceedings taken by the Commissioner and subsequently by the Standing Committee were without jurisdiction. (1955) 1 Mad L J 464 : 1955 Mad W N 173 : (1955) 1 Lab L J 395 : AIR 1955 Mad 386 (387) (Prs 6, 7).

——Art. 226 — Certiorari — Orders of State Govt. violating Art. 15 (1) held unconstitutional and ultra vires and liable to be quashed by issue of certiorari. See Ibid, Art. 15 (1). AIR 1964 Pat 393 (DB).

——Art. 226—Scope.

The writ of certiorari applies to judicial or quasi-judicial acts but under Art. 226 an order contrary to express law can be quashed. ILR (1954) Patiala 879 : AIR 1955 Pepsu 20 (22, 23) (Pt B) (Pr 11).

——Art. 226—Punjab Alienation of Land Act (1900), S. 3A — Jurisdiction of Deputy Commissioner and Civil Court — High Court has jurisdiction under Art. 226 to quash orders passed by judicial or quasi judicial bodies which are contrary to law. (Civil P. C. (1908), S. 9). See Punjab Alienation of Land Act (13 of 1900), S. 3A. AIR 1954 Punj 139.

——Art. 226 — Bikaner State Village Panchayat Act (3 of 1928), S. 42 — Order of remand by Nazim — Order is invalid — All that it can do is either to cancel jurisdiction of Panchayat or quash proceedings before it or cancel order or decree of Panchayat in case already decided, leaving parties to approach proper court. See Bikaner State Village Panchayat Act (3 of 1928), S. 42. AIR 1955 N U C (Raj) 5405.

——Art. 226—Duty of appellate court — Dismissal of appeal for default without perusing record—Order is without jurisdiction and can be quashed by writ of certiorari. See Houses and Rents—Jaipur Rent Control Order (1947), S. 12 (2). AIR 1952 Raj 180 (DB).

144 (d). Errors on face of record.

See also Note 139.

——Arts. 226 and 227 — Certiorari—Error of law — Interference — Powers of High Court—Proceedings under S. 12, Madras Estates (Abolition and Conversion into Ryotwari) Act — Conclusion of Tribunal justified on the evidence on record—Order not interfered — Error must be apparent on face of record — Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), Ss. 11, 12. AIR 1958 S C 398; A I R 1954 S C 215;

AIR 1960 S C 137 and A I R 1955 S C 425, Rel. on. (1963) 1 Andh L T 296.

——Art. 226—Certiorari or mandamus — Conditions for issuance of writs.

Unless there is a manifest injustice or the error apparent on the face of the record is equally manifest, Courts will not exercise their writ jurisdiction. The remedy by way of a writ of certiorari or mandamus is of a very special character. Writ of certiorari will only be issued if the conditions for its issuance existed. A I R 1955 S C 233; AIR 1954 S C 440; AIR 1958 S C 398, Rel. on. A I R 1960 Mad 425 and AIR 1960 S C 879, Disting. (1961) 2 Lab L J 526 : 1961 Andh L T 873.

——Art. 226 — Nature and scope of High Court's power — Writ of certiorari against Election Tribunal.

The jurisdiction of the High Court under Art. 226 however excessive it may be, is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made. When after a reading of the judgment of the Election Commissioner and on a consideration of the arguments advanced the High Court is not satisfied that there is any manifest error apparent on the face of the order made by the Election Commissioner or that the conclusion reached by the Election Commissioner is one which no judicial mind can reasonably reach, it will refuse to issue a writ of certiorari. A I R 1954 S C 440, Ref. AIR 1955 N U C (Andhra) 4178.

——Art. 226 — Powers of High Court—Certiorari—Order of Appellate Board under S. 64, Motor Vehicles Act—Interference.

The High Court will not issue a writ of certiorari quashing the order of the Appellate Board under S. 84, Motor Vehicles Act, unless it is clear from the order itself that the Board has either exceeded the limits of its jurisdiction or has committed any manifest error of law in the exercise of its jurisdiction. The ambit of its appellate powers is very wide and if the Appellate Board has adopted certain principles in preferring one applicant to the other, the High Court even though it may hold a different view from the Appellate Board, will not quash the order. ILR (1960) 12 Assam 225 : (1960) 1 Assam L R 7 : A I R 1961 Assam 26 (29) (Pt B) (Prs 5, 6) (DB).

——Arts. 32 and 226—Jammu and Kashmir Constitution, S. 103 — Conviction for contempt — Order manifestly illegal — Case is fit one for issue of writ to set aside order 1957 Cri L J 1400 : A I R 1957 J & K 52 (52) (Pr 3).

——Art. 226 — Interference — Grounds—Award of industrial tribunal—No apparent jurisdictional defect — No interference under Art. 226 See Industrial Disputes Act (1947), S. 10. AIR 1958 Ker 135 (DB).

——Art. 226—Certiorari, when can issue.

Apart from questions of jurisdiction, a writ of certiorari can also be issued where a Tribunal has committed mistakes apparent on the face of the record or committed flagrant violation of law. AIR 1952 S C 192, Rel. on. Indian and English case law referred. ILR (1954) Mys 47 : AIR 1954 Mys 102 (108) (Pt D) (Pr 12) (DB).

——Art. 226 — Writ of certiorari — When can be issued.

A writ of certiorari cannot be granted to quash a decision of an inferior Court acting within its jurisdiction, on the ground that the decision is wrong. It is not open to the High Court to canvass the reasoning of the impugned decision, unless it can be shown that the authority which passed that order acted without jurisdiction, or in excess of it, or in violation of the principles of natural justice. AIR 1952 S C 319, Rel. on.

The correct rule is that there must be an error apparent on the face of the record or of the order impugned; or that the error should be admitted in the face of the Court; and the error must be an error of law which affects the jurisdiction of the tribunal. The mere fact that two views are possible on a question of fact would not be sufficient to hold that the order of the tribunal is bad and to justify the issue of a writ of certiorari to quash that order. Case law referred. ILR (1953) Cut 682 : AIR 1954 Orissa 67 (68, 69, 70) (Pt D) (Prs 7, 10) (DB).

——Art. 226—Industrial Disputes Act (1947), S. 10-A—Award of compensation for loss caused by strike—Arbitrators not considering dominant purpose of Trade Unions combining to strike — Award must be quashed—Tort—Conspiracy. See Industrial Disputes Act (1947), S. 10 A. AIR 1963 Pat 170.

——Art. 226 — Interference — Grounds—Permanent permit granted to State Road Transport Corporation in violation of S. 57 (2) of the Motor Vehicles Act—Held, that there was only technical violation of S. 57 (2) and that was a mere irregularity causing no prejudice to petitioner under Art. 226 who was not displaced operator but Mukia of Gram Panchayat—Hence High Court was not justified in exercising its jurisdiction under Art. 226 for cancellation of the permanent permit AIR 1960 S C 350, Dist.; AIR 1959 S C 1378, Foll. 1961 B L J R 18 : AIR 1960 Pat 575 (581, 582) (Pt G) (Pr 11) (DB).

144 (e). Absence of reasons for decision.

——Art. 226 — Affirming order of Government in revision, not giving reasons—Order cannot be quashed on this ground. See Municipalities — Hyderabad Municipal Corporations Act, 1955 (2 of 1956), S. 679. AIR 1961 Andh Pra 489.

——Art. 226 — Jurisdiction — Order failing to give reasons—Effect.

When judicial orders are passed, they must disclose on their face that the mind of the authority was directed to the facts and law bearing on the case and was properly applied. It is therefore necessary that the order of a tribunal exercising judicial functions should ex facie show reasons not only for setting aside the orders of the subordinate tribunals but also for confirming the same. 1955 Andh L T (Civ) 831 : 1956 Andh W R 652 : AIR 1957 Andhra 739 (742) (Pt B) (Prs 13, 14).

——Art. 226 — Arms Act (1878), S. 18 (a) — Order cancelling licence not disclosing any reasons — Validity — Order is without jurisdiction because it does not disclose reasons or that it was necessary for security of public peace and must be quashed. See Arms Act, S. 18 (a). AIR 1955 NUC (Andhra) 4478.

——Art. 226 — Jurisdiction — Order cancelling Arms licence without stating reasons — Legality — Interference. See Arms Act, S. 18 (a). AIR 1955 Assam 183 (DB).

——Art. 226 — Other remedy available — Inferior Court wrongly deciding facts which are conditions precedent to exercise of jurisdiction — Order complained of not giving reasons — Person responsible for order filing affidavit — Speaking order — Power of Court to quash

A writ of certiorari will be granted ex debito justitiae to quash proceedings which the Court has

power to quash, where the application is by an aggrieved party and the existence of an alternative remedy cannot stand in the way of the writ being issued, where the objection to jurisdiction is apparent on the face of the proceedings.

If the inferior Court has decided wrongly facts which are conditions precedent to the exercise of jurisdiction such decision may be questioned and the superior Court has power to quash it by certiorari.

Where the orders complained of do not set out the reasons therefor and the person responsible for making the orders has set forth the reasons in the affidavit filed by him in Court, the affidavit has the effect of making those orders "Speaking orders" and hence the High Court has power to quash the orders by writ of certiorari. ILR (1952) 2 **Cal 412 : 56 Cal W N 73 : 88 Cal L J 137 : AIR 1952 Cal 112 (116) (Pt F) (Fr 33).**

——**Art. 226** — Suspension or cancellation of Arms license—Recording of reasons must be by Authority —It must appear from order that it was passed for security of public peace—Conditions are mandatory —Conditions not complied with — Order is without jurisdiction and must be quashed. **ILR (1965) Guj 571.**

——**Art. 226** — Cancellation of licence under S. 18, Arms Act, 1878 — No reasons given — Order is without jurisdiction. See Arms Act (1878), S. 18. **1954 Cri L J 1530 : AIR 1954 Pepsu 150.**

144 (f). Bias and mala fides.

See also Note 129.

——**Art. 226 — Administrative orders —Quashing of — Grounds.**

An administrative order can be quashed by the High Court under Art. 226 of the Constitution provided it is without jurisdiction or is arbitrary and mala fide. If the order is based on considerations which are outside the ambit of the law which empowers an authority to pass that order, such an order is clearly without jurisdiction. If an order is based on questions of fact without giving sufficient opportunity to the party affected to meet those allegations, such an order is in violation of the principles of natural justice and can be quashed by the High Court under Art. 226. **1957 All L J 257 : 1957 All W R (H C) 396 : AIR 1957 All 359 (361) (Pt A) (Fr 5).**

[Overruled in AIR 1964 All 7 (FB).]

——**Art. 226 — Grant of license for country spirit shop — Bias —Proof of —Authorities free to choose under law—No question of discrimination can arise —Grounds of certiorari — (Evidence Act (1872), S. 101—Bad faith)—(Bengal Excise Act (5 of 1909), Ss. 37 (c), 45).**

A, B, C and D were licensees of country spirit shops at places O, P, Q and R respectively. D's license was cancelled during currency of licensing period. B was appointed by A. D. M. licensee of shop at R subject to condition that he would surrender his license for shop at P and in the vacancy caused, C was appointed licensee for shop at P. A, B and C had been in trade for a long time. For shop at *, brother of B was appointed licensee. Appeal and revision by A against these appointments failed. In writ by A, the question of bias and the non-observance of executive instructions were at issues.

Held (i) that mala fides, by no means, had been established. There was, therefore, no reasonable apprehension of bias having vitiated the decision of authorities. Whether in a given case bad faith has been proved, is always a question of fact. It is true that it is not always possible nor even necessary to establish affirmatively facts from which an inescapable conclusion of bad faith may be reached. All that the law requires is that there should be circumstances proved from which a reasonable likelihood of bias can be inferred and if such proof is available then the decision of the authority concerned is liable to be set aside. AIR 1960 S C 468 and AIR 1959 S C 308, Cons.

(ii) that there being competition between two persons A and B having the same or nearly the same record, it was always open to the authority concerned to make its own choice. No question of discrimination can properly arise when the authorities are free, under the law, to choose between one old licensee and another for purposes of promotion.

And (iii) that the order of A D.M. under Ss. 37 (c), 45 of Bengal Excise Act. was a very full and comprehensive order which took into account the rival claims of the respective candidates for selection as licensee for shop at R. An order liable to be tested under Art. 226, unless is a "speaking order," would not be liable to certiorari. For a writ of certiorari to go, there has to be one or another of several conditions present which would justify interference by this Court. It must be shown that the order in question was made without jurisdiction or that the authority making it exceeded its jurisdiction; it has to be shown that the rules of natural justice have been violated or it has to be shown that the order suffers from some error apparent on the face of the record. It is not enough that there should be some error vitiating the order. It is necessary that the error must be an error of law patent on the face of the order itself. AIR 1958 S C 398, App. **1964 Cal L J 78.**

144 (g). No ground.

● ——Art. 226—Jurisdiction—Meaning of—Decision of judicial or quasi-judicial authority — Issue of certiorari against order — When lies—Quasi judicial authority having jurisdiction to decide a matter—Jurisdiction is not lost by coming to a wrong decision, whether the error is in law or in fact—Question whether tribunal has jurisdiction depends not on truth or falsehood of facts into which it has to enquire or upon the correctness of the finding upon these facts, but upon their nature and it is determinable, at the commencement and not at the conclusion of the inquiry. See Civil P. C. (1908), S. 9. **AIR 1962 S C 1621.**

● ——**Art. 226** — Income-tax Act (1922) S. 34 (1)—Previous assessment under Mysore Income-tax Act — Failure of assessee to disclose material facts in respect of entry in accounts of next year—Notice of re assessment — Validity — Effect of S. 13 (1), Finance Act, 1950 — Notice held within jurisdiction and no writ issued. See Income-tax Act (1922), S. 34 (1). **AIR 1961 S C 1149.**

● ——**Art. 226** — Certiorari—Election tribunal — Power of election tribunal to allow amendment under O. 6, R. 17, C. P. Code — **Held** in allowing general amendment contemplated by O. 6, R. 17, Civil P. C., the tribunal had not acted without jurisdiction so as to warrant issue of a writ of certiorari. See Representation of the People Act (1951), S. 83 (3). **AIR 1954 S C 440.**

——**Art. 226** — Power of Election tribunal to consider objection to election raised in written statements— Tribunal having jurisdiction to decide questions— High Court cannot interfere even if decision is wrong. See Representation of the People Act (1951), S. 80. **AIR 1954 Ajmer 33.**

——**Art. 226**—Certiorari—Issue of — Petitioners not in cultivatory possession, treated as khudkasht owners by Settlement Officer — Deputy Director also finding petitioners not to be in cultivatory possession of land

and correcting error of law committed by Settlement Officer — Mere mistake by Deputy Director in saying that there was no evidence while setting aside Settlement Officer's order will not entitle petitioner to writ of certiorari. Decision in Civil Misc. Writ No. 2305 of 1964, D/- 17-9-1964 (All), Affirmed. 1965 All W R (H C) 125 : 1965 All L J 313 : AIR 1966 All 173 (173, 174) (Pt B) (Pr 1) (D B).

—— Art. 226 — U. P. Consolidation of Holdings Act, 1953 (5 of 1954), S. 48 — Director exercising power of revision under S. 48 in excess of power vested — Order proper and equitable not resulting in injustice to petitioner — Held, order should not be set aside under article.

A revision against the order of a Settlement Officer (Consolidation) was allowed by the Director of Consolidation under S. 48 of Consolidation of Holdings Act. Though the Director acted in excess of the jurisdiction vested in him under S. 48, it was found that the order was proper, equitable and just and no manifest injustice had resulted to the petitioner.

Held, that it was not a fit case where the High Court should exercise its equitable jurisdiction of issuing a writ under Art. 226 for the purpose of setting aside the equitable order and restoring a position which was not fair to the parties. AIR 1952 S C 192, Foll.

The writ jurisdiction of the High Court is an equitable jurisdiction which is to be exercised in the interest of justice and not merely for the purpose of enforcing the technicalities of law. 1964 All W R (H C) 155 : 1964 All L J 240.

——Art. 226 — Transfer of pending election petition from one judicial officer to another—No provision in Rules for transfer — Transferee Officer should hear petition de novo—Failure to try de novo — Certiorari will not issue when no prejudice is caused thereby. See Municipalities—U. P. Town Areas Act (2 of 1914). 1960 All L J 441.

——Art. 226—Interference — Grounds—Order under Motor Vehicles Act—Issue of writ — Case held not fit for writ under Art. 226. See Motor Vehicles Act (1939), S. 4-A. AIR 1957 Andh Pra 383 (DB).

——Art. 226—Settlement holder—Settlement Rules—Development Rate Scheme—Allotment—Non-payment of premium—Eviction of allottees is proper and justified — No excess of jurisdiction or illegal exercise of jurisdiction—Cannot be challenged by a writ petition —See Assam Local Revenue Regulation (1 of 1886), S. 3 (b). AIR 1955 N U C (Assam) 2810.

——Arts. 228 and 286—Certiorari when can issue — Sales whether in course of export out of India—Decision of Sales Tax Officer—Issue of writ.

Certiorari can issue either if the Sales Tax Officer acts without jurisdiction or there is an error apparent on the face of the record. Even if the Sales Tax Officer decides wrongly the question whether the sales took place in the course of export out of India, that would not be decision without jurisdiction and there can be no error apparent on the face of the record when the sole point on which there is said to be an error was not raised before the Sales Tax Officer. (1959) 10 S T C 68 (Cal).

——Art. 226—Departmental enquiry—Charge sheet worded in language of S. 5 (1) (d), Prevention of Corruption Act — Objection to jurisdiction — Maintainability — (Central Civil Services (Classification, Control and Appeal) Rules (1957), R 15) — (Prevention of Corruption Act (1947), S. 5 (1) (d))—(Criminal Law Amendment Act (1952), S. 7).

Where the official was being proceeded against departmentally under R. 15 of the Central Civil Services (Classification, Control and Appeal) Rules 1957 but the wording of the charge-sheet in the proposed departmental inquiry had followed the language of S. 5 (1) (d) of the Prevention of Corruption Act only to show clearly what the allegations against the official were, it cannot be said departmental proceedings were without jurisdiction and liable to be quashed, was untenable. Under the circumstances there is no ground for interference with the departmental enquiry in the exercise of the High Court's extraordinary powers under Art. 226 of the Constitution. AIR 1959 Him Pra 12 (13, 14) (Prs 1, 3, 7, 11).

——Art. 32 (2-A)—Certiorari—Grounds for—Refusal to adjourn hearing—No ground to interfere — (Constitution of Jammu and Kashmir, S. 103 — (Civil P. Code (1908), O. 17, R. 1).

Where, in a telegram for adjournment of a hearing no ground at all was indicated, nor was any referred to in the petition filed; the refusal to adjourn cannot be said to be unjustified. Matters like this are not properly within the sphere of writ jurisdiction, unless it be for the purpose of showing that there has been a failure of natural justice.

Where the procedure adopted by the Custodian General did not amount to a denial of natural justice, nor was there any defect of jurisdiction or violation of the principles of natural justice or any error of law manifest on the face of the record to justify interference in certiorari, the quashing of the Custodian General's order was likely to result in injustice to respondents.

Held, that there was no reason for interfering with the order of the Custodian General. AIR 1959 J & K 123 (125) (Pt C) (Prs 6, 9).

——Art. 226 — Certiorari — Lower tribunal's order valid though passed on erroneous reasons — Writ cannot be granted — (J. & K. Constitution (1956), S. 103). AIR 1959 J & K 17 (18, 19) (Pr 7).

——Art. 226 — Administrative directions—Errors of fact and not of law—No writ will issue.

The order of the Government of Madras in the Home Department G. O. Ms. No. 1298, dated 28-4-1956 embodies mere administrative directions and the mistakes made in the allocation of marks even if they are established, will not attract jurisdiction of the High Court under Art. 226 of the Constitution. The mistakes alleged, even if they are established, will amount only to errors of fact. Only errors of law apparent on the face of the record are amenable to correction under Art. 226 of the Constitution; and errors of fact, however patent on the face of the record, cannot be so corrected. 1963 Cur L T 78 and Civil Appeal No. 198 of 1962 D/- 17-9-1952 (S C) and AIR 1961 S C 970, Rel on. 1963 Ker L J 239 : (1963) 1 Ker L R 266 : 1963 Ker L T 609 : AIR 1963 Ker 357 (358) (Prs 4, 5) (DB).

——Art. 226—Interference—Grounds—State Transport Authority interfering with order of Regional Transport Authority in matter of permit — Interference in writ proceedings — (Motor Vehicles Act (1939), S. 64-A).

In order to satisfy itself whether the order of the Regional Transport Authority was legal, regular or proper, the State Transport Authority under S. 64-A of the Motor Vehicles Act, 1939, was not deciding the existence of a collateral fact but the issue itself as to the legality, regularity or the propriety of the order.

By enacting S. 64-A, Motor Vehicles Act, the Legislature clearly intended that the State Transport Authority should have the powers to intervene if it was satisfied that the order in question passed by the Regional Transport Authority in the matter of granting permit, if it was satisfied that the order in ques-

tion was either illegal, irregular or improper. It would not be open to a Court exercising the power of certiorari to intervene merely because it might be of the opinion that the view taken by the State Transport Authority was erroneous. A I R 1956 S C 463, Foll. 1958 Ker L J 497 : 1958 Ker L T 410 : 1958 Mad L J (Cr) 518 : A I R 1958 Ker 341 (344) (Pt B) (Prs 11, 12).

——Arts. 226 and 227—Jurisdiction of High Court.

When the Tribunal has jurisdiction to come to the conclusion and pass the order and there is no lack of evidence to support the conclusion reached by the Tribunal, the jurisdiction of the High Court under Art. 226 of the Constitution is not attracted. The invocation of Art. 227 as well does not widen the circumstances in which a writ of certiorari will issue. 1957 Ker L J 1091: 1957 Ker L T 1271: (1958) 1 Lab L J 47 : I L R (1958) Ker 376 : A I R 1958 Ker 192 (193, 194) (Prs 6, 8) (DB).

——Art. 226—Duty of applicant.

A party by his conduct can disentitle himself to relief under Art. 226 of the Constitution.

Held, that the petitioner by not raising the question of jurisdiction before the Agricultural Income-tax Officer so conducted himself as to preclude himself from getting relief even on the assumption that the assessment concerned was made without jurisdiction. 1958 Ker L J 783 : 1958 Ker L T 958.

——Art. 226—Certiorari if can be issued to quash erroneous decision of inferior tribunal within its jurisdiction—(Civil P. C. (1908), S. 9).

A writ of certiorari cannot be granted to quash the decision of the inferior Court within its jurisdiction on the ground that the decision is wrong.

If a certain state of facts has to exist before an inferior Tribunal has jurisdiction to do certain things, the Tribunal must, to enable itself to obtain jurisdiction, find that those facts exist. The Tribunal cannot give itself jurisdiction by a wrong decision on them and the superior Court may by means of proceedings for certiorari inquire into the correctness of the decision. The decision as to those facts is collateral because, though the existence of jurisdiction depends thereon, it is not the main question which the Tribunal has to decide. If on the other hand the Tribunal is given jurisdiction to determine certain facts and those facts form a part of the very issue which the Tribunal has to decide and the Act constituting the Tribunal gives it the power to come to a final decision on that matter then the decision of the Tribunal cannot be treated as one going to its jurisdiction and cannot, therefore, be questioned in any Court. AIR 1952 S C 179, 192 and 319, Rel. on ILR (1954) M B 76 : A I R 1953 Madh-B 197 (202, 203) (Pt D) (Pr 14) (DB).

——Art. 226—Jurisdiction — Scope of interference regarding acts of tribunal.

While a tribunal cannot act without jurisdiction or refuse to exercise a jurisdiction, acts performed by it with jurisdiction cannot be the subject of a writ, unless there is an error of law apparent on the face of the record or there has been a violation of the principles of natural justice or the case otherwise warrants interference on well settled principles. When a tribunal decides matters rightly as well as wrongly but with jurisdiction, the remedy in such cases can only be an appeal where one lies and not Art. 226 of the Constitution which does not confer appellate jurisdiction on High Courts. 1959 M P L J (Notes) 4.

——Art. 226 — Certiorari — Impugned order of the lower Court challenged on the ground of jurisdiction —Objection not taken before that authority — Objection cannot be permitted in proceedings to obtain writ of certiorari either on the ground of acquiescence or from the stand point of certiorari. I L R (1964) 2 Mad 747 : 78 Mad L W 241 : (1965) 1 Mad L J 594 : A I R 1965 Mad 321 (323) (Pt D) (Pr 4).

——Art. 226—Certiorari — Nature of proceedings — High Court cannot interfere with quantum of punishment imposed by competent authority.

The High Court in a petition for certiorari, does not exercise an appellate jurisdiction and it cannot, therefore, interfere with the quantum of punishment decided by a competent authority. 76 Mad L W 36 : (1963) 1 Mad L J 225 : 1963 Mad W N 275 : AIR 1963 Mad 205 (207) (Pt E) (Pr 9).

——Art. 226 — Private institution recognized and aided by the Government— Termination of the services of the employee by the institution — Rights of parties governed only by the contract of service, express or implied — Conditions imposed by the administrative rules framed under the Madras Elementary Education Act (8 of 1920) for continuance of recognition and aid — Cannot be invoked for redress of employee's rights — Writ under Art. 226 of the Constitution will not issue. (1962) 1 Mad L J 269 : 75 Mad L W 267 : A I R 1962 Mad 387 (389) (Prs 7, 8, 10).

——Art. 226 — Industrial Disputes — Dismissal of workman — Power of Industrial Tribunal to interfere and give appropriate relief — Termination of service for misconduct after proper enquiry— No suggestion that conclusion was perverse or vitiated by improper motive — Award of Labour Court directing reinstatement held was without jurisdiction. (1960-61) 19 F J R 268 : (1961) 1 Mad L J 318 : (1960) 1 Lab L J 481 : A I R 1961 Mad 85 (86, 87) (Prs 4, 5).

——Art. 226 — Order of tribunal under S. 20 (3), Minimum Wages Act — Requirement of second proviso to S. 20 (2) not satisfied before admitting application—Susbtantial justice done between parties — Writ of certiorari to set aside order will not issue — (Minimum Wages Act (1948), S. 20 (2) and (3)). (1955-56) 8 F J R 234 : 68 Mad L W 402 : 1955-1 Mad L J 534 : A I R 1955 Mad 569 (571) (Pt C) (Pr 13).

——Art. 226 — Writ of certiorari —Erroneous decision — (Madras Shops and Establishments Act (36 of 1947), S. 41.)

The jurisdiction of a Court over a subject-matter does not depend upon whether its conclusions are correct or not; the Court has jurisdiction to decide wrong as well as right. Where therefore the subject-matter of the appeal is clearly within the exclusive jurisdiction of the Commissioner under S. 41 (2) of the Madras Act 36 of 1947 and there is no question of any irregularity, no writ of certiorari can be issued merely because the order is erroneous on the merits. A I R 1952 S C 179, Foll. Case Law referred.

Though the Court of appeal in England has held that certiorari will lie to quash the decision of a statutory tribunal on the ground of an error of law apparent on the face of the record and though it could be said of the order of the Commissioner that it is based on a misdirection which is an error of law, the High Court has no jurisdiction to interfere with it under Art. 226 in view of the Supreme Court's decision in A I R 1952 S C 179, 1952-1 E R 122 Ref. 1953 Mad W N 744 : (1953) 2 Mad L J 639 : 66 Mad L W 1038 : A I R 1954 Mad 377 (381) (Pt F) (Pr 11).

——Art. 226 — Grounds for issue — Supersession of Panchayat Board — Local Boards Act (14 of 1920), S. 45-A (1)— Directions from Government to Inspector in regard to matters already delegated to him — Validity of the Inspector's orders of supersession.

The Inspector of Municipal Councils and Local Boards to whom the powers of the Government under S. 45-A had been delegated issued an order superseding a Panchayat Board under S. 45-A (1) of the Act. Before the issue of proceedings the Government had communicated their view to the Inspector in unequivocal terms that there was sufficient reason for such supersession and even mentioned a particular individual as the Special Officer to be appointed. The order of supersession was attacked on the grounds (i) that the Inspector was not given an opportunity to form his own individual opinion on the material available and (ii) that the Inspector did not make any inquiry as regards the charges.

Held, (1) Though ordinarily not only the interference from Government would be deprecated, but an order passed after such interference would have been quashed, as it appeared from the file that though official orders had not been actually passed by the Inspector, he himself proposed to take steps for supersession, the mere fact that the Government set its seal of approval would not render the order invalid. Further, the Government was entrusted with the duty of supervision over Local Boards and though they cannot dictate to the Inspector what ultimately he should do, they certainly could initiate proceedings by moving the Inspector to take action.

(2) Though it was irregular to name the officer even before the Board was superseded, it would not vitiate the action of the Inspector.

(3) There must be something ex facie in the order passed by officers with statutory powers, to show that there are reasons for the order and the conclusion is based on materials before them. But merely because the order could have been more full, is not a ground for interference by way of issuing a writ, especially when an explanation was called for and submitted by the Board and presumably considered by the Inspector. (1951) 1 Mad L J 285 : A I R 1951 Mad 775 (777) (Pt C) (Pr 8) (DB).

——Art. 226—Certiorari—Order determining fair rent — Interference by High Court — Writ of certiorari — Application for — That the order is wrong is no ground for interference. See Houses and Rents — Madras Buildings (Lease and Rent Control) Act, 1946 (15 of 1946), S. 4. **A I R 1950 Mad 555 (DB).**

——Arts. 226 and 227 — Order of Revenue Court refusing to declare petitioner as occupancy tenant — Interference—(Tenancy Laws — C. P. Tenancy Act (1 of 1920), S. 41).

A writ of certiorari does not issue on the ground that there was no evidence in support of the finding, or that the Court has misdirected itself in considering the evidence. Absence of evidence does not vacate the jurisdiction of the Court. (1922) 2 A C 128, Rel. on. 1955 Nag L J 732 : ILR (1955) Nag 741 : A I R 1956 Nag 65 (65, 66) (Pt A) (Prs 3, 4) (DB).

——Art. 226—Board of Revenue — Jurisdiction—Domestic matter — Order not going beyond powers conferred — No interference. See Judicial Precedents. **A I R 1954 Nag 191 (DB).**

——Arts. 226 and 227—Jurisdiction—Appeal allowed on ground tenable—Order is not without jurisdiction —Motor Vehicles Act, S. 64.

The appeal to the S. T. A. raised grounds that were not tenable and also those on which the appeal was tenable. The appeal was allowed on ground that was tenable.

Held, that the appellate order was not without jurisdiction. 1952 Nag L J (Notes) 29 (DB).

——Art. 226—Certiorari—Writ of—Grounds.

If a question of law is specifically referred to an arbitrator for decision and he decides it, a Court of law will not interfere with the award even if the Court itself would have taken a different view on the point of law had it been placed before it. 1923 A C 395 and A I R 1949 P C 334, Rel. on. Where the interpretation of a specific provision in an award was referred to the Industrial Tribunal for adjudication, the decision of the Tribunal on that point cannot be set aside merely because the Court would have come to a different conclusion. **A I R 1957 Pat 471 (474) (Pt B) (Pr 5) (DB).**

—Art. 226 — Order for eviction of tenant—Execution — Executing Court deciding that it has jurisdiction to execute order — Decision affirmed in appeal—Order of appellate Court even if wrong is not without jurisdiction — Writ of certiorari cannot be issued — (Civil P. C. (1908), S. 9). **ILR 31 Pat 708 : 1953 B L J R 132 : AIR 1953 Pat 61 (62, 63) (Pt B) (Pr 5).**

——Art. 226 — Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act 5 of 2007 BK.), Ss. 20, 35, 41 — Illegal order of Settlement officer — (Constitution of India, Art. 226—Certiorari—Irregular assumption of juri diction) — **Held**, that the order of Settlement Officer ought not to be set aside under Art. 226 on the only ground that only a revision was permissible and no appeal lay under the Act against the order of the Settlement officer. See Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act (5 of 2007 BK.), S. 20. **A I R 1955 N U C (Pepsu) 6024.**

——Art. 226—Writ of certiorari—Issue of—Order of review by Custodian of evacuee property—Administration of Evacuee Property Act (1950), S. 26.

Where the review proceedings were started by the very Custodian who had made the original order and consequently it could not be said that the review proceedings were without jurisdiction, the taking of additional evidence, even if it was not legal, could not vitiate the proceedings, nor could it be said that the final order of review was without jurisdiction. There is, therefore, no justification for issuing a writ of certiorari quashing the order of the Custodian. 3 Pepsu L R 347 : **AIR 1952 Pepsu 82 (84) (Pt C)** (Pr 5) (DB).

——Art. 226—Certiorari—Government servant transferred to distant place—Place not suitable on grounds of ill-health of near relatives of servant — Servant appealing to higher authorities to change place of transfer but without success—Servant tendering resignation with one month's pay—Authorities not accepting resignation and threatening servant with proceedings under Defence of India Rules (1962) — Transfer order challenged on grounds of mala fides—Held, on facts that there was no sufficient material to grant relief claimed — Duties of Government and Public servants in democratic set up fully explained. **A I R 1965 Punj 455 (456, 457) (Prs 8, 9, 10).**

——Art. 226 — Punjab Security of Land Tenures Act (10 of 1953), Ss 9 (1) (i), 24 and 84 —Punjab Security of Land Tenures Supplementary Rules (1956), R. 13 — Application for reservation and resettlement of land — Procedure to be followed — Misdescription of nomenclature by authorities — No ground for writ of certiorari. See Tenancy Laws—Punjab Security of Land Tenures Act (10 of 1953), S. 9(1)(i). **1965 Cur L J 420 (Punj).**

——Arts. 226, 227 — Assessment proceedings — Assessee a coal agent — Assessment years for 1949-50 to 1955-56 — Writ petition for quashing assessment orders and for refund of payment of Sales-tax—Maintainability — E. P. General Sales Tax Act (46 of 1948), S. 7.

One company A had been doing business of procuring coal and coke as del credre agents. From 1953, they also started running a small coal and coke depot.

Under S. 7 of E. P. General Sales Tax Act they got themselves registered as "dealer". The assessments were completed and tax for years 1949 50 to 1955-56 was finally paid. A did not dispute that he was "dealer". On 22-3-1959 the Deputy Secretary to the Government of Punjab informed that coal agents were not covered by the term "dealer". A filed application for refund of the payment of sales tax, which was filed. In State of Bombay v. Messrs. Ratilal Vadilal and Brothers, A I R 1961 S C 1108, Supreme Court held that coal agents were not covered by the term dealer. A filed writ application on 15.10-1962 for issue of certiorari to quash the assessment orders and for issue of writ of mandamus to refund the payment of Sales tax.

Held, (1) that by the decision of the Supreme Court, all the previous assessments made by the Assessing Authority, which had become final under the Act, did not become without jurisdiction. There was no error of law in the assessment orders.

(2) that High Court would not quash the assessment orders after so much delay in proceedings under Art. 226 of the Constitution for the simple reason that on the record it was not possible to determine as to how much amount of sales tax was recovered from them as coal agents during the relevant years.

(3) that A was not entitled to the issue of mandamus for refund of the payment of Sales tax as there were disputed questions of fact and limitation. A I R 1964 S C 1006 and A I R 1965 S C 1740, Rel. on. **('65) 67 Pun L R 1185.**

— Art. 226—Certiorari - No absence of jurisdiction —Writ petition also after delay of ten years—Certiorari would not lie.

The Municipal Committee revised the assessment of the rental value of the petitioner's property on the basis of S. 3(1)(c) of the Punjab Municipal Act (3 of 1911) as applicable to Delhi. The petitioner applied after a period of 10 years under Art. 226 of Constitution of India for a writ of certiorari to quash the said assessment alleging that the revision ought to have been made on the basis of S. 3(1)(b) and not S. 3(1)(c).

Held, a legal error was not the same thing as an error of jurisdiction. The committee had the jurisdiction under S. 67 of the Act to revise the assessment. In revising that assessment, it might or might not have committed the legal error. But if it had committed a legal error, the remedy was by way of an appeal or by a writ of certiorari. When the remedy of appeal was pursued without success, the petitioner should have moved the High Court. When the petitioner prayed for writ of certiorari after a delay of ten years, the prayer must be rejected. **67 Punj L R 1027 : I L R (1965) 2 Punj 164.**

——Art 226—Power to issue writ under—When exercised—No manifest injustice—Impugned order substantially just and proper—Interference by writ not called for. AIR 1964 Punj 15 (20) (Pt C) (Prs 17, 18).

——Arts. 226 and 227 — Certiorari — Grounds on which writ can be issued, stated — Mistake not apparent on face of record — Errors in appreciation of documentary evidence — Writ cannot be issued. A I R 1958 S C 398, Rel. on. (1962-63) 23 F J R 419 : (1963) 2 Lab L J 17 : 1962 Cur L J 1 : **A I R 1961 Punj 569 (570) (Pt A) (Pr 7).**

[Reversed on another point in AIR 1964 Punj 313.]

● ——Art. 226—Jurisdiction of High Court — Order issuing permits by State Transport Commissioner—Absence of mala fides—Interference.

If the order granting permits is free from mala fides, the fact that the procedure adopted in implementing the said order was rather curious or even unfair would not be of much relevancy for the purposes of deciding this case. It is therefore impossible to find that the action of the State Transport Commissioner in granting the impugned permits was mala fide or that the said order is liable to be quashed on the ground. Ambala Ex-servicemen Transport Co-operative Society, Ltd. v State of Punjab, **60 Punj L R 515 : ILR (1958) Punj 1590 : AIR 1959 Punj 1 (8) (Pt E) (Pr 27) (FB).**

——Art. 226—Issue of writ—Grounds — Civil Court vacating order of stay — No mala fides or error on face—Issue of writ.

Where on the facts alleged in the writ petition, it cannot be said that the Judge of a civil Court who vacated certain order of stay was acting mala fides or the exercise of his discretion was arbitrary, or that it was an order which on the face of it was erroneous, there is no case for the issuing of any writ under Art. 226. A I R 1952 Bom 235 and A I R 1952 Cal 72 and A I R 1951 Bom 406, Disting. **59 Punj L R 480 : AIR 1957 Punj 76 (76, 77) (Pr 10) (DB).**

——Arts. 226 and 227 — (Administration of Evacuee Property Act (1950), S. 27) — (Administration of Evacuee Property (Central) Rules (1950), R. 31) — Object of R. 31—Hearing petitions which are more than sixty days old is not beyond jurisdiction of Custodian General — Custodian General extending time — High Court will not interfere. A I R 1955 N U C (Punj) 4016.

——Art. 226—Wrong decision on merits given in proper exercise of jurisdiction—Writ of certiorari or prohibition, if can be issued.

A writ of certiorari will not be granted to quash the decision of an authority with its jurisdiction on the ground that the decision is wrong. Indeed it must be shown before a writ of certiorari is issued that the authority which passed the order has acted without jurisdiction or in excess of it.

A wrong decision on the merits of proceedings given in the proper exercise of jurisdiction is not the subject-matter of writs of certiorari or prohibition. **AIR 1952 Punj 1 (5) (Pt C) (Pr 22) (DB).**

——Art. 226—Question of jurisdiction — (Civil P. C. (1908), S. 9).

The question that as the original defendant had died leaving other sons and they were not brought on the record, the whole suit abated and the Revenue Court should not have passed a decree against the applicant alone is not a question of jurisdiction at all. This is a matter which incidentally arises in suits, and the Court having jurisdiction to try the suit can also decide this question. If the question is wrongly decided it cannot be a ground for a writ of certiorari unless it can be said that there has been a patent mistake of law apparent on the face of the record. **1954 Raj L W 385 : I L R (1954) 4 Raj 1 : A I R 1954 Raj 236 (237) (Pt B) (Pr 9) (DB).**

——Art 226—Certiorari - Order passed by authority having jurisdiction and not acting in excess of power— Writ cannot issue even if order is erroneous.

An order though the decision in it is erroneous cannot be interfered with by a writ of Certiorari when the authority who passed the order had jurisdiction to decide the question and had not acted in excess of his powers.

In Saurashtra where the rent from the cultivators is collected by the Government and paid to the former talukdars, the Collector has jurisdiction, when a dispute arises, to fix the rent assessing the same on a measurement of the land and also to revise his original order when he finds that the procedure adopted and the measurements taken accordingly work out inequitably to one of the parties. His juris-

diction to revise the order will not be taken away from him, either by the fact that the measurements have already been taken or that the survey numbers measured were selected by the parties themselves who had agreed in the order itself to be bound by those measurements. Therefore if the Collector decides, on a dispute arising as to the quantum of rent based on the ground of the correctness of the norm adopted, decides that a fresh measurement is necessary, his decision cannot be interfered with by a writ of certiorari, even if it be a wrong decision, because in deciding so the Collector neither acts without jurisdiction nor in excess of his powers. (1953) 6 Sau L R 1 : AIR 1953 Sau 28 (30) (Prs 3, 4) (DB).

——Art. 226—Certiorari—Writ—Issue of—Grounds—Erroneous decision by Rent Controller — Decision, however, not without jurisdiction — High Court will not interfere. See Travancore Cochin Buildings, (Lease and Rent Control) Order, 1950, S. 9 (3) (a) (iii). **A I R 1952 Trav-Co 125.**

145. Income-tax Act, orders under.

● —Art. 226 — Income-tax Act (1922), S. 33-A (2) —Revisional jurisdiction of Commissioner — Orders passed are judicial and not administrative — Certiorari lies. A I R 1957 Cal 319 and (1960) 40 I T R 200 (Andh Pra) and A I R 1964 Cal 399, Overruled. Dwarka Nath v. I.-T. Officer, Special Circle, D Ward, Kanpur, (1965) 2 S C A 868 : (1965) 2 I T J 218 : (1965) 2 S C J 296: (1965) 57 I T R 349 : (1965) 2 S C W R 391 : **A I R 1966 S C 81 (86 87) (Pt C) (Prs 6, 7).**

● —Art. 226 — Scope — S 49-E, Income-tax Act— Section is subject to Ss. 228 and 229 of Companies Act (1918) — Income-tax Officer applying S. 49-E of the Income-tax Act (1922)—High Court can exercise its jurisdiction under Art. 226 of the Constitution. See Income-tax Act (1922), S. 49-E. (1965) 2 S C J 248 : AIR 1966 S C 35.

● —Art. 226 — Applicability — Assessment under S. 23 (5) (b), Income-tax Act without jurisdiction— Writ to set aside. See Income-tax Act (1922), S. 23 (5), (b). **AIR 1959 S C 1207.**

● —Art. 226 — Proceedings under S. 34 (1-A), Income-tax Act, are judicial or quasi-judicial —Principles of natural justice cannot be invoked for holding section void. See Ibid, Art. 14 **AIR 1960 All 19 (FB).**

——Art. 226 — Advance tax deposited in Lahore before 1947 —On partition assessee coming to India — Assessment for subsequent years —Assessee claiming adjustment or refund - Duty of I. T. Authority to refund— Omission — High Court has power to direct Authority to set off. See Income-tax Act (1922), S 12-A. **(1956) 29 ITR 60 (All).**

——Art. 226—Administrative orders — Income-tax Act (11 of 1922), S. 33-A—Order under is administrative and is not subject to removal on certiorari - Income-tax Act (11 of 1922), Ss. 30, 31, 33-A, 45 and 33-B — Powers of Income tax Officer to refuse time for payment of tax pending disposal of appeal - Income-tax Act, Ss. 29 and 46 (1)—Demand notice issued under S. 29 quantifying penalty leviable under S. 46 (1) — Contents of—Civil Procedure Code (5 of 1908), O 29, R. 2—Service of demand notice — Affixture to door of business premises — Propriety. (1960) 2 Andh W R 398 : (1960) 40 ITR 200 : ILR (1961) 1 Andh Pra 32.

[Overruled in AIR 1966 S C 81.]

● ——Art. 226 — Income-tax Act (1922) S. 33-A (1)— Commissioner's power of revision—Nature of—Order dismissing revision petition — It is an administrative order—No interference under Art. 226 of Constitution. See Income-tax Act (1922), S. 33-A (1). **A I R 1959 Andh Pra 508.**

——Arts. 226 and 227 — Income-tax Act (1922), S. 33-A—Order under S. 33-A correcting error committed by I. T. O. — Order being an administrative order will not be interfered with merely because party had not been heard. **A I R 1964 Assam 136 (137, 138) (Pt B) (Pr 5) (DB).**

[Not good law in view of AIR 1966 S C 81—Ed.]

● ——Art. 226 — Search and seizure under S. 37 (2), Income-tax Act, in excess of powers conferred—Executive action is ultra vires and illegal — Can be set aside under Art. 226. See Income-tax Act (1922), S. 37 (2). **A I R 1964 Assam 1 (FB).**

——Art. 226—High Court has power of superintendence over arbitrators functioning under S. 10-A, Industrial Disputes Act — Arbitrator acts as quasi-judicial body—His orders can be corrected by writ of certiorari provided there is an error of law apparent on the face of the record. See Industrial Disputes Act (1947), S. 10-A. **A I R 1962 Bom 274 (DB).**

——Art. 226 — Writ of certiorari —Income-tax Act (1922), S. 33-A—Exercise of power by Commissioner under—It is in his administrative capacity—No writ can be issued.

The power to be exercised by the Commissioner under S. 33-A is only in his administrative capacity. The High Court, therefore, has no jurisdiction to issue a writ of certiorari for quashing the order passed by the Commissioner under S. 33 A **A I R 1948 P C 102 ; AIR 1959 Andh Pra 508, Foll. 1962 Nag L J 296 : 64 Bom L R 201 : ILR (1962) Bom 29 : (1962) 46 I T R 1023.**

——Art. 226—Writ of certiorari — Commissioner of Income tax revising case under S. 33 A of Income-tax Act, 1922—He acts in administrative capacity — No writ of certiorari lies against his order passed under S. 33-A — Income-tax Act (1961), S. 264. A I R 1948 P C 102, Foll. (1964) 1 I T J 101 : 68 Cal W N 84 : (1964) 53 I T R 717 : **A I R 1964 Cal 399 (409) (Pr 25) (DB).**

[Overruled in AIR 1966 S C 81.]

——Art. 226—Income-tax Act (1922), S. 33A—Order of Commissioner under — Application for certiorari is not open against such order — Doctrine of natural justice, if attracted.

Section 33A prohibits the Commissioner to make any prejudicial order. For the making of prejudicial orders, there is now a separate provision, namely, S. 33B. The very refusal by the Commissioner to interfere with the order of the subordinate authority does not amount to a 'prejudicial order'. The requirement of a reasonable opportunity of being heard has also been taken away by the legislature by the amendment in 1941 leaving it to the Commissioner to "make such inquiry to be made . . . as he thinks fit." If that be so, certiorari would not be available on the ground that a hearing has been denied and the rules of natural justice have been violated because such expressions imply a determination on subjective satisfaction. A I R 1956 S C 153 and (1962) 44 I T R 870 (Cal), Rel. on.

The order contemplated by S. 33A (2) is an administrative order of a discretionary nature and the doctrine of natural justice cannot be imported because there is no obligation to hear, either expressly or impliedly. Hence, even though the Commissioner did not hear the petitioner, the petitioner cannot have any relief in application under Art. 226 on that ground. A I R 1959 S C 107 and AIR 1956 S C 153, Rel. on. (1963) 55 I T R 87 (Cal).

[Not good law in view of AIR 1966 S C 81—Ed.]

——Arts. 226 and 265—Certiorari — Invalid order of assessment — Failure of tax-payer to point out infir-

mities to Revenue Authorities in time—No ground to refuse writ—(Income-tax Act (1922), S. 24-B). ('62) 66 Cal W N 474.

——Art. 226—Certiorari — Notice of demand to pay tax issued by Income-tax Department—Writ cannot be issued. (1957-58) 12 F J R 324 : (1958) 33 I T R 866 : A I R 1957 Cal 514 (520) (Pt E) (Pr 22) (DB).

——Art. 226—Certiorari—Jurisdiction under—When exercised — Decision of facts condition precedent to jurisdiction — Wrong decision—Superior Court will interfere — Wrong order under S. 18 (7), Income-tax Act—Order quashed—(Income-tax Act (1922), S. 18 (7).) AIR 1955 N U C (Cal) 5917.

——Art. 226 — Proceedings under S. 34, Income-tax Act—Proceedings dropped—Proceedings again taken up—Quashing of—See Income-tax Act (1922), S. 34. AIR 1955 Mys 103 (DB).

——Art. 226—Income tax Act (1922), S. 5—Income-tax authority—Jurisdiction and powers of—These are quasi-judicial tribunals. See Income-tax Act (1922), S. 5. AIR 1957 Punj 312.

——Art. 226 — Proceedings under S. 45, Income-tax Act—Nature of — Assessment proceedings are quasi-judicial—Order extending time for payment of tax is administrative — Writ of certiorari — Issue of. See Income-tax Act (1922), S. 45. AIR 1956 Punj 164.

——Art. 226—Extension of time to pay tax — Powers of Commissioner—Interference by High Court—Concept of continuing jurisdiction — See Income-tax Act (1922), S. 33A. AIR 1956 Punj 164.

146. Industrial disputes, orders in respect of.

●——Art. 226 — Industrial dispute — Finding by Labour Court that management's action amounted to victimisation — Interference under Art. 226. See Industrial Dispute. AIR 1964 S C 806.

●——Art. 226—Administrative orders—Notification under S. 10 (1), Industrial Disputes Act, 1947, found invalid — Proper writ—Mandamus and not certiorari.

In making a reference under S. 10 (1), Industrial Disputes Act, 1947, the appropriate Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. That being so it would be more appropriate to issue a writ of mandamus against the State Government in respect of a notification issued by it under S. 10 (1), which is found to be invalid and ultra vires, than issuing a writ of certiorari against the State Government quashing the impugned notification : A I R 1953 Cal 53, Rel. on. State of Bihar v. D. N. Ganguly, (1958-59) 15 F J R 118 : (1958) 2 Lab L J 634 : 1958 S C A 1082 : 1959 Mad L J (Cr) 323 : (1959) 1 M L J (S C) 178 : 1959 S C J 533 : (1959) 1 Andh W R (S C) 178 : ILR 37 Pat 1524 : 1959 S C R 1191 : AIR 1958 S C 1018 (1026) (Pt B) (Pr 23).

●——Art. 226—Scope—Industrial Tribunal ceasing to exist — Writ against award of—Power to issue—(Industrial Disputes Act (1947), S. 7).

Under S. 7, Industrial Disputes Act, it cannot be said that the Government must be deemed to have brought into being not an ad hoc Tribunal to adjudicate upon the particular disputes referred to it but a permanent Tribunal though functioning intermittently. Where the Tribunal has ceased to exist and its members are subsequently engaged in the performance of other official duties, the Tribunal cannot be said to continue in a sort of suspended animation and hence a writ of certiorari cannot be issued for quashing its award. The Lloyds Bank, Ltd. v. The Lloyds Bank's Indian Staff Association (Calcutta Branches), AIR 1953 S C 743 (747) (Pt B) (Pr 3).

●——Art. 226—Industrial Disputes Act (1947), S. 10—Dismissal whether wrongful is a question for Tribunal—No interference by High Court under Arts. 226 and 227 of the Constitution unless there is grave miscarriage of justice or flagrant violation of law. See Industrial Disputes Act (1947), S. 10. AIR 1953 S C 58.

——Art. 226 — Administrative orders — Certiorari—Issue of, for quashing — Notification under S. 3 of U. P. Act (28 of 1947) - (Industrial Disputes — U. P. Industrial Disputes Act (28 of 1947), S. 3).

A notification issued by the Government of the State of Uttar Pradesh in exercise of its administrative and executive power conferred on it by S. 3 of the U. P. Industrial Disputes Act, 1947, does not incorporate in it any decision or determination by any judicial or quasi-judicial authority. No writ of certiorari can be issued for quashing such a notification. ILR (1958) 1 All 434 : AIR 1958 All 80 (84) (Pt C) (Pr 7) (DB).

——Art. 226—Invalid order—What is—U. P. Industrial Disputes Act (28 of 1947), S. 3 — Ingredients of order passed under S. 3 published in part—Validity of order.

Normally when an order is passed (e.g., one under S. 3, U. P. Industrial Disputes Act, 1947) the whole of the order must be contained in one single document. But if there happens to be an occasion where parts of the ingredients of that order have already been notified it would be wrong to hold that the order becomes invalid because these parts are not reproduced in the subsequent order and the persons concerned are informed of these parts of the order by making a reference to the earlier notification. AIR 1956 All 689 (697, 698) (Pt H) (Pr 13) (DB).

——Art. 226 — Dispute concerning leave rules in Standing Orders—Reference of, by State Government to Industrial Tribunal—Validity — Powers of Tribunal—Scope and extent — Power of High Court to interfere with award, under Art. 226 of Constitution—See Industrial Employment (Standing Orders) Act (1946). AIR 1956 All 597.

——Art. 226—Certiorari against Regional Conciliation Board.

Where the Regional Conciliation Board acts in disregard of S. 3 (b) of the U. P. Industrial Disputes Act, namely, that a Government Order, under that provision can direct the observance of terms and conditions of employment in the future and not in the past and an order of the Board is passed in these circumstances, it can be quashed by a writ of certiorari. AIR 1954 S C 440, Foll. (1955) 2 Lab L J 51 : ILR (1956) 1 All 216 : AIR 1955 All 578 (580) (Pt D) (Pr 12) (DB).

——Art. 226—Withdrawal of reference of industrial dispute by Government — Order should be in writing giving reasons — Reasons are not justiciable by High Court — (Industrial Disputes Act (1947), S. 10). AIR 1955 N U C (All) 3554.

——Art. 226 — U. P. Industrial Disputes Act (1947), S. 3 (b), (d) and Proviso 2—Applicability and scope—(Cl. (2) of Proviso to S. 3 applies to all orders under Cl. (b) — Order under S. 3 (b)—Question can still be referred to Industrial Tribunal—Labour Appellate Tribunal treating cl. (b) as binding upon it, refusing to apply its own mind to question raised before it—Appellate Tribunal held failed to exercise jurisdiction on erroneous view of law—It is error apparent on face of judgment — Certiorari can issue. See U. P.

Industrial Disputes Act (28 of 1947), S. 3 (b) (d) and Provisos. AIR 1955 N U C (All) 3296.

——Art. 226—Industrial Disputes Act (1947), S. 2 (k) —Industrial dispute — What is—Held on facts that there was clearly an industrial dispute and reference for adjudication under S. 3 being valid, the proceedings could not be interfered with under Art. 226. See Industrial Disputes Act (1947), S. 2 (k). **AIR 1955 N U C (All) 2664.**

——Art. 226 — U. P. Industrial Disputes Act (1947), S. 3—Reference under—It is in discretion of Adjudicator to go into certain dispute again after lapse of long period—High Court will not express any view on the matter in application under Art. 226. See U. P. Industrial Disputes Act (28 of 1947), S. 3. **AIR 1955 N U C (All) 2664.**

——Art. 226—Writ against Industrial Tribunal—U. P. Government Order No. U 686 (LL) XXXVI-B-257 (LL) 1954, D/- 8-9-1954 construction, effect and validity of considered. See U. P. Industrial Disputes Act (28 of 1947), S. 3. **AIR 1955 N U C (All) 1782.**

——Art. 226 — U. P. Industrial Disputes Act (1949), S. 6 (1) — G. O. No 3092 (T. D.) XVIII-28 (T. D.)/ 1951, D/- 28-6-1951—Powers of Adjudicator and Tribunal — Powers are not restricted with respect to matters which would be taken into consideration by them in coming to conclusion on question referred about the justifiability of retrenchment—Jurisdiction held not exceeded. See U P Industrial Disputes Act (28 of 1949), S. 6 (1). **AIR 1953 All 624 (626, 627) (Pt A) (Prs 6, 8, 12) (DB).**

——Art. 226—Administrative order — Government of Madras declining to make reference of labour dispute —Power of Andhra Government, its successor, to make reference after consideration of subsequent events — Interference. See Industrial Disputes Act (1947), S. 10 (1). **AIR 1958 Andh Pra 276.**

● ——Art. 226 — Powers of Industrial Tribunal and Labour Court — Termination of service of workmen under Standing Orders — Termination punitive—Inquiry necessary—Dispute referred to Industrial Tribunal—It has power to see whether termination is justified—High Court's power of interference with order of Tribunal. See Industrial Disputes Act (1947), S. 10. **AIR 1963 Assam 108 (FB).**

——**Art. 226—Award of Industrial Tribunal—Issue of writs.**

An Industrial Tribunal is a judicial body, and writs of certiorari and prohibition can be granted under Art. 226 of the Constitution in matters arising out of an award passed under the Industrial Disputes Act. AIR 1950 S C 188, Ref. to. **3 F J R 195 : ILR (1951) 3 Assam 147 : AIR 1951 Assam 96** (98) (Pt C) (Pr 13) (DB).

——**Art. 226—Jurisdiction of High Court to entertain writ petition for quashing reference to Industrial Tribunal—(Industrial Disputes Act (1947) S. 15 (1) Power of tribunal to examine validity of reference)**

The Tribunal to whom an industrial dispute is referred for adjudication cannot enter into the question if the reference is valid or otherwise, but is bound to deal with it as it stands. At any rate the language of S. 15 (1) does not seem to permit the Tribunal to go behind the validity of the reference and examine it for that consideration. AIR 1953 Mad 89, Rel. on; AIR 1953 Mad 30, Dist; AIR 1952 Punj 134 and AIR 1952 All 992, Ref. to.

Hence the High Court has jurisdiction to entertain a petition under Art. 226 of the Constitution of India for the issue of a writ of certiorari for quashing a reference to an Industrial Tribunal, when the petitioner challenges the validity of the reference on the ground that the matter referred to related to a closure and not an illegal lock-out and further alleges that the order of the Government compelling the petitioner's factory to run is invalid and is also liable to be quashed. **AIR 1954 Bhopal 17 (18, 19) (Pt A) (Prs 12, 16).**

——**Art. 226—Certiorari—Writ of—Industrial Tribunal—Award on question of bonus—Tribunal going wrong in its calculations on question of rehabilitation charges—Principles laid down by Supreme Court relating to distribution of available surplus not considered—Award of bonus held was defective and must be set aside. 64 Cal W N 979 : (1960) 2 Lab L J 508 : (1960) 1 Fac L R 425.**

——**Art. 226—Arbitration award under S. 10-A of Industrial Disputes Act—Writ of certiorari can issue against such award.**

A writ of certiorari can issue against an arbitration award passed by an arbitrator to whom a reference has been made by agreement of parties under S. 10-A of the Industrial Disputes Act. The view of the Supreme Court in Civil Appeals Nos. 182, 183 and 204 of 1962, dated 18-10-62 is that an arbitrator functioning under S. 10-A can be considered to be, at least in a loose sense, as a statutory arbitrator and that therefore in an appropriate case a writ may lie against his award. In (1961) 1 Lab L J 81 (Ker) and 1962 Ker L J 865 holding that the arbitrator functioning under S. 10-A stands on the same footing as that of a private arbitrator and hence a writ would not lie against him can no longer be accepted as good law. (1961) 1 Lab L J 81 (Ker) and 1962 Ker L J 865 held overruled by AIR 1963 S C 874. **(1963) 1 Ker L R 517 : (1964) 1 Lab L J 102 : ILR (1963) 2 Ker 132 : AIR 1963 Ker 324 (329, 330) (Prs 45, 46, 47).**

——Art. 226—Administrative act—Issue of certificate under S. 33 (c), Industrial Disputes Act, affecting fundamental rights of citizens—It is open to High Court to interfere though act may be administrative. **1959 Ker L R 1195 : 1959 Ker L J 1267 : 1959 Ker L T 1208 : (1960) 1 Lab L J 319 : AIR 1960 Ker 220 (222) (Pt F) (Pr 14).**

——**Art. 226—Administrative act—Order of reference under S. 10 (1), Industrial Disputes Act—No certiorari.** AIR 1957 SC 532 and AIR 1953 SC 53 and AIR 1958 SC 1018 Rel. on. **1959 Ker L J 1449 : 1960 Ker L T 90 : (1960) 1 Lab L J 823 : ILR (1960) Ker 222 : AIR 1960 Ker 190 (192, 193) (Pt A) (Pr 6) (DB).**

——**Art. 226—Applicability—Termination of service of employee under standing orders on ground of superannuation—Application by employee to Labour Court challenging such order—No previous application to employer as required by proviso to S. 31 (3) read with R. 34—Labour Court has no jurisdiction to entertain application—Order of termination set aside by Labour Court—Revisional jurisdiction of Industrial Court—Order of Labour Court confirmed by Industrial Court—Order is patently erroneous. See M P Industrial Relations Act (27 of 1960), S. 31 (3). AIR 1964 Madh Pra 156 (DB).**

——**Art. 226**—Certiorari — Jurisdiction—Registered establishment — Employees discharged—Dispute regarding reinstatement and payment of retrenchment compensation—Reference under S. 10 (1), Industrial Disputes Act—Maintainable—Scope of Ss. 58 and 61 of Establishments Act—Opinion expressed by Tribunal on merits after declining to entertain reference—No legal adjudication. See Industrial Disputes Act (1947), S. 10 (1). **AIR 1964 Madh Pra 20 (DB).**

——**Arts. 226 and 227—Certiorari—Adjudication by Industrial Tribunal—Error made at the instance and in favour of petitioner—Writ will not be granted.**

Where in an industrial dispute relating to fixation of fair wages and provision for gratuity scheme, the

petitioner had induced the adjudicator to adopt the industry-cum region basis for determining the paying capacity and taken a chance of a decision in its favour on that basis, it cannot be permitted to question that basis after the decision has gone against it By its conduct, it has clearly precluded itself from challenging it. AIR 1962 SC 676, Rel. on.

A writ of certiorari will, save in most exceptional cases not be granted to the party at whose instance or in whose favour the error was made. It is a discretionary remedy which will not be granted as a matter of course. AIR 1957 SC 227; AIR 1954 SC 207, Rel. on. 1962 M P L J 132 : 1962 Jab L J 240 : 1962 M P C 165 : (1962-63) 22 F J R 339 : (1963) 1 Lab L J 606 : ILR (1963) Madh Pra 56 : AIR 1962 Madh Pra 172 (175) (Pt B) (Pr 9) (DB).

——Arts. 226 and 227—Adjudication by Industrial Tribunal — Dispute relating to fixation of fair wages and provision for gratuity scheme—View taken by the tribunal on paying capacity of industry not impossible on evidence recorded—High Court cannot deal with the matter as a Court of appeal and substitute its own judgment. AIR 1954 SC 440. Rel. on. (1963) 1 Lab L J 606 : ILR (1963) Madh Pra 56 : (1962-63) 22 F J R 339 : 1962 M P L J 132 : 1962 Jab L J 240 : 1962 M P C 165 : AIR 1962 Madh Pra 172 (175) (Pt C) (Pr 10) (DB).

——Art. 226—Certiorari, writ of — Industrial Tribunal, decision of -Certiorari to quash.

Generally speaking, a writ of certiorari would be issued only in the event of a flagrant violation of law and consequent grave miscarriage of justice. This principle applies particularly to industrial tribunals which exercise functions relating to welfare and industrial harmony.

Held, that there was no irregularity and consequent miscarriage of justice in the instant case. AIR 1949 FC 111 and AIR 1953 SC 53; 1 M L J 212, Rel. on. (1960) 1 Fac L R 499 : AIR 1960 Madh Pra 358 (361) (Pt D) (Pr 18) (DB).

——Art. 226—Industrial Disputes Act (1947), Ss. 10, 2 (k) and 2 (s) -Reference of industrial dispute for adjudication of Tribunal—Tribunal has jurisdiction to decide whether industrial dispute exists—Wrong decision can be corrected under Art. 226 -See Industrial Disputes Act (1947), S 10. AIR 1960 Mad 82.

——Art. 226 -Industrial Disputes- Award—Bonus—Agreement between employer and workers — Construction — Terms free from ambiguity — Evidence by employer to explain or contradict terms not allowed — Employer held not prejudiced—No interference with award under Art 226—Evidence Act (1872), S. 93—Deed—Construction —(Industrial Dispute). (1960) 1 Lab L J 628 (Mad)

——Art. 226 -Certiorari — Decision of Conciliation Officer under Industrial Disputes Act— Conciliation officer does not act judicially or quasi judicially — No interference by writ. (1959) 1 Lab L J 520 : (1959 60) 16 F J R 106 (Mad) : 72 Mad L W 386 : (1959) 2 Mad L J 173 : 1959 Mad L J (Cr) 627 : I L R (1959) Mad 891 : A I R 1959 Mad 441 (444) (Pt B) (Prs 10, 12).

——Art. 226 — Industrial Disputes Act (1947), S. 2 (rr) — Wages — Fixation of — Financial capacity of employer — Opportunity to place material on record to sustain its claim — Denial of — Finding regarding capacity to pay increased remuneration vitiated — Statutory bodies — Duties of - Industrial Tribunal. See Industrial Disputes Act (1947), S. 2 (rr). A I R 1959 Mad 212.

——Art. 226 — Reference to Industrial Tribunal — Issue of writ of certiorari or prohibition — Question as to 'workmen'—Jurisdiction to decide—(Industrial Disputes Act (1947), S. 10 (1) (c)).

A reference of an industrial dispute to an Industrial Tribunal under S. 10 (1) (c) of the Industrial Disputes Act, 1947 being administrative in its scope, is outside the purview of correction by the issue of a writ of certiorari. Since an industrial dispute has been referred and the Industrial Tribunal has jurisdiction to take up the enquiry there can be no writ of prohibition issued at this stage.

The question whether the workers are really "Workmen" as defined by the Industrial Disputes Act, 1947, may be viewed as a jurisdictional issue but it is still for the Industrial Tribunal to decide that question in the first instance: (1958-59) 15 F J R 88 : (1958) 2 Mad L J 611 : 1958 Mad L J (Cr) 976 : 1958 Mad W N 719 : AIR 1959 Mad 202 (202) (Pr 1).

——Art. 226 — Administrative order — Order under S. 10 of the Industrial Disputes Act.

An order of reference under S. 10 of the Industrial Disputes Act, 1947, is administrative in its nature and an executive act by itself cannot be quashed by a writ of certiorari; but if by virtue of such an administrative act a quasi judicial tribunal like the Industrial Tribunal is vested with jurisdiction to proceed with an adjudication which certainly will be proper subject matter of a writ of certiorari at a later stage then it would be open to the High Court, under the powers conferred on it by Art. 226 of the Constitution, to issue a writ in the nature of a writ of prohibition prohibiting the quasi judicial tribunal from proceeding with the enquiry 71 Mad L W 549 : 1958 Mad W N 456 : (1958) 2 Mad L J 266 : (1959-59) 14 F J R 457 : 1958) 2 M L J (Cri) 719 : ILR (1958 Mad 981: AIR 1958 Mad 578 (579) (Pt A) (Pr 3) (DB).

——Art. 226—Certiorari—Issue of—Industrial Tribunal passing erroneous order -Power of High Court to interfere—(Industrial Disputes Act (1947), S. 33 (2).)

The Industrial Tribunal is a creation of a statute which has vested it with limited jurisdiction. Where such Tribunal transgresses the limits of its jurisdiction and passes an order which it had no jurisdiction to pass, the aggrieved party has a right to approach the High Court to set aside that order under Art. 226 of the Constitution.

Where the Industrial Tribunal passes an erroneous order by wrongly construing S. 33(2) of the Industrial Disputes Act, the order would be either an order which the Tribunal had no jurisdiction to pass or one in regard to which it assumed jurisdiction by reason of an error apparent on the face of the record namely, by an erroneous construction of the statute. Viewed in this light the jurisdiction of the High Court to issue the writ of certiorari in such a case would be beyond question. (1958) 1 Lab L J 300 : 71 Mad.L W 88 : 1958 Mad W N 26 : (1957-58) 13 F J R 356 : (1958) 1 Mad L J 164 : 1958 Mad L J (Cr) 139 : ILR (1958) Mad 374 : AIR 1958 Mad 433 (440, 441) (Pt B) (Pr 28).

——Art. 226 — Jurisdiction — Order of High Court Judge acting as Industrial Tribunal -Power of High Court to interfere by writ.

The High Court under Art. 226 has jurisdiction to issue a writ of certiorari and to call for the records of an order passed by a Judge of the High Court when that Judge was acting in his capacity as the Industrial Tribunal. AIR 1955 Mad 1 (FB), Foll ; 1956 R P C 323, Rel. on. 1958 Mad W N 26 : I L R (1958) Mad 374 : (1957-58) 12 F J R 356 : 71 Mad L W 88 : (1958) 1 Lab L J 300 : (1958) 1 Mad L J 164 : 1958 Mad L J (Cr) 139 : A I R 1958 Mad 433 (441) (Pt C) (Pr 29).

——Art. 226—Administrative acts—Reference under S. 10 (1) (c) of Industrial Disputes Act — Writ to challenge validity — Issue of — (Industrial Disputes Act (1947), S. 10 (1) (c)).

The validity of the reference under S. 10 (1) (c) of the Industrial Disputes Act by the Government

cannot be challenged by an application for the issue of a writ of certiorari, because in making the order of reference, the Government is only doing a ministerial or administrative act. 70 M L W 258 : 1957 Mad W N 268 : (1957-58) 12 F J R 389 : A I R 1957 Mad 700 (701) (Pr 1).

——Art. 226—Administrative orders—Orders making reference under S. 10 (1) (c), Industrial Disputes Act is administrative— No correction by certiorari or issue of writ of prohibition to Industrial Tribunal — (Industrial Disputes Act (1947), S. 10 (1)(c)). (1958-59) 14 F J R 417 : 1957 Mad W N 519 : (1957) 2 Mad L J 357 : (1957) Mad L J (Cr) 519 : 1957 Ker L T 963 : (1958) 1 Lab L J 62 : AIR 1957 Mad 615 (616) (Pr 2).

——Art. 226 — Peference under S. 10 (1) (c) of Act 14 of 1947 — Validity challenged — Proper writ to issue—(Industrial Disputes Act (1947), S. 10 (1) (c)).

Though a writ of certiorari cannot be issued to set aside an administrative act of the Government the validity of a reference under S. 10 (1) (c) of the Industrial disputes Act can be canvassed and decided if the relief asked for is the issue of a writ of prohibition to restrain the Industrial Tribunal from taking cognizance of a dispute as it is the jurisdiction of the Industrial Tribunal that is questioned in such proceedings. A I R 1946 Mad 113, Rel. on. (1955-56) 9 F J R 160 : (1956) 1 Lab L J 498 : A I R 1956 Mad 115 (118, 123) (Pt B) (Prs 9, 34).

——Art. 226—Administrative act— Certiorari —Writ of, against order of reference under S. 10 (1) (c), Industrial Disputes Act — (Industrial Disputes Act (1947), S. 10 (1) (c)).

A reference under S. 10 (1) (c), Industrial Disputes Act, 1947, constitutes an administrative act of the Government to correct which no writ of certiorari can issue: AIR 1953 S C 53, Rel. on. 1955 Mad W N 897 : (1955-56) 9 F J R 125 : (1956) 1 Lab L J 221 : (1956) 1 M L J 280 : AIR 1956 Mad 113 (114) (Pt A) (Pr 4).

——Art. 226—Industrial tribunal—Award of —Interference by High Court.

If the Tribunal has jurisdiction to give its award a retrospective operation, then the validity of the award cannot be questioned in a petition for the issue of a writ of certiorari on the ground that the provisions of the said award from their very nature are incapable of being given such a retrospective effect. 36 Mys L J 97 : (1958) 2 Lab L J 613 : I L R (1957) Mys 388 : AIR 1958 Mys 85 (89) (Pt B) (Pr 24) (DB).

——Art. 226 — Certiorari — Jurisdiction to issue — Declaration by Registrar under S. 28, Mysore Labour Act—Nature of act—If judicial or quasi-judicial act —Writ—Issue of.

To support an application claiming a writ of certiorari under Art. 226 of the Constitution of India the applicant has to show that the act complained of constitutes a judicial or quasi judicial act, and not a ministerial one and further that it was done without or in excess of jurisdiction.

A declaration under S. 28 of the Mysore Labour Act, by the Registrar to the effect that an announcement by an employer to close for a certain date some department of work carried on in the employer's factory and dispense with the services of the employees in those branches was a lock-out and illegal for want of notice, is not a judicial or a quasi-judicial act. It is a discretionary one having but a recommendatory or a moral force, which does not by itself create a liability or impose any penalty. It is therefore not a case in which a writ of certiorari can issue. 30 Mys L J 82 : I L R (1951) Mys 105 : A I R 1954 Mys 141 (141, 142) (Pt A) (Prs 1, 3, 6) (DB).

——Art. 226—Industrial Disputes Act (1947), Ss. 15, 19—Decision of Tribunal — Interference by Court — When open.

Generally the necessary prerequisites for Court's interference to set right decisions arrived at by Tribunal whose conclusions on questions of fact are final can be classified under the following categories, namely,—

(i) where the Tribunal acts in excess of the jurisdiction conferred upon it under the statute or regulation creating it or where it ostensibly fails to exercise a patent jurisdiction;

(ii) where there is an apparent error on the face of the decision; and

(iii) where the tribunal has erroneously applied well-accepted principles of jurisprudence.

It is only when errors of this nature exist, that interference is called for. (1964) 1 Lab L J 187 : I L R (1964) Cut 805.

——Art. 226—Arbitrators whose jurisdiction is based on S. 10-A, Industrial Disputes Act are not private arbitrators but statutory arbitrators — Hence writ of certiorari will lie against their awards. (1925) 1 K B 641 and (1953) 1 Q B 704, Rel. on. (1963-65) 25 F J R 395 : I L R 42 Pat 819 : 1962 B L J R 660 : (1962) 2 Lab L J 420 : AIR 1963 Pat 170 (177) (Pt E) (Pr 16) (DB).

——Art. 226 — Application for permission to remove employee — Charge against employee not covered by Standing Orders—Rejection of permission — Decision could not be disturbed in writ proceedings. See Industrial Disputes Act (1947), S. 33. ('64) 66 Punj L R 447.

——Art. 226—Certiorari — Quasi-judicial decision — Industrial Disputes Act (1947), S. 10-A — Reference under — Decision of Arbitrator is quasi judicial decision and not purely administrative determination — Reasons not given—Award liable to be quashed under Art. 226. AIR 1963 S C 874, Foll. (1964) 1 Lab L J 89 : (1963-64) 25 F J R 276 : I L R (1963) 2 Punj 84 : 1963 Cur L J 232 : A I R 1963 Punj 472 (474, 477, 478) (Pt A) (Prs 4, 11, 16, 17) (DB).

——Art. 226—Dismissal for misconduct after inquiry by the management—Interference with order of dismissal by Industrial Tribunal—Extent of jurisdiction of the Tribunal—In cases of dismissal for misconduct the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the management — Tribunal has to see if termination of service is justified—It can only interfere when there is victimisation, or unfair labour practice or violation of principle of natural justice or baseless or perverse finding. (1961-62) 21 F J R 241 : (1962) 1 Lab L J 555 (Punj).

——Art. 226 — Industrial Disputes Act (1947), S. 10 —Nature of act done in making reference — Administrative Act—No interference — Constitution of India, Art. 226). See Industrial Disputes Act (1947), S. 10. AIR 1959 Punj 603.

——Art. 226 — Interference—Grounds — Application by employer under S. 33, Industrial Disputes Act, for permission to dismiss or discharge workman — Complaint by workman under S. 33-A — Duty of Tribunal pointed out — Tribunal dismissing application of the employer, without examining whether employer has made out a prima facie case for the dismissal of the workman, on ground that the employer had committed breach of the conditions laid down in proviso to S. 33 (2) (b)—There is failure on part of Tribunal to exercise jurisdiction — Tribunal commits error of law and its order is liable to be set aside by issue of writ of certiorari. See Industrial Disputes Act (1947), S. 33 (1). I L R (1959) 9 Raj 1302.

——Art. 226 — Administrative Order — (Industrial Disputes Act (1947), S. 12 (5)).

A reference under S. 12 (5) of the Industrial Disputes Act would be an administrative act a fortiori. Where there is a dispute which is unquestionably industrial, and in the opinion of the Government there was a case for reference to a tribunal its correctness cannot be canvassed in a Court of law. AIR 1950 S C 222, Foll. I L R (1953) Trav-Co 118 : AIR 1953 Trav-Co 286 (291) (Pt C) (Pr 10).

147. Judicial decision.

See also Note 126.

(a) Elements of.

(b) Judicial power, meaning of.

147. Judicial decision.

See also Note 126.

● —Art. 226 — Judicial tribunal — Departmental enquiry under Police Act — Officer conducting inquiry, acts in judicial capacity — (Police Act (1861), S. 7). Bose J. The State of U. P. v. Mohammad Nooh, 1958 S C J 242, : I L R (1957) 2 All 422 : 1958 S C A 73 : 1958 M L J (Cr) 197 : 1958 S C R 595 : A I R 1958 S C 86 (96, 97) (Pt D) (Pr 24).

● —Art. 226 — Certiorari — Writ of — Death of Nawab — Appointment of Special Commission by Nizam to enquire into question of succession to his estate—Special Commission whether judicial body—(Hyderabad Atiyat Enquiries Act (10 of 1952).

Under the Atiyat Law as prevailed in Hyderabad State whenever a jagirdar died his successors had to appear before a Special Court viz., the Atiyat Court, which enquired into the question of the succession to the estate of the jagirdar and submitted its recommendations to H. E. H. the Nizam. The Nizam was the final authority to sanction or not to sanction the succession in favour of any particular individual. With regard to succession relating to high noblemen styled as 'Umarai Uzzam', the Nizam could constitute a Special Commission instead of directing the case to be enquired into by the ordinary Atiyat Court. The Special Commission so constituted is a judicial body whose orders are subject to the Certiorari Jurisdiction of the High Court under Art. 226 of the Constitution. The fact that although it is a judicial body exercising judicial functions its decisions are not final but are only in the nature of recommendations subject to the confirmation of the Nizam does not make the Special Commission to cease to be a judicial body. The law in such a case is that because a proceeding is subject to the confirmation and approval of another authority the proceeding does not cease to be a judicial proceeding. (1926) App Cas 586; A I R 1950 S C 222; A I R 1950 S C 459, Rel. on. Ahmed-Un-Nissa v. State, AIR 1953 Hyd 21 (22, 23) (Pt A) (Prs 4, 5, 6) (FB).

——Art. 226 — Erroneous order — Quashing of — (Panchayats — Vindhya Pradesh Gram Panchayat Ordinance (XXIV of 1949), Cl. 14).

Tare J. — Where the Collector wrongly removes the Sarpanch of Gram Panchayat from his office, and the Sarpanch files a writ petition to get the order quashed, the fact that the tenure of office of the petitioner has meanwhile expired, is no reason why the wrong order should not be quashed. It is not desirable that the order of the Collector should be allowed to remain on record, which would be in derogation of the petitioner's reputation for all time to come. 1959 Jab L J 441 : 1959 M P L J 815 : 1959 M P C 492 : A I R 1959 Madh Pra 407 (410) (Pt C) (Pr 16) (DB).

——Art. 226—Suit under S. 14, Madras Hereditary Village Offices Act—Order—Appeal to Revenue Board — Order of Revenue Board is judicial act liable to be quashed in appropriate cases—(Madras Hereditary Village Offices Act (3 of 1895), S. 14). (1953) 2 M L J 644: 66 Mad L W 700 : A I R 1953 Mad 972 (974) (Pt E) (Pr 8).

——Art. 226—Houses and Rents—Madras Buildings (Lease and Rent) Control Act (1949), S. 13 — Order under is not a judicial act. See Houses and Rents—Madras Buildings (Lease and Rent) Control Act (35 of 1949). AIR 1953 Mad 351.

——Art 226—Judicial order—[Sales Tax—C. P. and Berar Sales Tax (21 of 1947), S. 8-A (5)].

On 24th December, 1951, the petitioner made an application to the Commissioner for a declaration that it was not a dealer and was not liable to registration. By an order, dated the 7th January, 1952, passed under S. 19 of the Sales Tax Act, the Commissioner held that on the facts stated by the applicant it was clear that the petitioner did not carry on the business of selling or supplying goods and was more than an intermediary between the seller or the supplier on the one hand, and the buyers on the other, and received remuneration for its service as intermediary. The Commissioner characterised it as a broker and held that a broker is not a dealer. On 29th January, 1952, the petitioner made an application to the Sales-tax Officer, for cancellation of the registration certificate. After recording evidence the Sales-tax Officer submitted the report dated 13th March, 1952, to the Sales tax Commissioner. The Officer held that the assessee was not liable to registration and to payment of the tax on the transactions made by the seller company and that the tax on such sales was to be paid by the seller company. The Commissioner did not accept this recommendation. He was of the view that the petitioner was a commission agent inasmuch as it was required to pay the price if the buyer did not pay it and that such a commission agent was covered by the definition of buyer in S. 2 (c) of the Sales-tax Act. By the impugned order he directed the Sales-tax Officer to proceed with the case.

Held, that the decision of the Commissioner was certainly a judicial order under S 8-A (5) of the Sales-tax Act and the communication to the Sales-tax Officer could be quashed by a writ of certiorari. 1952 Nag L J 446, Dist. I L R (1954) Nag 355 : 1954 Nag L J 277 : AIR 1954 Nag 148 (150) (Pt B) (Pr 8) (DB).

● ——Art. 226 — Words and Phrases — "Judicial"—Rent Controller acting under C. P. and Berar Letting of Houses and Rent Control Order (1949) is a legal tribunal and not merely an executive officer—(Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order 1949, Cls. 13 and 21). Bhailal v. Additional Deputy Commr., Akola, 1952 Nag L J 1 : I L R (1952) Nag 943 : AIR 1953 Nag 89 (92, 93, 94) (Pt A) (Prs 13, 15, 20, 22) (FB).

——Art. 226—Jurisdiction — Order by tribunal exercising judicial functions—If subject to writ—The Chairman, Provincial Transport Authority is not a Court as ordinarily understood. But when he passes an order in appeal after hearing the parties and after deciding between a proposal and an opposition a writ of certiorari lies against the order inasmuch as the order is judicial. 16 Cut L T 201 : AIR 1951 Orissa 81 (84) (Pr 8) (DB).

——Arts. 226 and 227 — Scope — Function of Advocate-General under S. 92, Civil P. C —Nature of—Judicial or administrative—Order refusing permission to sue—Interference under Arts. 226 and 227.

The functions of the Advocate-General under S. 92, Civil P. C., are judicial in nature and not administrative or executive. 24 Cal 418 and AIR 1954 Trav-Co 331, Rel. on. 104 Pun Re 1910, AIR 1955 Raj 166 and AIR 1955 All 372, dissented from. Where it is nobody's case that the Advocate General has not acted within the scope of his jurisdiction under S. 92, Civil P. C. and no question of jurisdiction is involved and there is no apparent error on the face

of the record in so far as the orders of the Advocate-General are concerned, and there is no case of either grave miscarriage of justice or flagrant violation of law by the Advocate-General in withholding his consent, interference is not possible either under Art 227 or by a writ of certiorari under Art. 226. The jurisdiction is vested in the Advocate-General alone and the High Court has no power to either order him to give consent for the institution of the suit or to itself give such consent for that purpose. AIR 1954 Trav-Co Co 331, Rel on ILR (1956) Patiala 162 ; AIR 1956 Pepsu 65 (68, 69) (Prs 10a, 12).

● —Art. 226 - Constitution of Mewar (1947), Art. 18 (2)—Judicial and quasi judicia tribunals — Commissioners appointed under Mewar Proceedings of the Special Commission Validating Act (17 of 1944).

The Commissioners appointed or deemed to have been appointed under Act No. 17 of 1944, constitute a judicial tribunal. In any case, the tribunal was a quasi-judicial tribunal, and the High Court having powers to issue writs had authority to interfere. The restriction on the Civil Courts under S. 4 of Act 17 of 1944 to question the validity of the orders of the Commissioners does not prohibit the High Court from correcting the errors of the Commissioners by issue of proper writs or orders of directions. Lakshmi Lal v Bhagwat Singh Mehta, 1951 Raj L W 484 ; ILR (1951) 1 Raj 570 : AIR 1952 Raj 22 (FB).

——Art. 226—Certiorari—Administrative or judicial order.

The petitioner, a public servant, applied to the State Government for correcting his age in the service book. The Government rejected the application.

Held, that the order was the result of an enquiry as to the correct age of the petitioner. The decision was one based on evidence taken by the Government relating to the age of the petitioner. The proceedings were of the nature of a judicial enquiry. The petition under Art. 226 was therefore maintainable. ILR (1956) Trav-Co 879 : 1956 Ker LT 906 : AIR 1957 Trav-Co 124 (128) (Pt A) (Pr 9) (DB).

147 (a). Elements of.

● —Art. 226—Judicial decision—Authority acting judicially—How determined.

Whether an Authority, like the Board of Revenue acts judicially is to be gathered from the express provisions of the Act in the first instance. Where however, the provisions of the Act are silent, the duty to act judicially may be inferred from the provisions of the statute or may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used and other indicia afforded by the statute. AIR 1962 S C 1110, Foll. Board of Revenue, U. P. v. Sardarni Vidyawati, 1962 S C D 767 : (1963) 1 Andh L T 128 : (1963) 1 S C J 324 ; I L R (1963) 1 All 1 : (1962) Supp 3 S C R 50 ; 1962 All L J 691 : 1962 All W R (H C) 594 : A I R 1962 S C 1217 (1220) (Pt B (Pr 5).

● —Art. 226—Tests of judicial Tribunal.

A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites :— (1) The presentation (not necessarily orally) of their case by the parties to the dispute, (2) If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) If the dispute between them is a question of law, the submission of legal argument by the parties; and (4) A decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found including where required a ruling upon any disputed question of law. AIR 1950 S C 188; (1937) 2 K. B. 309, Foll. Maqbool Hussain v. State of Bombay, 1953 S C A 641 : 1953 Mad W N 648 ; 1953 S C J 456 : (1953) 2 M L J 113 ; 1953 Cri L J 1432 : 1953 All W R (Sup) 84 ; 1953 S C R 730 ; 56 Bom L R 13 : A I R 1953 S C 325 (329) (Pt B) (Pr 13).

● ——Art. 226—Judicial and administrative orders—Distinction—Former can by its determination impose liability or affect rights—Authority has also a duty to act judicially.

One of the essential elements of a judicial or quasi judicial order as distinguished from an administrative or ministerial order is that the former has power by its determination to impose liability or affect rights. Another distinction between the two classes of cases is that in cases of acts that are amenable to writ of certiorari or prohibition the authority concerned is not only legally empowered to determine questions affecting the rights of subjects but is also laid under a duty to act judicially. (1950) 2 Mad L J 703 : 1950 S C J 451 : AIR 1950 S C 222 and AIR 1959 S C 896, Rel. on. Sri Durga Gita Vidyalaya v State of U. P., 1962 All L J 329 : 1962 All W R (H C) 243 : ILR (1962) 1 All 737 : AIR 1962 All 187 (192) (Pt E) (Prs 18, 19, 21) (FB).

——Art. 226 — Notice to landlord under U. P. Land Utilisation Act, 1948 — Essentials of — Landlord not served with proper notice — Ex parte order of allotment against landlord—Order held without jurisdiction and quashed. See U. P. Land Utilisation Act (5 of 1948), S. 3. 1952 All L J 380 : A I R 1952 All 822 (DB).

——Art. 226 — Judicial decisions — Reasons for — Necessity.

It is necessary that the order of a tribunal exercising judicial functions should ex facie show reasons not only for setting aside the orders of the subordinate tribunal but also for confirming the same. (1955) Andh L T (Cri) 831 : 1956 Andh W R 652 ; A I R 1957 Andh Pra 739 (742) (Pt B) (Prs 13, 14).

——Art. 226 — Powers of High Court — Arms Act—Granting authority giving reasons for refusing licence —High Court if can examine reasons. See Arms Act (1878), S. 17. 1958 Cri L J 1014 : A I R 1958 Cal 470.

——Art. 226 — Writ of certiorari and mandamus—Essential conditions for issue of—Quasi-judicial and administrative acts—Distinction—Order of Collector under S. 42, Bengal Excise Act, cancelling excise licence and appellate order of Excise Commissioner cofirming same — Issue of writs against orders—(Bengal Excise Act (5 of 1909), Ss. 42 and 8).

A Collector cancelling an excise licence under S. 42, Bengal Excise Act (5 of 1909) for violation of its terms acts in a purely administrative capacity. Neither the Act nor the rules thereunder require him to hold any quasi-judicial investigation into the matter. He is not required to give any notice to the licencee before cancelling the licence and the mere fact that in a particular case such a notice was given and the licensee was allowed an opportunity to cross-examine the witnesses is immaterial for the purposes of determining the nature of his act. He has to decide whether there is any violation of the terms and when there is he has a discretion to cancel the licence where the licencee himself admits the violations and the Collector thinks that on these grounds alone the licence should be cancelled it is not for the Court to interfere.

The Excise Commissioner who hears an appeal from the order of the Collector cancelling the licence however does not act administratively. It cannot be said that because the original order is an administrative one the appeal against it may not be quasi-judi-

cial. The appeal under the rules framed under the Bengal Excise Act requires a judicial approach and therefore is a quasi-judicial proceeding. The Commissioner should in hearing the appeal follow the principles of natural justice since there is no particular procedure prescribed and when he hears the excise officer who is in the position of the accuser behind the back of the licencee and confirms the order of the Collector without giving an opportunity to the licensee or meeting any particular statement the officer might have made, he fails to follow those principles of natural justice.

Still the High Court would not cancel the order and direct a retrial of the case when even after excluding the evidence of the excise officers which relates to one of the items of violation only, the same result would follow at the retrial on the admitted violations of other terms of the licence. In such a case the writs would be useless. A I R 1952 Cal 808 (811 to 815) (Prs 13, 18, 19, 20, 21, 22, 23, 24, 25).

——Art. 226—Judicial or quasi-judicial order.

To constitute a judicial or quasi-judicial order, it must be necessary that the Tribunal should have to weigh the pros and cons before it can come to a conclusion. It would also have to consider facts and circumstances bearing upon the subject. If the determination or decision of the authority results in binding the subject so as to affect his right or impose a liability upon him, and if the exercise of the power by the authority is made dependent by the Legislature upon a contingency or a condition, which condition or contingency is an objective fact to be established and not left to the opinion of the authority, then, the Court will come to the conclusion that there is a duty upon the authority not only to decide and determine but to decide and determine judicially. I L R (1953) Hyd 412 : A I R 1953 Hyd 235 (236) (Pt B) (Pr 6) (DB).

——Art. 226 — M. P. Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act (1 of 1951), Ss. 91 (1), 3 (2), 34 — Rules under — Rules published under Notification No. 777-XXVIII dated 27-10-1951 —Nature of—Orders under—Appeal — Rules cannot be treated as executive instructions — They are statutory rules — In implementing these rules, Revenue Officers have to act on judicial principles — Their orders are capable of being examined by way of appeal under S. 34 of the Act. 1957 Nag L J 134 : 1957 M P C 192 : 1957 M P L J 206 : 1957 Jab L J 892 : I L R (1957) Madh Pra 25 : A I R 1957 Madh Pra 43 (44) (Prs 6, 7, 8) (DB).

——Art. 226—Requirements—Appeal—Duty of Court to hear both parties before deciding appeal—Failure to give opportunity — Effect. See Electricity Act (1910), S. 36 (3). 1958 M P L J (Notes) 12.

——Art. 226 — Certiorari — Jurisdiction of Court—Presence of offending officer before Court—Necessity—Judicial and quasi-judicial Tribunals—Enquiry by—Form and procedure.

The true scope of the writ of certiorari is to merely demolish the offending order. Hence in such cases the presence of the offender before the Court is not necessary.

The person proceeded against must be given a fair and reasonable opportunity to defend himself. The person charged with the duty of holding the enquiry must discharge that duty without bias and certainly without vindictiveness. He must conduct himself objectively and dispassionately not merely during the procedural stage of the enquiry, but also in dealing with the evidence and the material on record when drawing up the final order. A further requirement is that the conclusion must be read on the evidence and not on matters outside the record. Where enquiry is judicial there is yet another requirement which should be complied with, namely, that it is not sufficient that justice is done, but that justice should be manifestly appear to be done. (1959) Mad L J (Cri) 433 : (1959) 2 Mad L J 15.

——Art. 226—Special tribunal — Administrative and judicial—Test to decide.

When a question is raised as to whether an authority constituted under a special statute is an administrative body or a tribunal discharging the functions of a judicial character or a Court, the answer to it must depend on the nature of the powers conferred on the authorities by the provisions of the statute. 66 Mad L W 287 : (1953) 1 Mad L J 542 : 1953 Mad W N 200 : A I R 1954 Mad 340 (342) (Pt B) (Pr 3).

——Art. 226—Judicial order — Interference — Order de-reserving part of village grazing ground and for settlement thereof to local landless people issued under Notification—Order held was judicial order as it sought to maintain rights of parties within political community by means of physical force of the State — Order held infringed the fundamental rights of parties who had acquired easement rights of pasturage—Writ could therefore be issued to quash the same. AIR 1957 Manipur 18 (21) (Pt D) (Pr 14).

——Art. 226—Speaking order — Order passed under S. 33 of Displaced Persons (C. and R.) Act, not required to be speaking order — Order giving reasons for conclusions — High Court is competent under Art. 226 to go into entire record including grounds of revision to see if order is open to apparent legal infirmity.

An order on revision passed under S. 33, Displaced Persons (C. and R.) Act by Central Government authorities need not give reasons in support of the conclusions and in that view, the law does not require the order to be a speaking order, but if reasons are given, then it would be open to the High Court under Art. 226, Constitution of India to see that the conclusions and the reasons in support thereof are not tainted with an apparent legal infirmity exposing them to challenge in writ proceedings, and for this purpose, it would be open to the High Court to look at the entire relevent record including the grounds of revision. 67 Pun L R 173 : AIR 1965 Punj 225 (230) (Pt A) (Pr 14) (DB).

——Arts. 226 and 227—Judicial proceedings—Proper notice to parties—Necessity—Rules of natural justice—Duty of Courts and tribunals to follow—(Natural justice).

A judicial decision, reached when there is no notice or when there is improper notice in material respects is without jurisdiction and deserves to be quashed. Such an order clearly violates the fundamental and basic rules of natural justice The tribunal must give the parties an opportunity of being heard and of submitting their case and their views. In order effectively to discharge this obligation, it is mandatory that the Tribunal concerned must also conscienciously satisfy itself that such notice has in fact been duly served. The High Court must, in view of the Preamble of our Constitution be jealous in checking breaches of rules which are designed to ensure justice. 61 Pun L R 529 : A I R 1960 Punj 41 (41, 42) (Pt A) (Pr 1).

——Art. 226—Judicial order—Requisites of—Custodian of Evacuee Property can effing allotment acts judicially - (Administration of Evacuee Property Act (1950) S 26 (1)).

The requisites of a judicial decision or act may be stated thus : if (a) a competent authority, not being a Court in the ordinary sense, (b) has power to give a binding and authoritative decision, (c) after hearing evidence and opposition and upon consideration of facts and circumstances, and (d) imposing liability or affecting the rights of the parties, there is a duty to act judicially.

The expression 'judicial approach' postulates (a) that the authority in arriving at the decision or taking

action must be bound to act fairly and justly and (b) that it does so on basis to which objective test can be applied, limited by the consideration of the facts and circumstances of the case and the evidence led by the parties and the application of the law.

As the Custodian of Evacue Property has to decide the question of cancellation of allotment while acting under S. 28 (1) of the Administration of Evacuee Property Act with a judicial approach, it follows that his decision or act in so doing is a judicial decision or act and not an administrative or executive decision or act. A I R 1952 S C 16 : 1951 S C J 803 Distg. ILR (1957) Punj 1629 : AIR 1958 Punj 63 (68, 69, 70, 71) (Pt E) (Prs 16, 18. 19, 21) (D 3).

——Art. 226—Certiorari —Setting aside of judgment —Power of High Court.

If there is no evidence, which term evidently means "legally admissible evidence", the judgment can be set aside on a writ of certiorari. AIR 1954 S C 440 : 1954 S C J 695, Foll. ILR (1957) 7 Raj 34: AIR 1957 Raj 189 (200. 201) (Pt G) (Pr 30) (DB).

——Art. 226—Certiorari, writ of conditions for issue — Duty to act judicially, meaning of — Saurashtra Land Reforms Act (25 of 1951), S. 59—Rules under, Rr. 105 to 108—Committee appointed under R 105 is not a judicial or quasi-judicial body — Nor has it a duty to act judicially — No writ can be issued.

Whenever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority a writ of certiorari may issue. But it is essential that all these conditions must be satisfied before such a writ can be issued. AIR 1950 S C 222, Rel. on.

The test to see whether a body of persons have a duty to act judicially is that the law itself must provide that in reaching the decision the authority making the order must approach the subject in a judicial manner, and further that the recognised principles of approach, which appear to mean the rules of natural justice, must be required to be followed by the statute itself. AIR 1951 Bom 131, Foll.

A committee appointed under R. 105 of the rules framed under S. 59 of the Saurashtra Land Reforms Act (25 of 1951), cannot be held to be a judicial or quasi-judicially body charged with making certain decisions so as to bind the parties. It is only a recommendatory body and it has no powers to decide the issue for itself nor upon such decision to pass orders as is clear from Rr. 107 and 108.

R. 107 merely says that the Committee may after making such inquiry as it deems fit determine whether the person should be included as girasdar. Hence even assuming that the Committee is a judicial or quasi-judicial body no duty has been cast on it by R. 107 to act judicially and the enquiry contemplated is not a judicial enquiry. Consequently, no writ of certiorari can be issued against the order of such Committee dismissing the applicant's claim to be declared as girasdar without giving him a hearing.

Moreover, no useful purpose will be served even if a writ is issued, because after all the committee can only recommend to the Government which may or may not accept it. 1953-6 Sau L R 24 : AIR 1953 Sau 26 (27, 28) (Prs 5, 6, 7, 8) (DB).

147 (b). Judicial power, meaning of.

■ ——Art. 226—Certiorari—Essential features, effect and conditions under which writ is issued.

One of the fundamental principles in regard to the issuing of a writ of certiorari is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression 'judicial acts' includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. The second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari the superior Court does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal.

The supervision of the superior Court exercised through writs of certiorari goes on two points. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of certiorari could be demanded.

Certiorari may and is generally granted when a Court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the Court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances. When the jurisdiction of the Court depends upon the existence of some collateral fact, it is well settled that the Court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess.

A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e. g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. Basappa v. T. Nagappa, 1955 S C R 250 : 1954 S C J 695 : 1954 S C A 620 : 67 Mad L W 613 : I L R (1954) Mys 235 : A I R 1954 S C 440 (444) (Pt B) (7, 8, 9, 10).

——Arts. 226 and 227—Special Assistant Agent exercising powers under Agency Tracts Interest and Land Transfer Act exercises judicial functions — (Madras) Agency Tracts Interest and Land Tranfer Act (1 of 1917), S. 4 (2). 18 Cut L T 267 : ILR (1952) Cut 615 : AIR 1953 Orissa 238 (239) (Pt B) (Pr 6) (DB)

——Art. 226 — Person with "judicial experience" within meaning of S. 44 (2) (as amended) of Motor Vehicles Act — Experience at Bar or as presiding officer of quasi-judicial tribunal is not "judicial experience". See Motor Vehicles Act (1939 as amended by Act 100 of 1956), S. 44 (2). A I R 1960 Raj 105 (DB).

148. Jurisdiction.

See also Note 144.

(a) Power of superior Court to disturb decision of inferior Court or Tribunal on question of jurisdiction.

148. Jurisdiction.

See also Note 144.

■ ——Art. 226 — Writ of certiorari — When can be issued.

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals : these are cases where orders are passed by inferior Courts or tribunals without jurisdiction, or are in excess of it, or as a result of failure to exercise

Jurisdiction. A writ can, similarly, be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. Syed Yakoob v K. S Radhakrishnan, (1964) 5 S C R 64 : A I R 1964 S C 477 (479, 480) (Pt A) (Pr 7).

●——Art. 226 — Jurisdiction of High Court — Bihar Private Irrigation Works Act (5 of 1922), S. 11 — Demand made from landlords under S. 11—Contention raised by landlords that demand is invalid by reason of non-observance of S. 5-A—Demand made after commencement of Constitution — Held, High Court had jurisdiction to quash demand.

Demands were issued against the landlords under S. 11 of the Bihar Private Irrigation Works Act, 1922, and were sought to be recovered as arrears of public demands under S. 12. Those demands had their origin in or were ultimately based upon an order passed by the Collector under S. 5-A. The argument which the landlords presented to the High Court was that the demands were illegal and not justified by law, because they had ultimately to be based upon orders (under S. 5-A) which were without jurisdiction and therefore void.

Held, (1) that the High Court had jurisdiction under Art. 226 to direct that these demands be quashed and should not be enforced, (2) that as the several demands which were quashed were made after the Constitution, the High Court could exercise the jurisdiction that was for the first time conferred on it by Art. 226 of the Constitution. Collector of Monghyr v. Keshav Prasad Goenka, 1962 B L J R 463 : (1962) 2 S C A 708 : (1963) 1 S C R 98 : ILR 42 Pat 112 : A I R 1962 S C 1694 (1702, 1703) (Pt E) (Prs 18, 19).

●——Art. 32 — Jurisdiction — Meaning of, stated — Decision of judicial or quasi-judicial authority — Issue of certiorari against order — When lies. See Civil P. C. (1908), S. 9. A I R 1962 S C 1621.

●——Art. 226 — Error in exercise of jurisdiction—Interpretation and application of relevant items in Tariff Schedule by Customs Authorities for assessing duty even if grossly erroneous is an error in exercise of jurisdiction—They cannot make order beyond their jurisdiction. A. V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani, (1962) 1 S C J 170 : (1962) 1 Mad L J (SC) 83 : (1961) 1 Andh W R (SC) 83 : 64 Bom L R 386 : (1962) 1 S C R 753 : (1961) 2 S C A 622 : AIR 1961 S C 1506 (1510, 1511) (Pt D) (Prs 11, 15).

●——Art. 226 — Income-tax assessment — Alleged irregularity or illogicality — Issue of writ.

Where the ground taken against an assessment order is that the course taken by the Income-tax Officer in making orders of fresh assessment under S. 34 is irregular and illogical and therefore it should be corrected, it relates to the merits of the order and does not raise any question of jurisdiction under Art. 226. Y. Narayana Chetty v. Income-tax Officer, Nellore 1959 S C J 250 : (1959) 35 ITR 388 : (1959) 1 Andh W R (SC) 109 : (1959) 1 Mad L J (SC) 109 : 1958 Cal L J 320 : (1959) Supp (1) S C R 189 : A I R 1959 S C 213 (219) (Pt C) (Pr 12).

●——Art. 226—Certiorari is generally granted when Court has acted without or in excess of jurisdiction — Want of jurisdiction may arise from the nature of the subject-matter or from the absence of some preliminary proceedings or the Court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances. Basappa, T. C. v. T. Nagappa, 1954 S C A 620 : 67 Mad L W 613 : 1954 S C J 695 : ILR (1954) Mys 235 : 1955 S C R 250 : 10 Ele L R 14 : AIR 1954 S C 440 (444) (Pt B) (Prs 7, 10).

●——Art. 226 — Writ to quash decision of inferior Court.

A writ cannot be granted to quash the decision of an inferior Court within the jurisdiction of the High Court on the ground that the decision is wrong. It must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice Once it is held that the Court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a Court has jurisdiction to decide rightly as well as wrongly. Ebrahim Aboobakar v. Custodian-General, Evacuee Property, New Delhi, ILR (1953) Punj 17 : 1952 S C A 501 : 1952 Mad W N 502 : 1952 S C J 483 : 1952 S C R 696 : 90 Cal L J 133 : A I R 1952 S C 319 (322) (Pt B) (Pr 13).

●——Art 226—Power of High Court under — Writ of certiorari—When can be issued.

An inferior tribunal vested with powers to exercise judicial or quasi-judicial functions might have come to an erroneous conclusion, but where the conclusion is in respect of a matter which lies entirely within the jurisdiction of the tribunal and it does not relate to anything collateral, an erroneous decision upon which might affect its jurisdiction, and where records of the case do not disclose any error apparent on the face of the proceeding or any irregularity in the procedure adopted by the tribunal which goes contrary to the principles of natural justice, there are absolutely no grounds which would justify a superior Court in issuing a writ of certiorari for removal of an order or proceeding of such tribunal. In such a case High Court cannot exercise the powers of an appellate Court and correct what it considered to be an error in the decision of the tribunal. The position might have been different if it had omitted to decide a matter which it was bound to decide and in such cases a mandamus might legitimately issue commanding the authority to determine questions which it left undecided but no certiorari is available to quash a decision passed with jurisdiction by an inferior tribunal on the mere ground that such decision is erroneous. 1911 A C 179, Rel. on., Parry and Co Ltd Dare House Madras v. Commercial Employees Association Madras. 90 Cal L J 7 : (1952) S C A 299 : 1952 S C R 519 : 65 Mad L W 491 : 1952 Mad W N 429 : 1952 S C J 275 : 1952-1 Mad L J 813 : A I R 1952 S C 179 (179, 180, 181) (Pt A) (Prs 4, 11).

——Art. 226—Certiorari—Order passed under S. 29, Defence of India Act (1962)—Court can decide whether order falls within ambit of section — If not, certiorari can be issued. A I R 1965 All 236 (239) (Pt B) (Pr 17).

——Art. 226—Disputed question of fact and finding in respect to it.

Jurisdiction of State Government to entertain application under S. 7-F of U. P. (Temporary) Control of Rent and Eviction Act and pass order though it can be questioned in proceedings under S. 7-B, can be challenged in writ petition, since decision depended on consideration of Act and not controversial question of fact. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-F. AIR 1964 All 395.

——Art. 226 — Question of jurisdiction—Powers of High Court—Scope of.

If a question goes to the root of a case in determining the jurisdiction of the Court to deal with it, it is always competent for the supervisory Court, like the High Court, acting in exercise of its jurisdiction under Art. 226 of the Constitution to examine and see whether the inferior Court does or does not possess jurisdiction and, for that purpose to determine what is the correct interpretation of the law applicable. AIR 1964 All 386 (389, 390) (Pt D) (Pr 7) (DB).

——Art. 226—Writ of certiorari—U. P. Consolidation of Holdings Act (5 of 1954), S. 48—Jurisdiction of Director of Consolidation under—Limited to circumstances specified in the section — Order by quasi-judicial authority without jurisdiction—Quashed by issue of certiorari. See Tenancy Laws—U. P. Consolidation of Holdings Act (5 of 1954), S. 48. **I L R (1962) 2 All 359.**

——Art. 226 — Court will not go normally behind finding of fact unless jurisdiction to pass orders depends upon it. **1961 All W R (HC) 86 : 1961 All L J 36.**

——Art. 226 — U. P. Industrial Disputes Act (28 of 1947), Ss 3, 6A, 8 — U. P. Govt. Notification No. U 464 (LL) Y X XXVI B 257 (LL) 1954 D/- 14.7-1954, Cls. 3, 11 — Individual dispute espoused by wholly foreign trade union—Not industrial dispute—Reference of such dispute to Adjudicator is without jurisdiction—Power of High Court to interfere under Art. 226 and quash order of reference — See U. P. Industrial Disputes Act (28 of 1947), S. 3. **AIR 1960 All 734.**

——Art. 226—Certiorari — Issue of —Order of tribunal having no jurisdiction—Effect of.

If any judicial or quasi judicial Tribunal exercises jurisdiction and the conferment of that jurisdiction is ab initio void, there is no necessity for issue of any writ of certiorari to quash the decision of the Tribunal and the Court would be competent to issue appropriate directions and orders completely ignoring the effect of that decision. AIR 1956 All 684, Rel. on. I L R (1958) 1 All 434 : AIR 1958 All 80 (85) (Pt D) (Pr 7) (DB).

——Art. 226 — Certiorari — Power to quash by certiorari order of inferior tribunal on ground that it is on face of it erroneous in law.

The purpose of inserting Art. 226 in the Constitution was 'apparently to place all the High Courts in this Country in somewhat the same position as the Courts of King's Bench in England. In England, if the record of the proceedings of an inferior tribunal discloses on examination an error of law the proceedings can be quashed by a writ of certiorari and the Supreme Court in AIR 1954 S C 440 has declared such to be the law in India, and has not taken the view that the English rule is to be applied in India subject to certain modifications or limitations. There can, therefore, be no doubt that in the exercise of the jurisdiction to issue a writ of certiorari the Court does not, and has no power to, substitute its own views for those of the inferior tribunal, nor has it power to quash a decision because it thinks it wrong unless the error is an error of law and is apparent on the face of the record. AIR 1954 S C 440 explained and followed; AIR 1954 All 497 (FB) not followed; AIR 1952 S C 179: 1952 S C J 275: (1952) 1 M L J 813, held cannot be reconciled with AIR 1954 S C 440. Case-law discussed. **1955 All L J 244 : I L R (1955) 1 All 698 : AIR 1955 All 131 (134, 135) (Pt B) (Prs 9, 10).**

——Art. 226—Rules under U. P. Sugarcane Factories Control Act, Rule 23 — Jurisdiction of Cane Commissioner arises, only when there is agreement under S. 18 (2) in form No. 12 Appendix III, Schedule to Act—It is agreement written and signed—Oral agreement—Cane Commissioner exercisiong jurisdiction—Decision will be quashed under Art. 226—See U. P. Sugarcane Factories Control Act (1 of 1938), S. 18 (2). **AIR 1955 N U C (All) 3596.**

——Art. 226 — Certiorari — U. P. Land Revenue Act (1901), S. 145.

Remission of land revenue allowed by mistake over a number of years — Government is entitled to recover the same in one lump sum—Failure to obtain certificate under S. 145, U. P. Land Revenue Act, though a defect in procedure which affected jurisdiction of the Government to recover the same High Court refused to issue a writ of certiorari because the defect did not affect the equities and justice of the claim of the Government and did not interfere with the fundamental rights of the petitioner. The hardship which might result to petitioner as a result of recovering amount in a lump sum held was not a matter which the High Court could consider in the writ petition. **1953 All W R (H C) 475 : 1953 All L J 513 : AIR 1954 All 4 (5) (Prs 4, 5, 6) (DB).**

——Arts. 226 and 136 — Labour Appellate Tribunal deciding that there is no question of law — Writ application is not maintainable—(Industrial Disputes Labour (Appellate) Tribunal Act (1950), S. 7)—(C. P. Code (1908), S. 9).

Before a writ of certiorari can be granted to quash the decision of an interior Court within its jurisdiction, the applicant must show that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Once it has been established that the Court had jurisdiction but, while exercising it, made a mistake, the wronged party cannot ask the High Court to set matters right as a Court having jurisdiction can decide rightly as also wrongly.

Where the question before the Labour Appellate Tribunal is not whether the strikes were legal or illegal or whether the employers had acted legally or illegally in dismissing the employees but whether the appeal preferred by the employers was a competent one, the Labour Appellate Tribunal has to decide the question, not as a collateral and extrinsic issue but as a direct and intrinsic issue, whether the appeal raised any substantial question of law or not. Its decision of this question, right or wrong, does not give the High Court writ jurisdiction under Art. 226 of the Constitution. A I R 1953 All 260, AIR 1952 S C 319, Relied on.

The applicants have another remedy open to them namely, that of preferring an application for special leave to appeal against the judgment of the Labour Appellate Tribunal to the Supreme Court. **1953 All L J 488 : I L R (1954) 1 All 198 : AIR 1953 All 531 (532, 533) (Prs 5, 7) (DB).**

——Art. 226—Industrial Disputes Act (14 of 1947), S. 10 — "Refer the dispute" — Notification not referring to names of individuals whose disputes had to be considered by Tribunal but left the specific cases to be cited by employees — It is duty of Tribunal to determine whether persons whose names were cited were workmen or not — If it held that particular individual was not a workman, it meant that his case was not referred — Such determination was of fact which was itself subject matter of dispute referred for adjudication—Decision of such matter is exercise of jurisdiction and cannot be challenged by certiorari. Even wrong determination would not amount to exercise of jurisdiction not vested. **AIR 1953 All 260 (261, 262) (Prs 4, 4a) (DB).**

——Art. 226—Cognizance of case taken by a Panchayat Bench of five panchas—Decision by three is without jurisdiction—Order quashed. See U. P. Panchayat Raj

Act (26 of 1947), S. 49. 1952 Cri L J 940 : AIR 1952 All 510 (DB).

——Art. 226—Certiorari—Writ of—Registration Act (1908), Ss. 68 (2), 74, 7 (2)—Joint Sub-Registrar functioning as District Registrar, refusing to register document without holding enquiry as required by S 74 — District Registrar directing Joint Sub-Registrar to hold enquiry — No injustice caused to parties by order of District Registrar — High Court will refuse to quash order though passed without jurisdiction, under Art. 226, Constitution — Registration Act (1908), ss. 68 (2), 74, 7 (2).

Where the Joint Sub Registrar, who was functioning as District Registrar under S. 74, by reason of the delegation of powers under S. 7 (2), refused to register a document without holding an enquiry as required by S. 74, and the District Registrar on a petition under S. 73, purporting to act under S 68 (2), diverted the Joint Sub-Registrar to perform the functions which he was bound to do under S. 74, the High Court will refuse to quash the order of the District Registrar by a writ of certiorari even assuming that the District Registrar had acted without jurisdiction in issuing the direction. It is not every error of law that would induce the High Court to exercise its extraordinary jurisdiction but only in cases where there is failure of justice. **(1963) 2 Andh W R 285.**

— Art. 226 — Certiorari — Jurisdiction of revising authority — Sale of property for recovery of arrears held and completed on 20-8-1950 — Defaulter filing registered security bond after expiry of time allowed by Collector on 9-10-1950 - No application to Collector to set aside confirmation of sale—Revenue Minister in revision has no jurisdiction to set aside confirmation of sale. See Hyderabad Land Revenue Act (8 of 1317-F), S. 166-B(1). **(1963) 2 Andh L T 392.**

——Art. 226—Jurisdiction - Order of Industrial Tribunal confirmed by Labour Appellate Tribunal—Writ petition against order of Industrial Tribunal—Maintainability — (Industrial Disputes (Appellate Tribunal) Act (1950), S. 9(2)).

Where a person applying under Art. 226 of the Constitution can successfully demonstrate that the order of the original tribunal is void for want of jurisdiction, the fact that that order has been confirmed by an appellate authority does not detract from the power of the High Court to invalidate it.

Thus where on rejection of appeal summarily under S. 9(2) of the Industrial Disputes (Appellate Tribunal) Act the Labour Appellate Tribunal was not in existence and the writ petition was directed against the order of the Industrial Tribunal instead of against the order of the Labour Appellate Tribunal, on the ground that it was void for want of jurisdiction:

Held, that the writ petition was maintainable. AIR 1957 S C 444, Rel. on. **(1958) 1 Lab L J 17 : I L R (1958) Andh Pra 183.**

——Art. 226—Civil P. C. (1908), S. 9—Matters dealt with by special Tribunal — Minimum Wages Act (1948), Ss. 20 15, 22, 24, 25—Notification fixing minimum wages and making them payable to unskilled labour in tea industry—Order under S. 20 by Authority directing payment, in interpreting notification, to all unskilled labour including sub-normal workers—Suit by employers questioning correctness of decision of Authority — Whether barred — Jurisdiction of Authority to interpret notification and decide whether it applies to particular class of workmen—Ambit and scope—Jurisdiction whether exclusive. See Civil P. C. (1908), S. 9. AIR 1963 Assam 62 (FB).

——Art. 226 — High Court when can interfere with administrative order.

The High Court has power to interfere even with an administrative order in exercise of its powers under Art. 226 if the said order be passed without or in excess of his jurisdiction by a public officer or there is malice in fact or law.

Where the Deputy Commissioner in exercise of his powers under Sch. 4, R. 1 of the Assam Municipal Act fixed a certain date for holding of the first meeting of the newly elected members of the board knowing fully that certain election petitions were pending in respect of certain members but subsequently postponed the meeting till the decision of the election petitions, the order of postponement even if administrative is in excess of his jurisdiction and is liable to be quashed The Assam Municipal Act undoubtedly gives him a discretion to vary the date for the meeting, when considered necessary but not to obliterate or drop it or postpone the meeting sine die to suit certain purpose for which there is no legal sanction. I L R (1953) 5 Assam 212 : A I R 1954 Assam 86 (87, 88) (Pt B (Prs 9, 10, 13, 14) (DB).

——Art 226 -(Assam) High Court Rules and Orders, 1950 Chap V-A, R. 2 — Application under Constitution of India, Art. 226 — Hearing by single Judge — Jurisdiction—Remedy if order is without jurisdiction. See High Court Rules and Orders — (Assam) High Court Rules and Orders (1950), Chap. V-A, R. 2. AIR 1953 Assam 62.

——Art. 226 - Jurisdiction of High Court — Bombay Land Requisition Act, 1948, S 6(4) and proviso — Order of requisition — Decision that premises are vacant - Interference by certiorari — Jurisdiction of High Court.

An order of requisition by the Government under S. 6(4)(a) of the Bombay Land Requisition Act, as well as the declaration under the proviso is a quasi-judicial act and a writ of certiorari will no doubt issue if the Government act in excess of their jurisdiction. But the jurisdiction exercised by the High Court in issuing the high prerogative writ of certiorari is a limited jurisdiction. The Court is neither a Court of appeal nor a Court of revision and has no power to correct either findings of fact or even errors of law. Its sole function is to correct persons or tribunals exercising judicial or quasi-judicial functions when they assume jurisdiction which they do not possess or when they refuse to exercise jurisdiction which is vested in them by law, or when in exercise of their jurisdiction they violate principles of natural justice. Under S. 6(4) and the proviso, jurisdiction has been conferred upon the Government to decide and determine the question of vacancy, and the jurisdiction to determine that question is not made conditional upon the finding of any collateral or extraneous fact. A distinction has to be borne in mind, i.e., the distinction between a collateral fact and the actual matter to be decided by a tribunal.

The legal aspect of vacancy is not a matter collateral to the actual matter which the Government has to decide, but it is a part of the very issue and if the issue is erroneously decided, the superior Court has no jurisdiction or right to interfere with the decision of the inferior Court. There is again a distinction between a wrong assumption of jurisdiction and the wrong exercise of it. However wrong the exercise of jurisdiction may be by a lower Court, it does not empower the High Court to correct by a writ of certiorari.

It is only when the jurisdiction is wrongly assumed or is assumed when it does not exist that the power of the superior Court comes into play. When the Government determines the question of vacancy, it determines it as a Judge, and so long as its jurisdiction to do so cannot be challenged, its decision, however erroneous, cannot equally be challenged. There is consequently no power in the High Court to interfere by a writ of certiorari with any decision of Govern-

ment arrived at under the proviso to S. 6(4) of the Act with regard to the existence of a vacancy even though such decision may be erroneous in law. If the declaration is mala fide, the subject can always challenge such decision. 51 Bom L R 997, Dissented; 51 Bom L R 418, Ref 53 Bom L R 94: I L R (1951) Bom 701 : A I R 1951 Bom 303 (304 to 307) (Pts A, B, C) (Prs 3, 4, 5, 10) (DB).

——Art. 226 — Certiorari, writ of — Jurisdiction to issue when not exercised—(Certiorari).

The jurisdiction that the High Court exercises when it issues the high prerogative writ of certiorari is a limited jurisdiction. Thus, when any Court has been empowered to determine certain question and jurisdiction has been conferred upon it to determine those questions then the determination by the Court of those questions, however erroneous in fact or in law, cannot call into question the jurisdiction of the High Court under its high prerogative of issuing a writ of certiorari. To this principle there are two exceptions: the first is that the superior Court will interfere when an error of law is patent on the face of record; and the second is that the determination is arrived at mala fide in which case it will not be a determination at all and fraud or mala fides will vitiate any decision however arrived at. I L R (1951) Bom 701 : AIR 1951 Bom 303 (305, 306, 307) (Pt B) (Prs 4, 5, 10) (DB).

——Art. 226—Under Art. 226, the High Court interferes if there is a plain excess of jurisdiction; where the question of jurisdiction turns upon the disputed questions of fact the Court generally declines to interfere. AIR 1963 Cal 275 (276) (Pt A) (Pr 4).

——Art. 226 — Certiorari—Inherent lack of jurisdiction—Failure to object to jurisdiction will not clothe tribunal with jurisdiction — Certiorari can be issued to correct such lack of jurisdiction. I L R 9 All 191 (P C) and I L R 11 Mad 26 (P C) and AIR 1954 S C 340, Foll.; AIR 1958 Cal 208 and AIR 1954 Bom 202 and AIR 1957 S C 425 and AIR 1957 S C 397, Disting. (1961) 2 Lab L J 36 : (1961-62) 21 F J R 247 : (1961) 2 Fac L R 407 : 65 Cal W N 478 : AIR 1961 Cal 227 (229)(Pt C) (Pr 14).

——Art. 226- Certiorari — When can issue—(Industrial Disputes (Appellate Tribunal) Act (1950), S. 7).

In regard to cases where the jurisdiction of a tribunal depends upon the existence of some preliminary fact of a collateral character, that is, collateral to the actual matter which the tribunal has to try, a distinction has been made between cases where the Legislature has merely laid down the condition that if the preliminary fact exists, the tribunal shall have jurisdiction and cases where while laying down the condition, the Legislature has made it clear that it intends the very same tribunal to have jurisdiction to decide whether the preliminary fact exists or not.

Held, that the question whether the appeal before Industrial Appellate Tribunal involved a substantive question of law and was therefore maintainable was within the Appellate Tribunal's jurisdiction, as an appellate Court to decide and, therefore, no certiorari could issue against its decision. (1956) 2 Lab L J 328 : 60 Cal W N 602 : AIR 1957 Cal 560 (568, 568, 569) (Pt C) (Prs 21, 26, 28) (DB).

——Art. 226—Certiorari—When to issue.

If the fact in question is not collateral, but a part of the very issue which the inferior tribunal has to enquire into, an order will not be granted, although the inferior tribunal may have arrived at an erroneous conclusion with regard to it. (1950) 2 Lab L J 329 : 60 Cal W N 602 : AIR 1957 Cal 560 (569) (Pt D) (Pr 30) (D B).

——Art. 226 — Certiorari — Central Excise Rules (1944), R. 9 (2), order under—Order made with jurisdiction but stating wrong part of section—Court will not interfere unless party is prejudiced—AIR 1957 S C 227 and AIR 1958 S C 232, Foll. I L R (1965) Gui 40 : (1965) 6 Guj L R 137 AIR 1965 Guj 215 (225) (Pt C) (Pr 17) (DB).

——Art. 226 — Patent lack of jurisdiction — Writ of certiorari can be issued.

Where there is patent lack of jurisdiction, or where there is a case of clear absence of jurisdiction, a writ of certiorari can issue, though not of right nor as a matter of course, but almost as a matter of course. AIR 1957 S C 227; AIR 1960 S C 407, Disting. (1961) 2 Guj L R 299.

——Art. 226—Conferment of jurisdiction.

Jurisdiction is not conferred on grounds of natural justice. It has to be specifically conferred by statute and more so in the case of administrative bodies exercising judicial or quasi-judicial functions. Such bodies have to keep themselves strictly within the four corners of jurisdiction that is specifically conferred upon them, otherwise their orders become null and void. The fact that an officer has to keep law and order does not confer any jurisdiction to decide questions of title to property. I L R (1953) Hyd 412: AIR 1953 Hyd 235 (237) (Pt E) (Pr 10) (DB).

——Art. 226 — Administrative bodies—Orders without jurisdiction—Null and void.

Jurisdiction is not conferred on grounds of natural justice. Jurisdiction has to be specifically conferred by statute and more so in the case of administrative bodies exercising judicial or quasi-judicial functions. Such bodies have to keep themselves strictly within the four corners of jurisdiction specifically conferred upon them; otherwise their orders become null and void. I L R (1952) Hyd 791 : AIR 1953 Hyd 79 (88) (Pt I) (Pr 49) (DB).

[Reversed on another point in AIR 1956 S C 319.]

——Art. 226—Certiorari jurisdiction invoked under Art. 226 — Usurpation or excess of jurisdiction of inferior tribunal should be proved.

In order to invoke the certiorari jurisdiction under Art. 226 of the Constitution, the petitioner has to show that there has been a usurpation of jurisdiction or that there has been an excess of jurisdiction on the part of a judicial body. Excess of or want of jurisdiction arises where it has no authority to entertain an enquiry. The issue of a writ is not to reopen or vacate the judgment of an inferior tribunal as is done in the case of an appeal. The exercise of the writ is regulated and limited by fixed principles. The High Court merely determines the validity or invalidity of the record of such inferior tribunal and confirms or reverses in whole or in part accordingly. Ahmed-Un-Nissa Begum v. State, AIR 1953 Hyd 21 (23) (Pt B) (Pr 7) (FB).

——Art. 226—Certiorari—Jurisdiction of High Court—Order by Revenue Minister without jurisdiction and not authorised by Land Revenue Act—Cancellation of patta to jagir lands held by pattadar for over 30 years—Objections to, by rival party rejected several times and matter closed by Government officer—Writ to quash order of Minister.

Where a dispute as to certain jagir lands held by a pattadar under a patta granted by the Naib of the Jagirdar is one purely between two private parties, and so far as the Government is concerned it has no claim for anything due to insufficient assessment having been levied from the pattadar holding the lands for over 30 years, the dispute should properly be decided by a Court of law under judicial process.

It is not within the province of the Revenue department or the Revenue Minister to decide such private claims and to cancel a patta granted over 30 years ago on the objection of a private party when such objection raised on several prior occasions had been turned down and rejected by the superior revenue officers and the Revenue Department and even by the President of Council and the proceedings had been closed.

If the Revenue Minister passes an order cancelling the patta it is not a mere ministerial act as it affects rights of property of the pattadar and a judicial approach to the question is by Collector. Even in cases of administrative and executive orders, acting in excess of legal authority would vitiate the decision. Where the Minister had no jurisdiction under the Land Revenue Act to act in the way he did, to decide the matter, when there was no legal evidence or other material in support of the decision and there was no judicial inquiry, the High Court will issue a writ of certiorari to quash his order and direct that the patta and possession of the original pattadar who has been holding for over 30 years should not be interfered with in pursuance of the Minister's order. 48 Cal W N 766; AIR 1950 S C 222; AIR 1949 Mad 535, Ref. I L R (1951) Hyd 845 : AIR 1952 Hyd 10 (13, 14, 15) (Pt A) (Prs 15, 16, 17, 18, 18a, 19) (DB).

——Art. 226 (1) — Certiorari — Writ of — Object of — Unwarranted usurpation of jurisdiction by Ecclesiastical Department in Hyderabad — Power of High Court to issue writ.

The object of a writ of certiorari is to correct excess of jurisdiction. This power is exercised by the High Court by virtue of its extraordinary jurisdiction where the act complained of is a judicial or quasi-judicial act. Where there is an adequate remedy, a writ of certiorari will not lie and that remedy, should be such which should be equally beneficial and speedy and not merely one which at some further time will bring relief. A writ of certiorari is invoked before a trial is completed to secure a fairer trial than can be obtained before an inferior Court or to prevent an excess of jurisdiction after trial; it is in fact to quash an order which has been made without jurisdiction or in defiance of the rules of natural justice.

But a writ of prohibition is issued to prevent the commission of a future act and not to undo an act already performed. An application for such a writ cannot lie to restrain an inferior tribunal after its judgment has been executed. Where the Court has nothing further to do in pursuance of its order the question of restraining the action of the Court does not arise. This would be the position even if the order was void.

Per Siddiqi J. — The powers of the Hyderabad High Court in this respect are similar to those of the Indian High Courts.

Where the Director of Ecclesiastical Department in Hyderabad has no right to eject the tenant of endowed property without applying to a Court of law, a writ can be issued to the Director, restraining him from taking possession directly of the premises. But no writ can be issued in respect of that part of the endowed property of which the Department has already taken possession before the petitioner moved the High Court. ILR (1951) Hyd 149 : AIR 1950 Hyd 5 (10, 12, 13, 14) (Pt A) (Prs 18, 24, 31, 32) (DB).

——Art. 226 — M. B. Panchayat Act (58 of 1949), S. 20 — Grounds for certiorari — Authority having jurisdiction deciding wrongly — No certiorari.

Where the Legislature entrusts the authority with jurisdiction to determine whether the preliminary state of facts exists, no certiorari can lie even if the decision be wrong, the reason being that the jurisdiction having been conferred the authority has power to decide both rightly or wrongly. Thus, S. 20 of the Panchayat Vidhan confers jurisdiction on the Government to decide whether any Panchayat Board has abused its powers or neglected its duty; consequently in the proper exercise of its jurisdiction if it decides wrongly the High Court cannot interfere by way of certiorari proceedings. (1888 21 Q B D 313 and AIR 1950 S C 222, Rel. on. **AIR 1955 Madh B 173 (175) (Pt D) (Pr 6) (DB).**

——Art. 226 — Certiorari, when can issue.

A writ of certiorari can be issued to quash the order of an inferior tribunal or a quasi judicial authority if it goes beyond the jurisdiction, or to ensure observance of the rules of natural justice. 1957 M P C 291 : 1957 Jab L J 509 : AIR 1958 Madh Pra 11 (12) (Pt B) (Pr 9) (DB).

——Art. 226 — Industrial Disputes Act (1947), S. 33 (2) (as amended by Act 36 of 1956) — Object of — Grant of approval to action taken by employer — Jurisdiction of Tribunal — Nature of — Tribunal passing order in excess of jurisdiction — Power of High Court to interfere under Art. 226 of Constitution — Industrial Disputes (Appellate Tribunal) Act (1950), S. 22. See Industrial Disputes Act (1947), S. 33 (2) (as amended by Act 36 of 1956). AIR 1961 Mad 362.

——Art. 226 — Error of law — Award given by Industrial Tribunal based on no evidence — Setting aside of — (Industrial Disputes (Appellate Tribunal) Act (1950), S. 9 (7)).

The insufficiency of data is certainly not enough to reverse the finding of the Appellate Tribunal. But where there is really no evidence on which the Appellate Tribunal could rest its decision, the substituted award given by the Appellate Tribunal directing the reinstatement of workers is without jurisdiction and it is liable to be set aside under Art. 226. 1957 Mad W N 445 : (1957) 2 Mad L J 135 : 70 Mad L W 829 : (1957-58) 13 F J R 202 : (1958) 1 Lab L J 69 : AIR 1957 Mad 688 (689, 690) (Pt D) (Prs 10, 12).

——Art. 226 — Powers of High Court — Question whether industrial establishment is of a seasonal character when arises — Order of Government declaring petitioner's mill not of seasonal character when no such question arose — Validity — Interference. See Industrial Disputes Act (1947), S. 25 A. AIR 1957 Mad 410 (DB).

——Art. 226 — Certiorari — Jurisdiction.

Where the order of the Deputy Commissioner under S. 57 (b) of the Madras Hindu Religious and Charitable Endowments Act (19 of 1951) is set aside as one passed by a Tribunal wholly devoid of jurisdiction, the order of the Commissioner, which confirmed that order in appeal would have no basis by itself.

Hence the fact that under Art. 226, the petitioners applying for a writ of certiorari ask in form only for setting aside the order of the Deputy Commissioner and do not pray for setting aside the order of the Commissioner is not a bar to the exercise of the jurisdiction vested in the High Court under Art. 226 of the Constitution. ILR (1957) Mad 631 : 1955 Mad W N 865 : 68 Mad L W 777 : (1955) 2 Mad L J 612 : AIR 1956 Mad 146 (149) (Pt B) (Pr 20).

——Art. 226 — Scope of inquiry — Finding on jurisdictional issue — Power to examine.

The correctness of a finding on a jurisdictional issue is open to examination afresh, if necessary, in proceedings under Art. 226 of the Constitution. (1956) 2 Mad L J 254.

——Art. 226 – Certiorari —Tenancy Laws —Madras Estates (Abolition and Conversion into Ryotwari) Act (1948), S. 67 – Rules relating to procedure for being followed by Tribunals appointed under S. 8 of Act – Validity—Orders passed by two members sitting as Tribunal is without jurisdiction. See Tenancy Laws – Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 67. AIR 1953 Mad 129.

——Art. 226—Application for review under S. 96(2), Manipur Land Revenue and Land Reforms Act (1960) filed after period of limitation — Order passed on it held was in excess of jurisdiction and it being quasi-judicial High Court could interfere with it under Art. 226. See Tenancy Laws — Manipur Land Revenue and Land Reforms Act (33 of 1960), S. 14 (2). AIR 1965 Manipur 3.

——Art. 226 – Writ of certiorari—Object of—Object is to secure proper exercise of jurisdiction.

One of the objects intended to be secured by a writ of certiorari is that the jurisdiction of the inferior tribunal should be properly exercised. This is also the English law. The superior Courts in India can make an order or issue a writ in the nature of a certiorari in all appropriate cases and in appropriate manner so long as they keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law. AIR 1954 S C 440, Rel. on. (1965) 1 Lab L J 357 : (1965-66) 27 F J R 418 : AIR 1965 Mys 121 (123, 124) (Pt B) (Fr 4) (DB).

——Art. 226 — Jurisdiction — Failure to exercise — Interference — See Sales Tax — Mysore Sales Tax Act (25 of 1957), S. 40. AIR 1959 Mys 201 (DB).

——Art. 226 – Certiorari.

All questions of jurisdiction have to be decided in limine and the High Court cannot enter into the merits of a controversy even to reject a contention of the petitioner without its own jurisdiction to do so being clear and manifest. AIR 1930 P C 227, Rel. on. ILR (1953) Nag 772 : 1953 Nag L J 458 : AIR 1953 Nag 357 (358) (Pt A) (Pr 21) (DB).

——Art. 226 – Jurisdiction—Civil P. C. (1908), S. 9.

A Civil Judge may be vested with the jurisdiction of both kinds, namely, civil and criminal. But when two jurisdictions are so distinct they cannot be exercised even simultaneously, much less can criminal jurisdiction be exercised in relation to a civil matter, or civil jurisdiction in relation to a criminal matter. Therefore, an order which ought to have been made in exercise of civil jurisdiction, at appellate stage, if made in exercise of criminal jurisdiction, is made wholly without jurisdiction and can be set aside by the High Court under Art. 226. 1953 Nag L J 237 : 1953 Cri L J 1096 : ILR (1953) Nag 620 : AIR 1953 Nag 213 (214) (Pt D) (Pr 6) (DB).

——Art. 226– Certiorari — Proceedings of authorities exceeding jurisdiction. See Arms Act (1878), S. 18. 1954 Cri L J 951 : AIR 1954 Pat 299 (DB).

——Art. 226 — Administration of Evacuee Property Act (1950), S. 46- Jurisdiction of Civil Court—S 46 must be construed to mean that the jurisdiction of a civil or revenue Court is ousted even if the Custodian has wrongly decided that any property is an evacuee property under the Act — Custodian has exclusive jurisdiction — The error does not go to the root of the jurisdiction. See Administration of Evacuee Property Act (1950), S. 46. AIR 1953 Pat 112.

——Art. 226 — Cancellation of proprietary rights by Chief Settlement Officer for non-payment of mortgage money — Validity of — Departmental order — Interference under Art. 226 when authority exceeds jurisdiction. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 24. ('64) 66 Pun L R 770.

——Art. 226—Industrial Disputes Act (1947), S. 15—Award in excess of worker's demand – Validity—Question of jurisdiction depending on facts—Cannot be raised in petition under Art. 226. See Industrial Disputes Act (1947). S. 15. AIR 1960 Punj 76.

——Art. 226—Certiorari—Jurisdiction—Order of removal from service entirely without jurisdiction—Delay in attacking order in appeal or under Art. 226 not a sufficient ground for refusal to interfere—Distinction between inherent want of jurisdiction and irregular exercise of it.

Where a Court or a tribunal passes an order which is entirely beyond its inherent jurisdiction to pass, then such an order is a nullity and has no effect in law.

Where the order of removal passed by the Inspector-General of Police was entirely without any statutory authority and patently illegal, mere delay in attacking that order would not be sufficient ground for the High Court to refuse to interfere in the exercise of certiorari jurisdiction. ILR (1959) 9 Raj 654 : 1959 Raj L W 523 : AIR 1960 Raj 56 (59, 60) (Pt C) (Prs 10, 11, 12) (DB).

——Art. 226—Order without jurisdiction—Waiver of objection to jurisdiction — Effect—Absence of jurisdiction — Effect of consent — Consent to obey order made without jurisdiction—Right to challenge later—Other remedies—Plea inconsistent—Maintainability.

It is a fundamental rule of law that the judgment of a Court without jurisdiction is a nullity and consent cannot give jurisdiction where there is none. (13 Ind App 134 (PC) and 14 Ind App 160, (PC), Foll.)

Where in the written statement it was stated the petitioner had exhausted all other remedies it cannot be urged that other remedy under the Evacuee Property Act by way of revision made to Custodian-general exists. The remedy by revision where the jurisdiction of Custodian is denied, cannot be taken because the Custodian-general also would have no jurisdiction in the matter. It is not an adequate remedy.

The consent of the petitioners to give possession was not free consent in the circumstances and the High Court will not refuse to grant the petition. On the ground the petitioner's action in taking time and then challenging it by the writ petition may amount to fraud otherwise. 1952 Raj L W 489 : ILR (1952) 2 Raj 415 : AIR 1952 Raj 184 (187) (Pt C) (Prs 7, 8, 9) (DB).

——Art. 226—Jurisdiction—Fundamental principles—See V. P. Gram Panchayat Ordinance (1949), S. 49. AIR 1956 Vin Pra 6.

——Arts. 226, 227—Exercise of jurisdiction under.

Where a subordinate tribunal acts without jurisdiction the illegality should be corrected by the High Court, if it has caused prejudice, even though to a single individual. On the other hand, a discretion will not be interfered with unless the subordinate tribunal has committed a serious mistake, or has caused a grievance of public importance.

Thus, a direction of the nature of certiorari (and of prohibition if the proceedings are still pending) should be given where the tribunal acts altogether without jurisdiction. Where, having jurisdiction, it acts mala fide or with bias, or commits a gross error of discretion, leading to a general grievance, and grave consequence, then a direction under Art. 227 should be given In the former case the test is whether the statutory jurisdiction has been exceeded; in

the latter it is the seriousness of the mistake, and the gravity and the generality of the unwelcome consequence. (1951) 1 K B 711, Ref. AIR 1953 Vin Pra. 41 (42, 43) (Pt D) (Pr. 9, 10).

148 (a). Power of superior Court to disturb decision of inferior Court or Tribunal on question of jurisdiction.

● ——Art. 226 — Jurisdiction — Power of superior Court to disturb decision of inferior Court or Tribunal on question of jurisdiction.

There may be cases where the jurisdiction of an inferior tribunal may depend upon the fulfilment of some condition precedent or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the inferior tribunal has to try, and the determination of whether it exists or not is logically and in sequence prior to the determination of the actual question which the inferior tribunal has to try. In such a case, in certiorari proceedings a Court can enquire into the correctness of the decision of the inferior tribunal as to the collateral fact and may reverse that decision if it appears to it on the materials before it to be erroneous. There may be tribunals, however, which, by virtue of legislation constituting them, have the power to determine finally the preliminary facts on which the further exercise of their jurisdiction depends. With respect to them, in such cases, their decision even if wrong on facts or law cannot be corrected by a writ of certiorari. Raman & Raman, Ltd. v. State of Madras, 1956 Mad W N 441 : 1956 S C J 368 : (1956) 1 Mad L J (SC) 169 : 1956 S C A 528 : 1956 Andh W R (SC) 169 : 1956 S C R 256 : AIR 1956 S C 463 (466, 467) (Pt A) (Pr 9).

——Art. 226 — Stay of proceedings for recovery of tax — Order directing recovery of tax in spite of stay order—If void and without jurisdiction — Civil P. C. (1908), O. 41, R. 5 — U. P. Agricutural Income Tax Act (1949), S. 32 (2).

All that a stay order does is to paralyse the power of the officer against whom it is directed and to restrain him from using those powers. If those powers are used in spite of that order of restraint, in appropriate cases such orders may have to be vacated and in a case of worst type it may even be possible to hold that the action taken in exercising the powers may amount to contempt of the Court which issued the stay order. The exercise of power is not without jurisdiction even after knowledge of the stay order has been conveyed to the officer exercising the power, much less so before the information is conveyed to him. A I R 1927 All 401, Foll.

Where, therefore, an order for recovery of the tax was passed before the stay order was received, it was held to be a proper order and further proceedings in pursuance of that order were not barred. 1960 All W R (HC) 412 : 1960 All L J 542 : ILR (1960) 2 All 812.

——Art. 226 — Certiorari — Jurisdiction — Power of superior Court to disturb decision of inferior Court or Tribunal.

If the fact be collateral, to the actual matter which the lower Court has to try, that Court cannot, by a wrong decision with regard to it, give itself jurisdiction which it would not otherwise possess. The lower Court must, indeed, decide as to the collateral fact, in the first instance but the superior Court may upon an application for the issue of a writ of certiorari inquire into the correctness of the decision, and may quash the proceedings in the lower Court if such decision is erroneous or at any rate if there is no evidence to support it. On the other hand, if the fact in question be not collateral but a part of the very issue which the lower Court has to inquire into, certiorari will not be granted. (1956-57) 12 F J R 251 : (1957) 2 Lab L J 194 : 59 Bom L R 209 : ILR (1958) Bom 8 : A I R 1957 Bom 111 (116) (Pt D) (Pr 10) (DB).

——Art. 226 – Error of law—Question of jurisdiction —Whether adjudicator, who is a creature of statute had power to interfere with order of dismissal passed by employer, is a question of jurisdiction and question of jurisdiction is undoubtedly one of law — Even if the industrial tribunal wrongly held that it had jurisdiction, its view held could not be said to be manifestly wrong and no certiorari will issue. See Industrial Disputes Appellate Tribunal) Act (1950), S. 7. A I R 1957 All 650 (DB).

——Art. 226—Jurisdiction of High Court — Decision of Industrial Court under Bombay Industrial Relations Act (1947) — Jurisdiction of Industrial Court — Extent of — Limits to—Interference by High Court by issue of writ.

The Industrial Court is a Court of limited jurisdiction, it is a creature of statute and its jurisdiction is strictly controlled by the Bombay Industrial Relations Act which brings it into existence, and if the Tribunal acts in excess of the jurisdiction conferred upon it by the Statute the High Court can always correct the Court by an appropriate writ. When there is a collateral fact upon the determination of which the jurisdiction of the Tribunal arises, if the Tribunal decides the collateral fact erroneously, and assumes jurisdiction the superior Court can always correct the decision of the inferior Tribunal. It must be a fact which it is necessary to decide in order to assume jurisdiction in other words, the jurisdiction of the Tribunal must be conditional upon the existence of that fact. On the other hand, there are relevant facts or facts in issue to determine which the Court has been created. Express jurisdiction has been conferred upon the Court to decide and determine those facts and as far as the determination of those facts is concerned. the decision of the Court is final and however erroneous its decision may be in fact or in law, the superior Court will not interfere with that decision. The existence of an industrial dispute is the very foundation of the jurisdiction of the Industrial Court to decide certain matters. If there be no industrial dispute, it has no jurisdiction. In order to determine whether the dispute is an industrial dispute, that Court has to find whether there is any relationship of employer and employee, between the parties to the dispute; and it cannot assume to itself jurisdiction to decide the question by erroneously finding that the relationship of employer and employee did exist. It is unquestionable that the High Court has ample jurisdiction to consider whether such a finding of the Industrial Tribunal is right or not. 53 Bom L R 94, Ref. 53 Bom L R 263 : A I R 1951 Bom 68 (69, 70) (Pt A) (Pr 2) (DB).

——Art. 226 – Income-Tax Act (1922), S. 34—(as amended by Income-tax and Business Profits Tax (Amendment) Act (1948)) – Re assessment under section—Condition precedent which gives jurisdiction to Income-tax Officer — Wrong decision as to existence of conditions precedent — Remedy. See Income-tax Act (1922), S. 34. AIR 1952 Cal 636.

——Art. 226 — Wrong decision on fact—Condition precedent to jurisdiction — War Injuries Ordinance (1941), S. 4 —Workmen's Compensation Act (1923), S. 19.

If the inferior Court has decided wrongly facts which are conditions precedent to the exercise of jurisdiction such decision may be questioned and the Superior Court has, power to quash it by certiorari. The fact whether injury was War Injury or not is a

question on which the jurisdiction of the Commissioner to deal with the cases of the deceased workmen depends. If the Commissioner is wrong in his finding that the injury was not a War Injury the High Court has jurisdiction to interfere with the finding. (1888) 21 Q B D 313 and (1951) 1 All E R 195, Rel. on. **88 Cal L J 137 : ILR (1952) 2 Cal 412 : 56 Cal W N 73 : AIR 1952 Cal 112 (116) (Pt E) (Pr 32).**

——Arts. 226 and 227—Scope of inquiry — Retrospective operation.

In a proper case, upon certiorari, the correctness of the decision as to a collateral fact may be enquired into with a view to ascertaining whether the lower Court or tribunal has by a wrong decision with regard to it given itself jurisdiction which it did not possess. Articles 226 and 227 of the Constitution have no retrospective operation and the transactions which are past and closed and the rights and liabilities which have accrued and vested would remain unaffected. **1959 M P L J (Notes) 133.**

——Arts 226 and 227 — Finding of fact—Powers of High Court — Jurisdiction based on existence of certain facts — Finding can be reviewed under Art. 227 — (Tenancy Laws—C. P. Tenancy Act (1 of 1926), S. 40).

No tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction; such question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess, or to refuse to exercise a jurisdiction which it has and ought to exercise. Where the jurisdiction of the Board of Revenue depended on the finding whether the applicant was a sub-tenant on the date of the application under S. 40, C. P. Tenancy Act and the finding of the Board that he was such a sub-tenant was challenged by a petition under Art. 226;

Held, that though High Court cannot interfere with a finding of fact of the character, which was fundamental to jurisdiction, under Art. 226, the Court had ample power under Art. 227 to rectify a defect of this character. It being an error of jurisdiction on the face of the record, had to be corrected. (1910) 2 K B 859, Rel. on. **1958 M P C 346 : 1958 M P L J 452 : 1958 Jab L J 549 : AIR 1958 Madh Pra 368 (369, 370) (Pt A) (Prs 5, 7, 9) (DB).**

——Art. 226—Jurisdiction — Question of — Issue of writ — Decision under S. 41 of Madras Act (36 of 1947) — Extent of finality.

All Tribunals acquire jurisdiction to act only when certain facts exist. Initially the responsibility of deciding whether those facts exist would rest on the tribunals themselves. The enactments setting up the Tribunals may lay down that the decisions of the Tribunals themselves whether on the facts proved they have jurisdiction or not shall be final and conclusive. On the other hand the statutes may not attach any such finality on this point. It has been held that though a writ of certiorari can issue in the latter class of cases such a writ cannot issue in the former class of cases.

Sections 41 and 51 of the Madras Shops and Establishments Act have not the result of placing the decision of the Commissioner of Labour in the former category of cases and therefore a writ can issue. **(1959) 2 Lab L J 771 : AIR 1960 Mad 288 (293) (Pt C) (Prs 23, 24).**

[Reversed in AIR 1960 Mad 425.]

——Art. 226 — Question of jurisdiction — Findings whether labourers were workmen and disputes were industrial disputes are on jurisdictional issue — Correctness of decision of Appellate Tribunal can be questioned in writ proceedings. See Industrial Disputes Act (1947), S. 2 (k) and (s). AIR 1957 Mad 632.

——Art. 226—Jurisdictional issue—Question whether certain employees were workmen — High Court's power to examine decision of tribunal under Article —(Industrial Disputes Act (1947), S. 2 (s)).

The question whether certain categories of employees are workmen as defined by the Industrial Disputes Act is what can be called a jurisdictional issue which it is within the competence of the statutory tribunals to decide. The correctness of the finding of the statutory tribunal on such a jurisdictional issue is open to examination by the High Court in proceedings under Art 226 for the issue of a writ of certiorari. 1954) 2 Mad L J 155, Approved. **69 Mad L W 923 : AIR 1957 Mad 60 (61) (Pt A) (Pr 5).**

——Art. 226—Jurisdictional issue — Wrong decision by Tribunal to give it jurisdiction.

Where the jurisdiction of a statutory Tribunal depends on the correct determination of a jurisdictional issue, the Tribunal cannot give itself jurisdiction by deciding that issue wrongly unless that jurisdiction also is specifically conferred by the statute which created the Tribunal. **69 Mad L W 923: AIR 1957 Mad 60 (64) (Pt D) (Pr 15).**

——Art. 226—Finding of fact—Interference—Industrial Tribunal deciding wrongly jurisdictional issue — Writ against Tribunal—Issue of.

A statutory body like an Industrial Tribunal cannot give itself jurisdiction by deciding wrongly a jurisdictional issue. But where the findings of fact arrived at by the tribunal are correct on the material placed before it and the petitioner has himself to blame for his failure to place before the Tribunal the evidence which he had in his possession all along to prove his contentions, the findings of fact did not call for any revision by the High Court in a writ petition filed at the instance of the petitioner, even if that were permissible. **(1956) 10 F J R 467 : (1956) 2 Mad L J 225 : (1956) 2 Lab L J 238 : AIR 1956 Mad 636 (637, 638, 639) (Pt B) (Prs 4, 6).**

——Art. 226—Jurisdiction.

A statutory authority cannot give itself jurisdiction by deciding wrongly a jurisdictional issue, nor can a statutory authority decline to exercise a jurisdiction by an erroneous decision on a question of fact on which depends the presence or absence of jurisdiction. Therefore, the correctness of the decision of jurisdictional issues is open to challenge in proceedings under Art, 226. **(1956) 2 Lab L J 497 : 69 Mad L W 779.**

——Art. 226 — Issue of writ against Income-tax Officer giving notice under S. 34 (1) I. T. Act— (Income-tax Act (1922), S. 34 (1)) —(Special Tribunal) —(Civil P. C. (1908), S 9).

The tribunals established by and working under the Income-tax law belong to the class of the Tribunals who are entrusted by the Legislature with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further to do something more. All points arising out of and affecting the assessment, whether they be points of fact or law, must be raised before, and adjudicated upon, by those tribunals and no writs can be issued against those tribunals except when their proceedings are vitiated by total want of jurisdiction or the defect of jurisdiction is apparent on record. (1888) 21 Q B D 313, Rel on. Case law discussed.

Whether the attack on the proceedings under S. 34 of the Act is due to the want of preliminary conditions or conditions precedent or to the bar of time, or

illegality due to the matter being res judicata, or due to the provisi on being ultra vires or the amendmnet being prospective. they are all questions of law and do not affect the jurisdiction of the Income-tax Officer. AIR 1953 Punj 55, Foll. ILR (1953) Patiala 451 : AIR 1953 Pepsu 88 (95, 96) (Pt E) (Prs 25, 27) (DB).

——Art. 226 — Quasi-iudicial tribunal — Order of — Issue of writ - (Industrial Disputes Act (1947), S. 15 (1)).

The jurisdiction of every judicial or quasi-judicial tribunal is derived from and limited by the statute or other instrument by which it has been credited, and every judicial or quasi-judicial tribunal has power to determine the boundaries of its own jurisdiction. Indeed it has been said that every such tribunal should of its own motion, consider the question of its jurisdiction over any matter brought before it even though it is not raised by the parties. Nor is there any substance in the contention that the language of S. 15 (1) of the Industrial Disputes Act does not permit the Tribunal to question the validity of a reference made to it by the State Government. 60 Punj L R 425 : (1958-59) 15 F J R 49 : (1959) 1 Lab L J 274 : ILR (1958) Punj 2061 : A I R 1959 Punj 75 (80) (Pt G) (Pr 18) (DB).

——Art. 226 — Jurisdiction of High Court — Proceedings of statutory bodies — Jurisdiction to question.

When the legislature establishes a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them whether there shall be any appeal from their decision. It would be an erroneous application of the formula to say that the tribunal cannot give them jurisdiction by wrongfully deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends, and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction. ILR (1958) Punj 854 : A I R 1958 Punj 490 (494, 495) (Pt B) (Pr 5) (DB).

——Art. 226—Certiorari — When lies — Application under S. 6, Rajasthan Relief of Agricultural Indebtedness Act (28 of 1957) — Applicant whether agriculturist or not is collateral fact on which jurisdiction of Debt Relief Court depends — Collateral fact if wrongly decided, certiorari would lie — High Court has jurisdiction to see whether collateral fact is properly decided. A I R 1954 S C 440, Rel. on. 1965 Raj L W 149 : ILR (1965) 15 Raj 272 : A I R 1965 Raj 184 (187, 188) (Pt A) (Prs 10, 11, 13) (DB).

——Art. 226—Wrong assumption of jurisdiction.

Where a Revenue Court and the Board of Revenue give themselves jurisdiction by a patently wrong decision on a question of collateral fact on which their jurisdiction depends, the High Court has jurisdiction to interfere on a writ of certiorari. 21 Q B D 313, Ref. : 1953 Raj L W 291 : ILR (1952) 2 Raj 852 : AIR 1953 Raj 84 (84) (Pt B) (Pr 5) (DB).

—— Art. 226—Industrial Tribunal—Jurisdiction.

The question whether a person is a "workman" within the definition of the Industrial Disputes Act is a fact collateral to the assumption of jurisdiction by the Industrial Tribunal. The Tribunal cannot by a wrong decision with regard to it give jurisdiction which it would not otherwise possess. It is competent for the High Court on a writ of certiorari to call for and examine the decision of the Industrial Tribunal. AIR 1951 S C 115, Rel. on; 6 Sau L R 227, Ref. AIR 1955 Sau 33 (35) (Pt B) (Pr 5) (DB).

149. Labour Relation Board.

● —Arts. 226 and 32—Wage Boards —Character of functions performed — Whether legislative, judicial or administrative - Decisions of Wage Boards—How far can be attacked on grounds of violation of principles of natural justice—(Natural justice).

It is impossible to state that the functions performed by the Wage Boards are necessarily of legislative character. It is no doubt true that their determinations bind not only the employers and the employees in the present, but they also operate when accepted by the appropriate Government or authorities and notified in accordance with law, to bind the future employers and employees in the industry. If that were the only consideration the functions performed by these Wage Boards would be invested with a legislative character. This is however not all, and regard must be had to the provisions of the statutes constituting the Wage Boards. If on a consideration of all the relevant provisions of the statutes bringing the Wage Boards into existence, it appears that the powers and procedure exercised by them are assimilated to those of Industrial Tribunals or their adjudications are subject to judicial review at the hands of higher Tribunals exercising judicial or quasi-judicial functions, it cannot be predicated that these Wage Boards are exercising legislative functions.

Even if on the construction of the relevant provisions of the statute the Court comes to the conclusion that the functions performed by a particular Wage Board are not of a legislative character, there is no doubt that these Wage Boards are not exercising purely judicial functions. They are not Courts in the strict sense of the term and the functions which they perform may at best be quasi-judicial in character. The fact that they are administrative agencies set up for the purpose of fixation of wages do not necessarily invest their functions with an administrative character and in spite of their being administrative bodies they can nevertheless be exercising quasi-judicial functions if certain conditions are fulfilled.

Whatever be the character of the functions performed by the Wage Boards whether they be legislative or quasi-judicial if proper safeguards are adopted e g. provision for judicial review or the adopting of the procedure as in the case of the recommendations of the Wage Councils in the United Kingdom, or the reports of the advisory committeea which come to be considered by the Administrator under the Fair Labour Standards Act of 1938 in the United States of America, no objection could ever be urged against the determinations of the Wage Boards thus arrived at on the score of the principles of natural justice having been violated. Press Trust of India v. Union of India, (1958-59) 14 F J R 211 : 1958 S C A 952 : 1958 S C J 1113 : A I R 1958 S C 578 (612, 614) (Pt D) (Prs 116, 117, 118, 123).

——Art. 226—Employees' Provident Funds Act (1952) Ss. 16 (1) and 1 (3) — Temporary closure of factory and restarting by lessee — Act applies — High Court cannot quash pending prosecutions or restrain any other action under Act. See Employees' Provident Funds Act (1952), S. 16 (1). AIR 1965 All 373 (DB).

— Arts. 226, 227 — Minimum Wages Act (1948), S. 20 Order under—High Court can interfere—(Civil P. C. (1908), S 115). See Minimum Wages Act (1948), S. 20. AIR 1960 Assam 123.

——Art. 226 — Administrative order ultra vires — Issue of writ—(Minimum Wages Act (1948), S. 5).

Though the fixation of minimum rates of wages in respect of any scheduled employment by the appropriate Government is an administrative act which is final, and is not subject to the judicial review on the question of the quantum of the wages fixed, if the

fixation by the Government is ultra vires their powers under the Act admits of being so declared and corrected by the High Court under Art. 226. AIR 1955 Trav.-Co., 97. Rel. on. 1959 Ker L J 830 : 1959 Ker L T 904 : (1959) 2 Lab L J 610 : I L R (1959) Ker 941 : A I R 1960 Ker 67 (69) (Pt B) (Pr 12) (DB).

150. Land acquisition proceedings.

——Art. 226—Administrative order — Interference — Order awarding compensation — Land Acquisition Officer setting it aside—Issue of writ. See U. P. Land Acquisition (Rehabilitation of Refugees) Act (26 of 1948), S. 11. AIR 1958 All 154 (DB).

——Art. 226—Jurisdiction of Court — Power of High Court to issue writ of certiorari where there is no statutory bar to exercise powers under Art. 226—Court is not precluded from issuing writ of certiorari to Government where it comes to conclusion that notification under S. 6, Land Acquisition Act should not be made as purpose of acquisition cannot possibly be useful to public—After the Constitution came into force, no legislature has authority to take away a power conferred on the Courts by the Constitution. See Land Acquisition Act (1894), S. 6. AIR 1954 All 700.

——Art. 226—Conclusiveness of declaration of S. 6(1) of Land Acquisition Act, 1894 — S. 5A not complied with — Declaration not conclusive — Declaration quashed under Art 226. See Land Acquisition Act (1894), S. 5A. AIR 1952 All 752 (DB).

——Art. 226—Land Acquisition Act (1894), Ss. 6 (1), 6 (3) — Land acquisition proceedings challenged — Only question for consideration is whether it is requirred for public purpose — Once declaration is made by Govt. to that effect, that is conclusive evidence under S. 6 (3) of the Act and cannot be challenged in a civil Court — Validity — Proof of public purpose—See Land Acquisition Act (1894), S. 6 (1). AIR 1960 Andh Pra 343.

——Art. 226—Land acquisition—Public purpose — Power of Court to go into question. See Land Acquisition Act (1894), S. 6. AIR 1954 Assam 81 (DB).

——Art. 226 — Quasi-judicial proceeding—Enquiry conducted under S. 5-A of Land Acquisition Act — Proceeding is administrative and not quasi-judicial. AIR 1963 Guj 50, Foll. (1963) 4 Guj L R 405 : AIR 1963 Guj 80 (83) (Pt B) (Pr 5) (DB).

——Art. 226—Quasi-judicial order—Order of authority when is quasi-judicial Test—Land Acquisition Act (1894), S. 6 and S. 5-A—Government functioning under Ss 6 and 5-A — Absence of lis in inquiry — Subjective satisfaction of Govt.—Government acts in its administrative and not in quasi-judicial capacity.

The material consideration for determining whether a particular act of a statutory body is a quasi-judicial act or mere administrative act is whether the statutory authority has the duty to act judicially. Where there is a lis between two parties and the statutory authority is an outside authority empowered to decide the lis, there would be prima facie, a duty on the statutory authority to act judicially. Where there are not two parties apart from the statutory authority and the contest is between the statutory authority proposing to do the act and the subject opposing it, in such a case the terms of the Statute must be examined in order to determine whether in any particular case a duty to act judicially is cast on the statutory authority. In respect of this latter case there is a general principle, namely, that where the language of a statute indicates with sufficient clearness that the personal satisfaction of the statutory authority on certain matters about which he has to form an opinion founds his jurisdiction to do a certain act or to make a certain order, the function should be regarded as an administrative function as opposed to a quasi-judicial function and in the absence of proof of bad faith, the Court would have no jurisdiction to interfere with the act or order of the statutory authority.

Applying this test it is clear that the act of the Government in issuing the notification under S. 6 for acquisition of land is an administrative act and not a quasi judicial act. AIR 1945 Mad 394 (FB) and AIR 1919 PC 155, Rel. on.

The function entrusted to the Government under S. 6 being thus an administrative function, the inquiry under S. 6-A which is but a step in the process leading up to the exercise of such administrative function would ordinarily in the absence of other factors, be an administrative inquiry. In the inquiry under S. 5-A, there are no two contesting parties as between whom the Government must come to a determination. The Government in exercising its statutory function cannot be regarded as a quasi-litigant vis-a vis the objectors. The present case, therefore, falls within the principle in Robinson's case. (1947) 1 All E R 851 and Franklin's case, (1948) AC 87 and does not fall within the principle in Errington's case, (1934) All E R 154 and Johnson's case, (1947) 2 All E R 395. The Government is therefore not under any duty to act judicially in considering the objections. (1963) 4 Guj L R 326 : AIR 1963 Guj 50 (63, 64, 67, 68, 74) (Pt H) (Prs 14, 15, 16, 21, 23, 28) (DB).

——Arts. 226 and 31 (2) — Statutory right of State to abridge right of ownership—Conditions for exercise of right must be strictly fulfilled—Proceedings for acquisition neither in conformity with provisions of Hyderabad Sanitary Powers A'in nor in accordance with Land Acquisition Act—Proceedings are invalid — Court will direct issue of writs of certiorari and prohibition—(Hyderabad Sanitary Powers A'in (5 of 1352F), S. 150) — Land Acquisition Act (1894), Ss. 6 and 50)—(Hyderabad Land Acquisition Act, Ss 5 and 35). See Ibid, Art. 31 (2). AIR 1955 Hyd 203 (DB).

——Art. 32 (2-A) (J. & K.) — Who can apply—Land acquisition proceedings in disregard of provisions of Land Acquisition Act—Case involves invasion of fundamental rights of owner under Arts. 19 and 31—Petition by owner under Art. 32 (2-A) for writ to quash proceedings—Maintainable. AIR 1962 J & K 19 (20) (Pt B) (Pr 4).

——Art. 226—Scope—Land acquisition—Declaration by Government that land is required for public purpose—If justiciable. See Ibid, Art. 31. AIR 1960 Ker 321.

——Art. 226—Administrative orders—Land acquisition proceedings—Final order for acquisition passed without giving notice of objections to Government Department requiring land—Interference. See Land Acquisition Act (1894), S. 5-A. AIR 1959 Ker 343 (DB).

——Art. 226—Land proposed to be acquired—Sufficient particulars not given in notifications—Acquisition proceedings are void — Notifications quashed. See Land Acquisition Act (1894), S. 4. AIR 1961 Madh Pra 140 (DB).

——Art. 226—Certiorari — Issue of—Acquisition of property for public purposes — Provisions of Land Acquisition Act not followed—Action held without jurisdiction — Writ of certiorari granted. See Ibid, Art. 31. AIR 1960 Manipur 20.

——Art. 226 — Land Acquisition Act (1894), S. 18 — Refusal to make reference—Remedy is under Art 226. See Land Acquisition Act (1894), S. 18. AIR 1961 Orissa 39.

——**Art. 226**—Opinion of Government that land was waste and arable—Opinion can be questioned in writ proceedings if it is based on no evidence. See Land Acquisition Act (1894), S. 4. 1965 B L J R 272.

——**Art. 226**—Land Acquisition Act (1894) S. 30 — There must be dispute as regards apportionment of compensation—Finding as to existence of dispute — Writ of certiorari. See Land Acquisition Act (1894), S. 30. AIR 1961 Pat 150.

151. Legislature, against.

See also Note 5.

——**Art. 226**—Passage of Bill in Legislature — High Courts have no power to interfere. See Ibid, Art. 194. AIR 1965 Andh Pra 306.

152. Licensing authority, against.

——**Art. 226**—Where the District Magistrate has not recorded his reasons for his refusal to renew licence under Arms Act there is no breach of any mandatory provision of any law and no interference under Art. 226 is called for. See Arms Act (1878), S. 18 (a). 1955 Cri L J 1019 : AIR 1955 Ajmer 32.

——Art. 226—Refusal to renew licence of arms dealer —Order passed without giving petitioner opportunity of being heard — Order is vitiated firstly because refusal was quasi-judicial act and secondly because it affected his right to carry on trade. See Arms Act (1959), S. 15 (3). 1965 All L J 596.

——**Art. 226 — Procedure of executive bodies — Cinematograph Act (1918), S. 5 (3) — Order of State Government granting license is executive — No opportunity to hear given to parties—Effect—[Cinematograph Act (1918), S. 5 (3).]**

There is no provision anywhere in the Cinematograph Act making it incumbent on the State Government to hear persons who want licenses for running cinema houses. Where the State Government grants a license under S 5 (3) to one of the applicants it is not necessary for the State Government to issue notices to the parties and to give them an opporunity of placing their cases before it. The order is in the nature of an executive order and it is neither a judicial nor a quasi-judicial order.

Hence the order cannot be challenged by the petitioners on the ground that no opportunity was given to them to place their case before the State Government.

Held, on facts that both the parties had full opportunity of placing their cases before the Cinema Magistrate and it was not necessary that subsequent opportunities also should have been given to the parties at every stage of the proceedings. ILR (1955) 2All 37 : AIR 1955 All 82 (85, 86) (Pt E) (Pr 8).

——**Art. 226**—Order cancelling excise licence—Nature of—Not judicial or quasi-judicial order. See U. P. Excise Act (4 of 1910), S. 35 (1) (a). **AIR 1955 N U C (All) 2654.**

——**Art. 226** — U. P. Cement Control Order (1953), Cl. 5 — Order refusing renewal of license on ground of contravention of Cl. 4—Application under Art. 226 —At time of hearing, Cement Control Order repealed and replaced by order of 1955 — Rights of petitioner governed by 1955 Order — No relief held could be granted under 1955 Order — Order refusing to renew license held was invalid and should be quashed. AIR 1955 N U C (All) 1740.

——**Arts. 226, 19 (1) (g)— Power to interfere with administrave orders — Refusal to renew license in Form B-1 under U P. Controlled Cotton Cloth and Yarn Dealers Licensing Order, 1948, on grounds irrelevant to the consideration of application for renewal—Order of refusal quashed and direction to consider application on merits issued—[U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order (1948), Cl. 11].**

A person has by virtue of Art. 19 (1) (g) of the Constitution the fundamental right to carry on his trade or business subject to such reasonable restrictions as may be imposed under Art. 19 (6). He is therefore, prima facie, entitled to a licence under U. P. Controlled Cloth and Yarn Dealers' Licensing Order 1948 and the granting of it cannot therefore appropriately be described as a privilege.

Held, on the facts as gathered from the affidavit, the counter-affidavit and the affidavit in rejoinder, that the order of the District Magistrate refusing to renew the license granted to the petitioner by Form B-I under the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948 was not bona fide inasmuch as it was based on irrelevant considerations, namely, that the petitioner had in he past dared to approach the High Court against the order of the District Magistrate and obtain a stay order against him. (The order of refusal was quashed and directions to consider the application for renewal on merits were issued.)

Ordinarily the High Court does not interfere with administrative orders; but where there are reasons to think that the order has been influenced by extraneous consideration the High Court has irrespective of the question whether the order can be classed as falling within the category of certiorari or not, ample authority under Art. 226 of the Constitution to interfere with it by a proper order or direction. The words of Art. 226 of the Constitution are wide enough to cover an order of that description. AIR 1952 All 836; A I R 1952 All 61 ; A I R 1951 Nag 33 ; A I R 1950 S C 163, Rel. on.

The fact that the Licensing Authority has under Cl. 11 of the Order, to record his reasons when he refuses to renew a licence is not, in the absence of any specification of the grounds on which a renewal may be refused or indeed of any other limitation on his powers in this respect, a sufficient indication that he has to act judicially. Therefore the act of the Licensing Authority in refusing to renew the petitioner's licence was an administrative act and accordingly the High Court could not interfere with such order by a writ in the nature of certiorari. AIR 1950 S. C. 222, Rel. on.

But the High Court has power under Art. 226 of the Constitution to issue directions and orders, as well as writs for any purpose ; and in exercise of that power it can direct that an administrative order be quashed. ILR (1954) 2 All 453 : 1953 All W R (HC) 723 : A I R 1954 All 144 (145, 146, 147, 149, 150) (Pt A) (Prs 1, 3, 5, 15, 16, 22) (DB).

——**Art. 226—Arms Rules (1951) — Rr. 41 (1) (a), 41 (1) (b) —Validity —Application for licence to Collector —Reference to State Government — Does not constitute delegation of power or deprivation of right of appeal —(Arms Act (1878), S. 17.)**

Rule 41 being one made under an Act must be deemed to form an integral part of the statute itself. Where such rules themselves in terms vest the licencing authority with a discretion to refer an application for the orders of the Government, it cannot be said that such a reference is void of legal authority or illegal as constituting a delegation of a power which should not be delegated.

Further the right of appeal in cases of this kind is the creature of a statutory provision and where the rules do not provide such an appeal there is no substance in the contention that the party is deprived of a right of appeal by such a reference. See Arms Rules (1951), R. 41 (1) (a). **AIR 1960 Andh Pra 384.**

——Art. 226 — Mandamus — When can issue — Auction sale of liquor shop — Infringement of executive instructions—It affects validity of order.

At an auction sale of liquor shop the Government accepted the highest bid and granted a licence in favour of the highest bidder. The petitioner whose bid was lower, applied under Art. 226 for directing the Government to hold a fresh auction on ground that there was a breach of Notification of the Revenue Department, dated 12th July 1957 :

Held, that (i) the Notification issued by the Government was merely in the nature of executive instructions not intended to have the force of statutory rules. In law that would not affect the legality of the order made by the Auctioning Authority. (ii) Before the petitioner can succeed in claiming a writ of mandamus he must be able to show that the respondent has refused or neglected to perform a duty imposed on him by the statute. Even though the decision is erroneous when the proceedings have been conducted with fairness and impartiality, the High Court cannot and will not interfere (iii) Further the petitioner had no legal right to have his tender accepted by the Auctioning Authority and therefore he could not complain of any infringement of his legal rights. **1958 Andh L T 696.**

——Art. 226 — Cinematograph Act (1898), S. 5 — Notice under S. 5 not issued — Writ of certiorari.

Section 5 (3) does not provide for any notice being issued to any of the parties. The order passed by the State Government under S. 5 is an executive or administrative order and is not a judicial or quasi judicial order. Before issuing a licence to another owner of a cinema theatre there is no obligation on the part of the State Government to issue notice to the petitioner (himself owner of another such theatre) and the order of the Government is not liable to be quashed by a writ of certiorari on the ground of want of notice to the petitioner, A I R 1955 All 82 and (1951) A C 66, Rel. on. **1956 Andh W R 46.**

——Art. 226 — Certiorari — Order cancelling license under S. 18 (a), Arms Act, not disclosing any reasons —Validity. See Arms Act (1878), S. 18 (a). **AIR 1955 Andh 168.**

——Art. 226 — Settlement of country spirit shops — Decisions of Deputy Commissioner and Board of Revenue are quasi-judicial —Writ can be issued under Art. 226. A I R 1965 Assam 87 (88) (Pt A) (Pr 3) (DB).

——Art. 226—Administrative orders—Interference — Scope—Order cancelling licence — Failure to record reasons — Order though administrative in nature is liable to be quashed under Art. 226 of the Constitution. See Arms Act (1878), S. 13 (a). **1961 (2) Cri L J 195 (Assam).**

——Art. 226—Quasi-judicial orders— Eastern Bengal and Assam Excises Act (1 of 1910), S. 36 (2) — Rules under, R. 218.

Direction under R. 218 by State Government fixing period of settlement in respect of certain country liquor shops — Order of Commissioner of Hills Division and Appeals affirming or interfering with selection made by Deputy Commissioner — Order of Commissioner is quasi judicial—Order cannot be set aside under Art. 226 on the ground that as direction by State Government has not been published in official gazette as required under S. 75, it could not be read as part of R. 218 — It was open to Government to regularize matter by publishing direction in Gazette subsequently. **ILR (1960) 12 Assam 453 : AIR 1960 Assam 218 (223, 224) (Pt E) (Prs 16, 17) (DB).**

——Art. 226 — Administrative order — Assam Settlement of Fisheries Rules, R. 8 — Powers of Commissioner under R. 8 — Administrative or judicial.

Per Mehrotra J. — The power exercised by the Commissioner under R. 8 of the Rules is an administrative power and the High Court will be reluctant to interfere with the administrative order in the exercise of its powers under Art. 226 of the Constitution. Harinath Das v State of Assam, **ILR (1958) 10 Assam 44 : AIR 1958 Assam 70 (73) (Pt B) (Pr 5) (SB).**

——Art. 226 — Certiorari — Order refusing to renew arms licence — (Indian Arms Rules (1951), R. 41)— (Arms Act (1878), S. 18).

The effect of R. 41 of the Indian Arms Rules is that the grant or renewal of licences by the Deputy Commissioner may be controlled by the executive authorities, viz , the State Government, to which the Deputy Commissioner is subordinate. The State Government has the power to direct the Deputy Commissioner not to renew the licences if it thought that it was a desirable course to adopt and the adequacy of the reason which persuaded the State Government to take this action is not for the High Court to go into in the proceedings under Art. 226.

The order is within the jurisdiction of the State Government, and also not contrary to law and it is not liable to interference in the exercise of the extraordinary jurisdiction of the High Court under Art. 226. Where the validity of the relevant rules are not challenged on the ground that they do not provide for an appeal, when the order is passed by the State Government the petitioner has no ground for complaint against the order as the State Government had the authority and the jurisdiction to direct the Deputy Commissioner to refuse renewal of the licences. **(1956) 26 Com Cas 39 : I L R (1955) 7 Assam 424 : 1955 Cri L J 1558 : A I R 1955 Assam 278 (279, 280) (Prs 8, 9) (DB).**

——Art. 226—Electricity Act (1910), S. 4 (1) and (3) — Licence — Revocation on grounds mentioned in S. 4 (1) — Order of revocation — Government while making order does not act judicially.

An order of revocation of a licence passed under S. 4 of the Electricity Act, 1910, is an administrative order. There is nothing in the language of subss. (1) and (3) of S. 4 to suggest that in making such an order the Government is obliged to act judicially. The Government is no doubt required to determine the existence of the circumstances mentioned in Cls. (a) to (e) of subs (1) of S. 4 before deciding whether in those circumstances it would be in the public interest to revoke a licence. But from this it does not follow that the Government must determine those circumstances or facts judicially. The provision in sub-s. (3) of a notice to the licensee to show cause against the proposed revocation is not any condition imposing a quasi-judicial duty on the Government in passing an order of revocation. AIR 1950 S C 222 and A I R 1958 S C 398 and A I R 1958 S C 578 and A I R 1959 S C 308 and A I R 1960 S C 606 Applied. **I L R (1963) Madh Pra 1021 : 1962 M P L J 1049 : 1962 Jab L J 829 : 1962 M P C 441 : AIR 1963 Madh Pra 41 (46) (Pt A) (Pr 9) (DB).**

——Art. 226 — Electricity Act (1910), S. 4 (3) — Notice to show cause — Meaning of "to show cause" —Object and purpose of sub-s. (3) of S. 4— Holding of inquiry by Government after notice — Inquiry is not judicial.

A notice under S. 4 (3) of the Electricity Act, 1910, to show cause to the licensee does not mean merely an opportunity to object to the revocation but also implies an opportunity for alleging a cause and proving it to the satisfaction of the authority. The term "to show cause" does not merely mean to allege

cause nor, even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the authority issuing the show cause notice. But the giving of an opportunity to a licensee to show cause in this manner against the proposed revocation of the licence does not make the grounds on which it is proposed to revoke his licence and the material in support of the intended revocation matter of issue between the licensee and the Government so as to make it obligatory for the Government to adjudicate upon them in a judicial manner after holding an enquiry.

Sub-section (3) of S. 4 does not cast on the Government the duty to call evidence before the inquiry and justify the grounds on which it is proposed to revoke the licence and prove them. It simply gives an opportunity to the licensee to state his objections and call such evidence to substantiate them as he may think it necessary. The purpose of giving an opportunity to the licensee to allege sufficient cause and prove it to the satisfaction of the Government is further to inform the mind of the authority proposing the revocation of the licence and not to determine any issue between the Government and the licensee. I L R 20 Bom 208 and I L R 21 Cal 213 (FB) and ILR 17 All 21 (FB), Rel. on. 1962 M P L J 1049 : I L R (1963) Madh Pra 1021 : 1962 Jab L J 829 : 1962 M P C 441 : A I R 1963 Madh Pra 41 (46) (Pt B) (Pr 9) (DB).

——Art. 226 — Order refusing to renew licence—It is purely administrative — Petitioner not heard before order passed — Order cannot be assailed as illegal. See Arms Act (1878), S. 18 1961 M P L J (Notes) 291 : AIR 1962 Madh Pra 133 (DB).

——Art. 226 — Arms Act (1878), Ss. 18, 17 — Order cancelling or refusing renewal of licence is administrative.

An order cancelling or refusing to renew a licence for firearms is an administrative one, and as such cannot be assailed in a petition under Art. 226 of the Constitution on the ground that the licencee had not been heard by the licensing authority. A I R 1960 Madh Pra 157, Applied. 1961 M P L J (Notes) 291 : 1962 Jab L J 475 : A I R 1962 Madh Pra 133 (136) (Pt C) (Pr 8) (DB).

——Art 226 — Arms Act (1878), Ss 18, 17 — Order cancelling or refusing to renew licence for firearms —Checks on exercise of powers by licensing authority — Reasons for orders — Power of High Court to go into reasons.

Although the High Court can appropriately look into the reasoning given by the licensing authority, in the orders cancelling or refusing to renew licences for firearms the purpose of the High Court in doing so is not to satisfy itself as to their sufficiency on the facts, but only to see if the reasons are in accordance with the purposes mentioned in the statute. All that the law requires is that there should be a record in writing of the reasons so that he appellate authority may be able to examine them and correct the decision wherever proper, and the High Court itself after the appellate authority had done its work, see if the reasons are relatable to the purpose mentioned in the law. 1961 M P L J (Notes) 291 : 1962 Jab L J 475 : A I R 1962 Madh Pra 133 (136) (Pt D) (Prs 8, 9) (DB).

——Art. 226 — M. P. Yarn Dealers Licensing Order (1956), Cl. 25 — Order under — Validity of—Reasons to act under Cl. 25 cannot be questioned in proceedings under Art. 226 — Deputy Commissioner having before him material to form requisite belief — His order was upheld. See M. P. Yarn Dealers Licensing Order (1956), Cl. 25. 1961 M P L J 1001.

——Art. 226 — Administrative Order — Refusal to renew arms licence is an Administrative Order — When the order is not arbitrary the High Court will not interfere See Arms Act (1878) S 17. 1960 Cri L J 613 : AIR 1960 Madh Pra 157 (DB).

——Art. 226 —Administrative Act — Authority granting permits should state reasons for its orders where objections for the grant of permits are made — Omission to state reasons — Jurisdiction of High Court under Art. 226. See Rice Milling Industry Regulation) Act (21 of 1958), S. 5 (4). (1963) 2 Mad L J 320.

——Arts. 226 and 19 — Cancellation of gun licence— The Administrative Order interferes with fundamental right of citizen to hold property — Hence cancellation is proper subject matter of application under Art 226. 70 Mad L W 605 : 1957 Mad W N 430 : (1957) Mad L J (Cr) 417 : (1957) 2 Mad L J 249 : 1957 Cri L J 1282 (1) : I L R (1957) Mad 1056 : AIR 1957 Mad 692 (693) (Pt B)(Pr 2) (DB).

——Art. 226 — Quasi-judicial orders — Licensing— (Madras Rice Mills Licensing Order, 1955).

Where statutory rules prescribe a licence as a condition precedent to the exercise by a person of his right to engage himself in a business of his choice, the grant or refusal of the licence by the licensing authority cannot be viewed merely as an administrative act. Where a person applies for the issue of a license and the issue thereof is objected to by another the question has to be determined by the licensing authority whether the applicant could be granted a licence That really makes the determination at least quasi-judicial in its scope.

Where the licensing authority having rejected the application for license, the Government passed an order directing the licensing authority to grant the licence such order does not fall outside the purview of correction by the issue of a writ of certiorari. (1957) Mad L J (Cri) 263 : 1957 Mad W N 308 : (1957) 2 Mad L J 1 : 70 Mad L W 547 : I L R (1957) Mad 845 : A I R 1957 Mad 551 (555) (Pt C) (Prs 15, 16).

——Art. 226—Certiorari—Writ of—Grounds—Refusal to issue yarn and cloth dealer's license on sole ground that petitioner had not produced income-tax verification certificate and was in arrears.

The fact that a person is in arrears of income-tax is not germane to the issue of a licence under the Yarn Dealers Control Order. It is a circumstance extraneous to the right of the person concerned to carry on his business. The Income-tax Act provides an adequate machinery for realising the arrears due from an assessee.

Hence, where the Collector refuses to renew a yarn and cloth dealers license on the sole ground that the petitioner had not produced the income-tax and excess profits tax verification Certificate and that the firm was in arrears, relying upon the Madras Government G O. No. 867 (Finance dated 16th August 1949) the order of the Collector is liable to be quashed by certiorari. The order discloses that the Collector was using his powers under the Yarn Dealars Control Order for the purpose of collecting the amounts due to the Government of India. The restriction imposed was unreasonable and was not in the interests of the general public. (1952) 22 I T R 377 : (1952) 2 Mad L J 544 : 1952 Mad W N 782 : A I R 1953 Mad 84 (85) (Pr 4).

——Art. 226—Right to trade in beef—License granted to petitioner by Municipality on certain conditions— Cancellation of license without any allegation or proof as to breach of conditions opportunity to show cause not given to petitioner — Fundamental right to trade is violated by such cancellation—Order quashed See Ibid, Art. 19 (1) (g). A I R 1965 Mys 281 (DB).

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——Art. 226 — Nature of order under Arms Act (1878), S 18.

Under S. 18 (a), Arms Act, no duty is cast on the authority cancelling a license to act judicially. The order under the section is not open to appeal or revision. An order cancelling a licence under that section, therefore, is only an administrative or executive order and is not open to review by a writ of certiorari. 1954 Cri L J 1672 : I L R (1954) 4 Raj 170 : A I R 1954 Raj 264 (266, 267) (Pt D) (Pr 6) (DB).

——Art 226 — Quasi-judicial orders — Decision of Chief Inspector of Factories refusing or granting renewal of licence—Decision whether quasi-judicial —(Factories Act (1948), S. 6 (1) — Rules under — Travancore-Cochin Rules, R. 7).

A decision of a Chief Inspector of Factories refusing or granting renewal of licence after deciding whether the applicant is legally qualified to hold a licence is not merely administrative but quasi-judicial in its character and is, therefore, amenable to judicial review under Art. 226. (1957) 2 Lab L J 501 (Trav-Co).

153. Mandamus and certiorari.

See Note 189.

154. Mines and minerals, orders in respect of.

——Art. 226 —Certiorari—Writ of—Cannot be issued against administrative acts — Mines and Minerals (Regulation and Development) Act (1957), Ss 10 and 30 — Mineral Concession Rules (1949), Rr 32 and 54 —Grant of mining lease—State Government acts in its administrative capacity — Central Government exercising revisional powers however acts quasi-judicially Mines and Minerals (Regulation and Development) Act (1957), Ss. 10 and 30—Mineral Concession Rules (1949), Rr. 32 and 54.

The scheme of the Act and the Rules shows that the State Government acts in its administrative capacity while disposing of applications for the grant of mining leases and as such a writ of certiorari cannot be issued against its orders. A I R 1959 S C 107 and (1924) 1 K B 171, Rel. on. The Central Government, while deciding an application under Rule 54 of the Mineral Concession Rules, exercises quasi-judicial functions. Consequently, it is obligatory on the part of the Central Government to afford reasonable opportunity to the other party in the review application. But in taking action under R. 32 of the Mineral Concession Rules 1949, the State Government does not perform the act in a quasi-judicial capacity. (1962) 1 Andh L T 152 · (1962) 1 Andh W R 146 : AIR 1963 Andh Pra 54 (56, 57) (Pt A) (Prs 12, 13, 15) (DB).

——Art. 226 — Administrative orders — Mining lease for mica and beryl —Approval of Central Government —Failure to obtain — Tentative approval by State Government — Cancellation of—Writ petition—Maintainability. See Mineral Concession Rules (1949), R. 26 (1). A I R 1959 Pat 243 (DB).

155 Municipal laws, orders under.

——Art. 226 —Administrative orders—Issue of writ —(Municipalities — C. P. and Berar Muinicipalities Act (2 of 1922), S. 53-A).

S. R Das, C. J., S K Das and Kapur, JJ. — The function which the State Government exercises under S. 53 A of C. P. and Berar Municipalities Act, is administrative in nature and hence its action under the section is not amenable to a writ of certiorari.

When the Government takes action against a municipal committee under S. 53-A, C P. and Berar Municipalities Act, there is no question of two contending parties. There is also nothing in S. 53-A which in terms imposes any duty on the State Government to act judicially. Nor can such duty be inferred from the fact that the Government has to exercise its power under the section by an order stating reasons therefor.

K. Subba Rao, J. (contra) :—Before Government can take action under S. 53 A, three preliminary conditions for the exercise of the power must exist. They are (1) the committee is competent to perform the duties imposed upon it ; (2) the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government ; (3) an order stating the reasons therefor. The difference between Ss. 53-A and 57 in the matter of the duty cast upon the Government is not decisive of the question whether the action of the Government under the former provision is judicial or administrative. It would be against all canons of natural justice that a tribunal should arrive at a finding of far-reaching consequence without giving an opportunity to explain to the persons who would be affected by such finding. For these reasons it must be held that, S. 53-A imposes a duty on the Government to act judicially in ascertaining the objective and jurisdictional fact, namely, whether the committee is incompetent. Radhesham Khare v. State of Madhya Pradesh, (1959) 1 Mad L J (S C) 5 : (1959) 1 Andh W R (S C) 5 : 1959 S C J 6 : 1959 Nag L J 49 : 1959 M P L J 185 : 1959 S C R 1440 : A I R 1959 S C 107 (113 to 116, 118, 121, 126, 127, 128, 129, 133, 134, 135) (Prs 7, 8, 10, 10-A, 11-A, 23, 43, 48, 50, 64, 65, 66).

——Art. 226—Municipalities—Ajmer Merwara Municipalities Regulation (1925), S. 243 — Notification superseding municipality — Preliminary enquiry — Nature of—It is administrative or quasi-judicial only —Chief Commissioner is not bound to specify whether dissolution or supersession is proposed — Communication to show cause need not be signed by Chief Commissioner or expressed to have been issued under his direction. A I R 1955 N U C (Ajmer) 2616.

——Art. 226 — Quasi-judicial order — Dismissal of Municipal servant by Municipal Board — Appeal to State Governmeut — Dismissing authority and appellate authority act in administrative capacity — There is nothing to prevent State Government from reviewing its order—Essentials of quasi-judicial authority indicated. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 74. 1964 All L J 727.

——Art. 226 — Certiorari, writ of — Administrative order — Order superseding town Area Committee under S. 36, U. P. Town Areas Act (2 of 1914) — Nature of—Certiorari to quash such order does not lie. A I R 1959 S C 107, foll. A I R 1962 All 264 (294, 295) (Prs 5, 8).

——Art. 226 — Supersession of Municipal Board — Order of Government under S. 30, U. P. Municipalities Act—Nature of — Order is not quasi-judicial but administrative—Order when can be challenged—Persistent default—Meaning of — Defaults committed by President or Executive Officer — Ultimate responsibility is with Board. See Municipalities—U. P. Municipalities Act (2 of 1916), S. 30. ILR (1960) 2 All 539.

——Art. 226 — Orders under Ss. 143 and 147, U P. Municipalities Act — Nature of — Orders are quasi-judicial and subject to certiorari jurisdiction of High Court. See Municipalities—U P. Municipalities Act (2 of 1916), S. 143 (2). A I R 1958 All 211.

——Art. 226 — Secretary appointed on probation — Termination of service—Where discharge not according to statutory requirements — Order must be quashed. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 67. 1957 All LJ 30.

——Art. 226 — Powers of High Court — U. P. Municipalities Act (2 of 1916), S. 34 and S. 48 — Regula-

cion of conduct of meeting — Power of District Magistrate — Quashing of order made without jurisdiction.

If there be complaints made to the District Magistrate that the President wrongly records the minutes of the proceedings of the meetings, the State Government may have power to deal with the situation under S. 48, Municipalities Act by taking steps against the President; but the District Magistrate has no authority under S. 34, on the complaint being made by some of the members, to regulate the conduct of the meeting. Hence, if he makes such an order, it being wholly without jurisdiction deserves to be quashed under Art. 226, Constitution of India. **AIR 1956 All 369 (372, 373) (Pt C) (Pr 4).**

——**Art. 226—Powers of High Court — Interference with interlocutory administrative order — Removal of President of Municipality—Action proposed under S. 48 (2) (b) (vi), U. P. Municipalities Act, by Government—Nature of inquiry.**

Section 48 (2) (b) (vi) gives power to the State Government to pass an order of suspension. If the State Government proposes to take action namely, either to give a warning to the President or to remove him on any of the grounds enumerated in cls. (a) and (b) of S. 48, it is obligatory on the part of the State Government, before passing a final order, to give an opportunity to the President of explaining the conduct on account of which it is proposed to take action against him.

The orders removing the President or the proposal to take action against the applicant may themselves be administrative orders; but the inquiry started on the notice and terminating in the final order of removal or warning is an inquiry conducted by the State Government and can be regarded as a quasi judicial proceeding. Whether the conditions precedent for the starting of such an inquiry have been fulfilled in the case brought to the notice of the High Court, are questions which can be gone into by the High Court and necessary direction can be issued by it under Art. 226.

Article 226 does not limit the powers of the High Court to be exercised only when final orders have been passed by the Government or any other subordinate authority or tribunal, though generally it will not exercise its powers under that Article interfering with an interim administrative determination. **A I R 1956 All 369 (374, 375) (Pt F) (Pr 6).**

——**Art. 226—Powers of High Court—U. P. Municipalities Act (2 of 1916), S. 48 (2) (b) (vi) — Misconduct of President—Objective determination — Power to issue writ of prohibition.**

In S. 48 the words used are that the State Government may at any time, if it is satisfied that a President has committed gross misconduct in the discharge of his duties, remove him. The satisfaction of the State Government necessarily means the satisfaction based on materials before the State Government. It is an objective determination by the State Government and the existence of gross misconduct on the part of the President is a condition precedent for the exercise of the power under S. 48.

Hence, if the conduct attributed to the President on which proceedings are taken against him and he is asked to explain, does not come within the ambit of S. 48 itself, it is open to the High Court to issue a writ of prohibition directing the State Government not to proceed with the inquiry. A I R 1955 All 106, Disting. **A I R 1956 All 369 (377) (Pt H) (Pr 9).**

——**Art. 226 — Interference at interlocutory stage — Proceedings under S. 48 (2) (b) (vi), U. P. Municipalities Act against President for granting leases of municipal lands without previous sanction of Board —Whether act of president amounts to gross misconduct—Proceedings whether without jurisdiction and mala fide—(Municipalities — U. P. Municipalies Act (2 of 1916), S. 48 (2) (b) (vi)).**

Held, on facts that the act of the President in sanctioning the grant of leases to various applicants without the sanction of the Board was an act which was not permissible within the provisions of the Municipalities Act.

(ii) that the acts alleged against the President may, in certain circumstances, amount to gross misconduct, but it cannot be said that the grounds on which the State Government has proposed to take action against him do not fall within the scope of S. 48 (2) (b) (vi).

If the present proceedings have been validly started and the order of suspension passed by the State Government is within its competence, whatever may be the motive which influenced their decision, it is not a question which can be gone into by the High Court in this writ petition and it cannot be said that the act of the State Government proposing to start proceedings under S. 48 (2) (b) (vi) against the applicant is mala fide which can be quashed by the High Court on that ground. **1955 All W R (HC) 628 : AIR 1956 All 213 (214, 215 216) (Prs 4, 10, 11, 12).**

——**Art. 226 — Municipalities — U. P. Municipalities Act (1916), Ss. 143 (3), 160 — No objection to assessment—Order is not one under S. 143 (3) — Appeal to District Magistrate does not lie — Entertaining an appeal after 30 days amounts to disregard of provisions of law—Order quashed. A I R 1955 N U C (All) 2036.**

——**Art. 226 — U. P. District Board Manual Ch. III R. 3-A — Termination of service of servant drawing Rs. 40 per month — Validity of notice — Powers of Secretary. See U. P. District Boards Act (10 of 1922), S. 82. A I R 1955 N U C (All) 2025.**

——**Art. 226 — Certiorari — Administrative orders — Writ will not issue — Order of Commissioner of Municipal Corporation sanctioning construction of building is administrative order — Order of Government in revision against Commissioner's order is judicial—Writ will issue against the order—Municipalities — Hyderabad Municipal Corporations Act, 1955 (2 of 1956), Ss. 397, 399, 679.**

A writ of certiorari will not normally be issued to quash what is really an administrative act. Considering the scope and nature of the powers of the Commissioner of the Corporation under the relevant provisions of the Hyderabad Municipal Corporation Act of 1956 an order sanctioning a construction of a building is nothing more than a mere administrative order. A writ of certiorari to quash it is prima facie incompetent and untenable. A I R 1951 S C 41 and A I R 1958 Andh Pra 458 and A I R 1960 S C 321, Rel. on.

But an order passed by the Government in revision under S. 679 against the Commissioner's orders is a judicial or a quasi-judicial order as to which a writ of certiorari can well be issued especially as the order of the Commissioner must be deemed to have been merged in the order of the Government. **A I R 1961 Andh Pra 489 (490, 491) (Pt A) (Prs 3, 4).**

——**Art. 226 — Administrative acts — Power to issue direction to Government.**

There is no provision either in the Hyderabad Municipal Corporation Act or in the Hyderabad Abkari Act empowering the Revenue Minister either to direct the Municipality to desist from levying or collecting octroi duty or to direct the Government to meet the demand made by the Municipality in that regard. Such an expression of opinion canno be regarded as a judicial or quasi judicial one. It is only an opinion expressed by a Minister on the adminis-

trative side. The High Court cannot give a direction either to the Rajpramukh or to the Government to give effect to the noting of a single Minister. **I L R (1960) Andh Pra 42: A I R 1960 Andh Pra 234 (244) (Pt H) (Pr 53) (DB).**

——**Art. 226** — Quasi-judicial tribunal. See Municipalities — Assam Municipal Act (1923), S. 89. **A I R 1953 Assam 132 (DB).**

——**Art. 226**—Bengal Municipal Act (1932), S. 215 (b) —Reviewing authority deals with assessment in quasi-judicial manner. See Municipalities — Bengal Municipal Act (15 of 1932), S. 215 (b). **A I R 1957 Cal 447.**

——**Art. 226 -Certiorari — Administrative matters— (Election — Bengal Municipal Act (15 of 1932), Ss. 529-A and 44).**

While the actual proceedings before the registering authority under R. 8 or before the Magistrate under S. 529-A of the Bengal Municipal Act may be said to be of a quasi-judicial nature, the publication of the preliminary or the final electoral roll is a purely administrative affair, and such publication cannot be quashed by a writ of certiorari. **A I R 1956 Cal 456 (458) (Pt E) (Pr 6).**

——**Art. 226—Judicial or administrative act — Order of supersession under S. 131 of Bengal Local Self-Government Act (3 of 1885).**

In order that a statutory authority may be deemed to act judicially, the lis need not be between two parties other than the authority which purports to make the order. The real test is that there must be a lis, that is, a controversy between the subject and another party which may be the party making the order and that, superadded to it, there must be a further condition that the statutory authority must act judicially. In order that a decision by a statutory authority may be regarded as a quasi-judicial act, the approach to the decision must be a judicial one. In other words, the conclusion which has to be reached by the statutory authority must require the application of a judicial process in arriving at a decision. Section 131 of the Bengal Local Self-Government Act, 1885, does not require the Provincial Government to start an enquiry at which the District Board would have a right of audience. The fact that an explanation may be called from the District Board does not necessarily show that the decision has to be arrived at by the Provincial Government or the officer concerned by the application of a judicial process. The order of supersession made under S. 131 of the Bengal Local Self-Government Act, 1885, is purely an administrative act on the part of the Provincial Government. **A I R 1951 S C 23, Foll. A I R 1952 Cal 901 (903, 904) (Pt A) (Prs 14, 16).**

——**Art. 226 — Quasi-judicial order — Action under latter part of S. 23 (7) of Bombay District Municipal Act—Is quasi-judicial in nature — President must be given opportunity to meet charges against him before action is taken under S. 23 (7).**

There may not be a lis between the two contending parties, but if before arriving at a finding materials placed before the deciding authority have to be judged and if facts have to be decided objectively and the decision has serious consequences, the exercise of the powers by the authority will have a quasi-judicial character although there is nothing one way or the other in the statute casting a duty on the authority to act judicially. It must however be remembered that these circumstances are only some of the relevant indicia to show the nature of the action taken. **(1924) 1 K B 171; A I R 1959 S C 107 and A I R 1962 S C 1110, Rel. on.**

The Court must turn to the provisions of S. 23 (7) of the Bombay District Municipal Act to determine whether the State Government while acting under that section has the duty to act judicially. Section 23 (7) contemplates the removal of the President in two ways: (1) removal of the elected president by the municipality by a resolution which must be passed after giving him a reasonable opportunity of showing cause why such a resolution should not be passed against him, and (2) removal of the President by the State Government for misconduct or neglect or incapacity to perform his duties. Though the latter part of S. 23 (7) is silent as to the function being quasi-judicial as against the first part of the sub-section where the legislature has been clear by providing for a reasonable opportunity, considering the various factors mentioned above, it would be legitimate to impute to the legislature the intention that the function performed under the latter part of this sub-section was to be treated as a quasi-judicial function. The circumstances attendant upon and the consequences following on the taking of an action under S. 23 (7) of the Bombay District Municipal Act indicate and justify the inference that there is a duty cast upon the authority taking action under that section to act judicially and the action taken under that section is quasi-judicial in nature. **AIR 1957 Punj 100 and 59 Bom L R 930 (At Nag) and AIR 1953 All 195, Distinguished; AIR 1952 Cal 594 and AIR 1953 Cal 212, Rel. on.** As to the nature and the extent of the right of the petitioner of having a fair and reasonable opportunity to meet the case against him before the final order was passed against him, no hard and fast rule can be laid down as that would depend on the nature and circumstances of each case. The principles which must be followed in an inquiry by a body exercising quasi-judicial functions are: (1) the delinquent must be given a fair opportnity to meet the accusation made against him and to state his defence; (2) some inquiry must be made such as would enable the deciding authority fairly to determine whether he was satisfied that the charge in question was made out; (3) in cases where there are prescribed rules of procedure, the rules must generally be followed. Where there are no such rules the authority can fix his own procedure, not contrary to the rules of natural justice. **1915 A C 120 and (1960) 1 All E R 631, Rel. on.**

Held, that the materials relating to the charge against the petitioner were not properly considered by the authority before passing the order of removal under S. 23 (7) of the Bombay District Municipal Act and that the order was passed mechanically without a proper application of the mind by the authority. The petitioner did not get a reasonable opportunity of a proper hearing before passing final order. The whole order, therefore, must be struck down as illegal. **I L R (1963) Guj 1046: A I R 1964 Guj 51 (54 to 59) (Prs 7, 8, 9, 10, 11, 17, 18, 19, 21) (DB).**

——**Art. 226 — Order of removal from membership under S. 7 of Punjab Small Towns Act—Opportunity to show cause against proposed order not necessary —Opinion of State Government is subjective—Order is administrative and not amenable to writ of certiorari.**

The Punjab Small Towns Act does not contain a provision that an opportunity should be afforded to a member of the Small Town Committee before ordering his removal from membership. The opinion which the State Government has to form under S. 7 as to the fitness or otherwise of a person to continue as member of the Small Town Committee is subjective and not purely objective. The order of the State Government removing the member from membership of the Small Town Committee is therefore an administrative order and is not amenable to a writ of certi-

orari. A I R 1962 Him Pra 59 and A I R 1962 All 264 and A I R 1950 S C 222 and 1942 A C 206, Rel. on; A I R 1962 S C 1110 and A I R 1962 S C 1217, Disting. and Expl. A I R 1962 Him Pra 68 (68, 69, 72) (Prs 5, 19, 20).

——Art. 226—Certiorari, writ of —When can issue—Removal of member under S. 7, Punjab Small Towns Act, on ground of unfitness—Order is purely administrative —Cannot be quashed by certiorari when it is not mala fide—Nor can a writ of mandamus be issued —Principles of natural justice—Audi alteram partem Scope and applicability.

The audi alteram partem principle is applicable only to judicial and quasi judicial acts of an administrative body and not to administrative or executive acts of such body. The scope of a writ of certiorari is to a certain extent akin to the scope of the principle of audi alteram partem and the duty to act judicially is considered to be one of the conditions requisite for the issue of a writ of certiorari. Such a writ will not issue to quash the order of a body that has acted in a purely ministerial capacity notwithstanding that its ministerial order may have been preceded by a determination of a judicial character by another body. 1924 A C 988, Rel. on.

An order passed under S. 7, Punjab Small Towns Act removing the petitioner from the membership of the small town committee is not a judicial or quasi-judicial order but is purety an administrative order and it is not amenable to a writ of certiorari when it has not been found to be mala fide. A I R 1960 Punj 186, Dist.

A direction that the petitioner be restored to the membership of the small town committee cannot be issued unless the impugned order is quashed and if it is beyond the competence of the High Court to issue a writ of certiorari, it cannot issue a writ of mandamus either. AIR 1962 Him Pra 59 (64, 65, 66, 67, 68) (Pt B) (Prs 19, 21, 22, 31, 32, 33, 42, 43).

——Art. 32 (2-A) (read with Constitution of India (Application to Jammu and Kashmir) Order (1954))—Government removing petitioner from Chairmanship of Town Area Committee — High Court of J. & K.—Interference.

Where the Government has removed the petitioner from certain post, i e., Chairmanship of Town Area Committee, the High Court of Jammu and Kashmir will assume jurisdiction in such matters only if an authority which is bound to follow the provisions of a statute acts in contravention of those provisions. But if the Government or such authority acts according to the procedure provided by the said statute, holds an inquiry as provided by law, and then arrives at some conclusion, High Court of J and K. will not and cannot interfere on the ground that these conclusions are not warranted by facts. The Court will only see if the petitioner has or has not received equal protection of law. AIR 1956 J & K 32 (32) (Prs 3, 4).

——Art. 226— Government's power to take action under S. 11 (1), State Municipalities Act— Determination of collateral facts — Subjective determination — Judicial enquiry — Committee superseded without judicial enquiry — Issue of writ of certiorari. See Municipalities — Gwalior State Municipalities Act (1903), S. 11 (1). AIR 1954 Madh B 161 (DB).

——Art. 226—Certiorari—Essential condition for applying President and Vice President of Municipality — Removal from office — Application for writ — (Municipalities — Gwalior State Municipalities Act (1993-S), S. 11 (1).)

The right of the President and Vice-President of a Municipality to continue in office is a legal right irrespective of the fact that it came into existence by election or nomination, and if they are unlawfully removed from their office they possess sufficient interest to pray for a writ. Madh B L J 1954 H C R 1 : A I R 1954 Madh B 161 (163, 167) (Pt A) (Prs 4, 29, 35) (DB).

——Art. 226 — Certiorari — Administrative order without jurisdiction—Order is liable to be quashed—Order under S. 53, C. P. and Berar Municipalities Act (2 of 1922).

The making of an order under S. 53 (1) of the C. P. and Berar Municipalities Act is no doubt an administrative or executive act. But it has been made dependent on certain conditions and contingencies enumerated in that section. The fulfilment of these conditions is no doubt left to the subjective opinion or satisfaction of the Collector. But where the Collector makes an order solely on grounds altogether extraneous to S. 53 (1) the case would be one of want of jurisdiction in the Collector to make the order, and must be quashed by a writ of certiorari. I L R (1961) Madh Pra 252 : 1961 M P C 233 : 1961 Jab L J 771 : 1961 M P L J 667 : AIR 1962 Madh Pra 40 (42) (Pt A) (Prs 4, 5) (DB).

—— Art. 226— Directory and mandatory nature of Rules—Test to determine—Rules 29 and 30 are directory —Substantial compliance held sufficient — No interference under Art. 226. See Municipalities—C. P. & Berar Municipalities Act (2 of 1922), S. 85. 1961 M P L J 1473.

——Art. 226— Interference—Order of removal on grounds extraneous to those prescribed by law—Order will be quashed under Art. 226, Constitution of India. See Municipalities — M. B. Municipalities Act (I of 1954), S. 16 (1) (a). 1961 M P L J 1011.

——Art. 226—Quasi-judicial order —Order superseding municipality —Not purely administrative —Interference by High Court—See Municipalities—Madhya Bharat Municipalities Act (I of 1954), S. 208. A I R 1958 Madh Pra 397 (DB).

——Art. 226—Powers of High Court—Order superseding municipality —Grounds on which High Court may interfere in its writ jurisdiction. See Municipalities —C. P. and Berar Municipalities Act (2 of 1922), S. 57 (2). AIR 1958 Madh Pra 323 (FB).

——Art. 226—Administrative orders — Order under S. 173, M. B. Municipal Act, refusing to renew licence for running flour mill—No writ—Conduct of petitioner — (Municipalities — M. B. Municipal Act (I of 1954), S. 173).

The Municipal Council and Collector were both satisfied that the petitioner's flour mill was dangerous to the health and property of the persons living in the neighbourhood and decided that the renewal of the licence should be refused. The petitioner applied under Art. 226 to quash the order of the Municipality under S. 173, M. B. Municipal Act :

Held, (1) That the decision taken by the Municipal Council was purely an administrative decision and it was not incumbent to deal with the case judicially or to hear the petitioner before the decision was made, (2) That the conduct of the petitioner in continuing to work the mill even after expiry of the licence and the refusal of the Municipality to renew it was highly objectionable and also disentitled him to writ. 1957 M P C 291 : 1957 Jab L J 509 : A I R 1958 Madh Pra 11 (12, 13) (Pt C) (Pr 11) (DB).

——Art. 226—Madras District Boards Rules (1920), Rr. 5 and 5-A—Scope—Non-compliance— Effect — Order held was nullity —Certiorari held could issue — See Madras District Boards Rules (1920), R. 5. AIR 1958 Mad 211.

——Art. 226 — Madras District Municipalities Act (1920), S. 43 — Allotment of seats reserved under S. 7 (3) — Duty of Government to consult municipality

—Certiorari against order of allotment—See Municipalities—Madras District Municipalities Act (5 of 1920), S. 43. AIR 1953 Mad 392.

——Art. 226—Decision on appeal petition questioning election — Character of — Principles of judicial approach if should be followed — Decision based on material obtained behind back of party affected — Issue of writ of Certiorari — See Municipalities — Mysore Town Municipalities Election Rules (1951) (framed under Ss. 23 and 208)—Mysore Town Municipalities Act (22 of 1951), R. 11. AIR 1956 Mys 33.

——Art. 226—Quashing of executive order — Order under Proviso in Cl. (1), S. 14 (1-A), Mysore Town Municipalities Act, nature of — [Municipalities — Mysore Town Municipalities Act (12 of 1951), S. 14 (1)(A).]

The High Court has power to interfere in the cases of even so-called administrative orders which are made in defiance of the articles of Constitution or the mandatory provisions of law and without any jurisdiction.

Where orders are passed or action is taken under a Statute or an Act of the Legislature by a Court or tribunal which is vested with the power to take and enforce decisions regarding the rights between rival parties who appear before the tribunal or between them and the State, then proceedings, orders and action cannot be said to be executive.

Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed. Therefore, wherever any body of persons having legal authority to determine questions affecting rights of subjects and having the duty to act judicially in excess of their legal authority writ of certiorari may issue.

The order under Proviso to Cl. (1), S. 14 (1) (A) of the Government or the Minister who has got to decide a question of so vital and valuable interest to the Councillor and the electorate, in pursuance of a statutory power or duty cast on the Government to do so under Mysore Town Municipalities Act is not one which is merely executive or administrative and incapable of correction under Art. 226 of the Constitution in appropriate cases. AIR 1953 S C 210, Rel. on. I L R (1953) Mys 497 : 33 Mys L J 125 : AIR 1954 Mys 18 (21, 22) (Pt B) (Pr 12) (DB).

——Art. 226—Certiorari—Interference with order of inferior Tribunals—When permissible—Jurisdiction of High Court to interfere with order passed by the Authority acting under provisions of S. 398 read with S. 394 of Orissa Municipal Act.

There are two lines of cases—(1) where the jurisdiction of an inferior tribunal may depend upon the fulfilment of some condition precedent or upon the existence of some particular facts, such a fact is collateral to the actual matter which the inferior tribunal has to try, and the determination of whether it exists or not is logically and in sequence prior to the determination of the actual question which the inferior tribunal has to try. In such a case, in certiorary proceedings a Court can enquire into the correctness of the decision of the inferior tribunal as to the collateral fact and may reverse the decision if it appears to it, on the materials before it, to be erroneous. There is the other line of cases where there may be tribunals which, by virtue of legislation constituting them, have the power to determine finally the preliminary facts on which the further exercise of their jurisdiction depends. With respect to the second line of cases, their decision even if wrong on facts or law cannot be corrected by a writ of certiorari. In cases where the fact in question is a part of the very issue which the inferior tribunal has to enquire into, a Court will not issue a writ of certiorari, although the inferior tribunal may have arrived at an erroneous conclusion with regard to it. AIR 1956 S C 463, Rel. on; AIR 1958 Orissa 197, Dist.

Having regard to the provisions of S. 394 and S. 398 of the Orissa Municipal Act, this case falls under the category of the cases where the High Court has jurisdiction to interfere. Under S. 394, a duty has clearly been cast on the State Government to see that the proceedings of Municipal Council are in conformity with law and rules in force thereunder. Section 398 confers on the State Government such power of control by suspension or cancellation with regard to the resolutions, order, licence, permission and lays down procedure for the same. Undoubtedly the State Government in order to invoke its jurisdiction to suspend or cancel, has to determine regarding the collateral fact of there existing such conditions or contingencies, under which the State Government can have power of suspension or cancellation. Where the merit of the matter, on which the State Government has to exercise its powers of suspension or cancellation, has nothing to do with its jurisdiction of control over the proceedings of the Municipal Council, the High Court has jurisdiction to interfere with an order made by the State Government purported to have been made under S. 398 read with S. 394 of the Orissa Municipal Act. (1963) 5 Orissa J D 97.

——Art. 226 — Power of State Government under—Nature of—Is judicial or quasi-judicial — High Court can interfere with such an order in its jurisdiction under Art. 226 of the Constitution. See Orissa Municipal Act (1950), S. 398 read with S. 394. (1963) 5 Orissa J D 97.

——Art. 226—Executive order — Order under Ss. 16 and 22 of Punjab Municipal Act — [Municipalities — Punjab Municipal Act (3 of 1911), Ss. 16 and 22).]

The power of obtaining a writ, direction or order of the kind mentioned in Art. 226 of the Constitution extends to acts and orders of a competent authority or tribunal, including the Government in appropriate cases, which has power to impose a penalty or liability or to give decision determining the rights of the affected party or parties. The order of the State Government under Ss. 16 and 22 of the Punjab Municipal Act is not one which is merely executive or administrative and is, therefore, capable of correction under Art. 226 I L R (1954) Patiala 265 : AIR 1954 Pepsu 186 (190)(Pt D) (Pr 13) (DB).

——Art. 226—Natural justice—Quasi-judicial body—Opportunity to be heard—Municipal Committee under S. 67, Punjab Municipal Act (3 of 1911) revising rental value — Committee acts as quasi-judicial tribunal — Application by property-owner under section competent—Committee must decide application and must give hearing to applicant before passing order. See Municipalities — Punjab Municipal Act (3 of 1911), S. 67. I L R (1965) 2 Punj 164 : 67 Punj L R 1027.

——Arts. 226 and 227—Municipalities—Punjab Municipal Act (3 of 1911), S. 16 (1) (e)—Order of removal of petitioner from membership under section—Order passed on grounds which did not amount to a flagrant abuse of position as member — High Court has power to quash the order even though it is an administrative one—Certiorari.

Where the Government has passed an order under S. 16 (1)(e) of the Punjab Municipal Act, removing the petitioner from the membership of the municipal committee on a ground, namely that he had violated R. 3-A of the Rules framed under the Act, which does not amount to a flagrant abuse of his position as a member of the committee, the High Court has power in the proceedings under Arts. 226 and 227 of the Constitution to quash the Order, although it is an

administrative one, on the ground that it is ultra vires of the power of the Government. AIR 1961 S C 1731, Rel. on. Although under S 16 (1) (e) of the Act, the Government acts in an administrative capacity, the determination of the fact whether there is a flagrant abuse or not, is an objective determination and not a purely subjective determination. An administrative action may in some cases be taken on a subjective determination but in other cases it may have to be taken on an objective determination. Where the administrative action has to be taken on purely subjective determination it is not open to review by any Court of law. But where the administrative action has to be taken in pursuance of a statute which requires that certain facts must exist before the action can be taken and those facts do not exist at the time the action is taken, it can always be shown that the action is uncalled for, because the conditions precedent for such an action do not exist, in such a situation the administrative action would be liable to be struck down as violative of the statute. ('64) 66 Pun L R 226.

——Art. 226 – Certiorari—Administrative orders — Punjab Municipal Act (3 of 1911), S. 14 (e) — Order under — Not justiciable — Municipalities — Punjab Municipal Act (3 of 1911), S. 14 (e).

Where the function which the State Government exercises is administrative in nature such an action is not amenable to a writ of certiorari. Where orders under S. 14 (e) of Punjab Municipal Act were made in exercise of administrative functions of the State Government, it will not be for High Court to go into the question whether it rightly deemed certain reasons as affecting public interest and quash them by certiorari. Hence, they were not justiciable. AIR 1959 S C 107, Rel. on. ('62) 64 Pun L R 685.

● ——Art. 226—Action of statutory body—Question as to legality — Matters to be considered—Rules of natural justice—Relevant only when action is judicial or quasj-judicial — Seat of municipal member vacated under S. 14 (e) of Punjab Municipal Act — Previous notice or hearing not necessary.

When a question arises whether a statutory authority has or has not acted in accordance with law, the terms of the statute setting up that authority have to be examined and the Court has to decide in view of the statutory provisions, whether the Authority concerned has exceeded its power or acted in a manner contrary to the statutory provisions. It is, therefore, neither permissible nor in any sense proper to invoke the assistance of any outside rule, whether of natural justice or otherwise.

Further, it is only when a statutory authority is required by the appropriate statute to act in a judicial or quasi judicial manner that any question of any rule of natural justice really arises. In every case, therefore, the real question always is whether the terms of the particular statute setting up the particular authority have been observed or violated : AIR 1957 S C 232, Rel. on.

Considering the language of S. 14 and other provisions of the Punjab Municipal Act, it is clear that when the State Government orders a seat to be vacated, it does not, and is not required to perform any judicial or quasi judicial function, and no rule of natural justice, therefore, comes into the picture. S. 14 does not require any notice or hearing, and the grievance, therefore, that there was none in the case, has no legal foundation. Jogindar Singh v. State of Punjab, 65 Pun L R 267 : I L R (1963) 1 Punj 588 : 1963 Cur L J 98 : A I R 1963 Punj 280 (286, 287) (Pt A) (Pr 18) (FB).

——Art. 226—Quasi-judicial order—Qrder removing Chairman from office under S. 22 (10), Rajasthan Town Municipalities Act — Interference — (Municipalities — Rajasthan Town Municipalities Act (23 of 1951), S. 22 (10)).

Removal of a Chairman is undoubtedly an administrative decision of the Government. But the power to remove, if exercised, requires the pre-existence of certain basic facts mentioned in S. 22 (10) of the Act. When the basic facts alleged in a case are the existence of the neglect of the chairman of his duties and incapacity to perform his duties there is no doubt that these facts have to be objectively determined. The finding of the existence of the basic facts is a decision of a quasi judicial nature. AIR 1950 S C 222 and AIR 1952 All 63 and AIR 1953 All 739, Rel. on. ILR (1957) 7 Raj 393 : AIR 1957 Raj 284 (288, 289) (Pt A) (Prs 17, 18, 22) (DB).

——Art. 226—Order under Municipal Law—Interference by Collector with order is authorised in cases when carrying out order is likely to cause injury or annoyance to public or is unlawful—Held that order of Collector under S. 195, Rajasthan Town Municipalities Act was not justified — Order quashed. See Municipalities — Rajasthan Town Municipalities Act (23 of 1951), S. 195. A I R 1955 N U C (Raj) 4610 (DB).

——Art. 226—Bikaner Municipal Act (1923), S. 172 —Supersession of municipality — Dutyto hear municipal Board before supersession—Writunder Art. 226, Constitution of India — See Municipalities — Bikaner Municipal Act (6 of 1923), S. 172. AIR 1953 Raj 149.

156. New point.

See Note 98.

157. Order for clarification.

See Note 24.

158. Orders that can be passed.

See also Notes 34 and 85.

● ——Arts. 32 and 226 – Illegal order – Severability—Proper order on writ petition—Renewal of permit for one year — In writ petition Supreme Court holding the order illegal – Proper order to pass is to maintain order of renewal and quash order relating to period and direct the authority to pass orders according to law—See Motor Vehicles Act (1939), S. 58 (2). A I R 1960 S C 321.

● ——Art. 226—Powers of High Court under.

The High Court did not content itself with merely quashing the proceedings under the Motor Vehicles Act, it went further and directed the Regional Transport Authority, to grant to the petitioner permits in respect of the five buses in respect of which a joint application was made originally by the petitioner and one B and that in case the above buses had been condemned, the petitioner was to be at a liberty to provide substitutes within such time as may be prescribed by the authorities.

Held, that such a direction was clearly in excess of its powers and jurisdiction. Veerappa Pillai v. Raman and Raman Ltd., 1952 S C R 583 : 90 Cal L J 194 : (1952) S C A 287 : 65 Mad L W 620 : 1952-1 Mad L J 806 : 54 Pun L R 210 : 1952 Mad W N 431 : 1952 S C J 261 : A I R 1952 S C 192 (196) (Pt B) (Pr 24).

——Art. 226—Interference—Punishment of dismissal from service—Finding about one of charges vitiated —Whole order it to be quashed.

Two charges were framed against the petitioners and both of them were found established. It was on the basis of both the charges that punishment of dismissal was imposed on them. On account of the

breach of the provisions of the Police Regulations the finding about one of the charges was vitiated.

Held, that it could not be said that the same punishment would have been given to the petitioners even if only one charge was established against them. The other charge became an extraneous consideration which could not be taken into account at all while determining the measure of punishment to be meted out to them. Under the circumstances the whole order of the dismissal becomes void and was liable to be quashed. AIR 1953 All 575, Rel. on. **1961 (2) Cri L J 327 (All).**

——Art. 226—Civil P. C. (1908), O. 47, R. 1—Order without jurisdiction — Power to correct in review — See Civil P. C. (1908), O. 47, R. 1. **A I R 1956 Madh-B 240.**

——Art. 226—Certiorari—Order of inferior Tribunal or Court on appeal properly made to it, quashed — Effect — Power of inferior Court or Tribunal to rehear appeal.

Where the order of the inferior Court or Tribunal on an appeal properly made to it, is quashed by the High Court by a writ of certiorari on any ground which does not deal with the merits of the case, it is not only permissible but it is also incumbent on the inferior Tribunal or Court to take up the appeal and re-hear the same, and to pass any proper order in the light of the decision of the High Court. AIR 1952 Mad 605 and A I R 1957 Bom 46 ; (1951) 1 K B 711 and AIR 1960 S C 321, Foll. **(1961) 3 Orissa J D 244 : AIR 1962 Orissa 97 (98) (Prs 4, 5) (DB).**

159. Origin and nature of.
See Note 183.

160. Other remedy.
See Note 7.

161. Parties to proceeding.
See Note 87.

162. Persona designata.

——**Arts. 226, 227 (1), 245 (1)**—Orissa Municipalities Act (1950), Ss. 21, 22, 23 — District Judge as persona designata acting as Election Tribunal performs judicial function and comes under powers of judicial superintendence of High Court under Art. 227: (1) of Constitution. See Municipalities—Orissa Municipal Act (23 of 1950), S. 21. **AIR 1952 Orissa 244 (DB).**

163. Police Act, orders under.

——**Art. 226**—Order of Commissioner of Police under S. 39, Calcutta Police Act, is administrative and not judicial or quasi-judicial. Kishan Chand v. Commr. of Police. **(1961) 2 S C J 309 : (1961) 2 SCA 150 : (1961) Mad L J (Cri) 541 : A I R 1961 SC 705 (710) (Pt D) (Pr 6).**

——**Art. 226—Quasi-judicial inquiry—Departmental inquiry under S. 7 of the Police Act is quasi-judicial in nature—(Police Act (1861), S. 7).**

The departmental enquiry under S. 7 of the Police Act read with Cl. 489 of the Police Regulation is quasi-judicial in nature. A charge sheet has to be served on the accused officer. The proceedings are amenable to the jurisdiction of the High Court under Art. 226 and on sufficient cause being shown, a writ of certiorari can issue. **AIR 1960 All 304 (313) (Pt F) (Pr 35).**

——**Art. 226—Interference with administrative orders—Opening of history sheet under Para 228, U. P. Police Regulations against person having only one prosecution — Action is without jurisdiction — High Court will interfere—(U. P. Police Regulations, Para 228).**

Where a history sheet is opened against a person who has to his credit only one prosecution under S. 408, I. P. Code, and that too ending in his acquittal the action taken under para 228, U. P. Police Regulations is without jurisdiction and though the action taken is administrative in nature, the High Court in exercise of its powers under Art. 226 will interfere and set aside the administrative order. The person concerned cannot be said to be a confirmed or professional criminal for purposes of para 228. **1960 All W R (HC) 501 : 1960 All Cr R 314 : 1960 All L J 637.**

——**Arts. 226 and 311—Quasi-judicial order—Departmental enquiry by Tribunal under S. 7, Police Act, in U. P.—Nature of—Administrative or quasi-judicial —(Police Act (1861), S. 7)—(U. P. Police Regulations, Regn. 489).**

The departmental enquiry by the Tribunal constituted under S. 7 of the Police Act, according to the rules prescribed by U. P. State Government is of a quasi-judicial nature, in respect of which a writ of certiorari can issue. **:1958 All W R (H C) 265 : 1958 All L J 205 : (1958) 2 Lab L J 27 : 1958 All Cr R 217 : AIR 1958 All 607 (608, 609) (Pt B) (Pr 6) (DB).**

——**Art. 226** — Bombay Police Act (22 of 1951) S. 37 (3) —Administrative order—Provisions of S. 37 (3) are not void—Restrictions are in interest of public order. See Ibid, Art. 19. **AIR 1956 Bom 300.**

——**Art. 226—Bombay Police Act (22 of 1961), S. 33 —Rules under—Rules relating to licensing of places of public entertainment—R. 5 —Function of licensing authority—Nature of—Tests of quasi-judicial acts—Function of Police Commissioner held merely administrative—Order refusing to renew licence—Held principles of natural justice not applicable—Order not invalid for want of giving prior hearing.**

Though no exact rule can be laid down and each case must depend upon its own facts and circumstances, it would seem from the authorities that an act would be quasi-judicial (1) where the statute, from which the authority is derived, directs by express words or by implication that the determination should be made judicially, (2) where there is lis and (3) even if there is no lis and the parties are only the authority and the subject and where the existing rights of a subject are affected provided that the statute requires the authority to decide judicially.

In the case of licensing of places of public amusements and entertainments by the Police Commissioner under the rules made by him under S. 33 of the Bombay Police Act, 1951, the nature of the functions entrusted to him by the Act and the method of its disposal would clearly show that the act is administrative rather than judicial, or quasi-judicial. The nature of the function entrusted to the licensing authority is to see that a licence is given to a suitable person. The question whether a person is suitable or not is left to the satisfaction of the licensing authority and it is made dependent on his satisfaction as contrasted with an objective process of sifting and analysing evidence. Under these circumstances, the act cannot be anything else than an administrative act and therefore doctrine of natural justice does not apply to that case.

But even where an administrative action is taken it does not absolve the authority from observing the ordinary rules of fairplay and it may be necessary to give an opportunity to a party to have his say before an order is passed. That, however, is quite different from the well ordered procedure involving notice and an opportunity of hearing before an order is

made. What is fairplay must, of course, depend upon the facts of each case.

Held, on facts that the order refusing to renew a licence under R. 5 (2) was an administrative one and as no question of natural justice arose in such a case the order could not be held invalid merely because no opportunity to give an explanation was furnished to the licence holder before making such an order. (1963) 4 Guj L R 897 : AIR 1964 Guj 102 (106, 107) (Prs 11, 12, 14) (DB).

—Art. 226—Executive actions—Mala fides — History sheets opened by police under Police Act — Petitioners' names entered in—Action of police held to be mala fide —High Court has power to issue writ in such case—Observations on honesty and integrity of police force.

The Station House Officer of Police of the petitioners' village placed the petitioners in the list of bad characters maintained under S. 10 of the Police Act and their history sheets had been opened in the police station. The Station House Officer had as a result, directed the lambardars and chowkidars of the village to watch the petitioner's movements and call them out every night, with the result that their movements were watched and they were constantly shadowed by the police. The petitioners approached the High Court under Art. 226 of the Constitution for an appropriate writ, direction or order directing the Police officers to remove the names of the petitioners from Register No. 10, Police Act.

Held (i) that the material placed before the High Court by the Police Officers did not appear to be relevant and adequate for justifying the impugned action, which must, therefore, be held to be mala fide; (ii) That the power of the High Court to interfere in the present proceedings if the mala fides of the order were established was indisputable; (iii) that the impugned action had been inspired by collateral and extraneous motives and was therefore, mala fide which must be quashed. 1963 (2) Cri L J 586 : 65 Punj L R 922.

164. Pre-Constitution power of High Courts.

See Note 183.

165. Private body, against.

See also Note 5.

——Art. 226 — Certiorari and prohibition—Writ to private persons — Arbitrations under U. P. Co-operative Societies Rules (1936)—Power of High Court to issue writs—Co-operative Societies Act (1912), S. 43—Arbitration Act (1940), S. 46.

Ordinarily the High Court has no power to interfere with the arbitrations based on private agreements and a writ of certiorari or prohibition cannot be issued in respect of such agreements or awards. The only exception is in case of statutory arbitration wherein the arbitrator acts under the powers conferred by a statute. Provisions of the Arbitration Act including S. 46 are applicable to the arbitrations under the U. P. Co-operative Societies Rules. In view of the deeming clause in S. 46 of the Arbitration Act arbitrations under U. P. Co-operative Societies Rules are put on the same level as arbitrations based on agreements. Consequently, arbitrators under Co operative Societies Rules are not amenable to writ jurisdiction and writ cannot be issued to quash the award made in the arbitration under those Rules. 1962 All L J 876 : 1962 All W R (H C) 904 : AIR 1963 All 113 (115, 116) (Pt A) (Prs 3, 5, 6, 9).

——Art. 226 — Certiorari — Quasi-judicial orders — Private institutions — Resignation by servant — Acceptance of, is not judicial or quasi-judicial order — Certiorari will issue. A I R 1961 All 282 (284) (Pt B) (Pr 12).

——Art. 226—Petition under Art. 226 against private body—Maintainability. See Ibid, Art. 26. AIR 1964 Andh Pra 277 (DB).

——Art. 226—'Person'—Writ of certiorari to public limited company.

A writ of certiorari cannot be directed against a public limited company registered under the Companies Act. The expression 'person' as defined in S. 3, Cl. 39 of the General Clauses Act includes a company or association or body of individuals whether incorporated or not. But the expression 'person' in Art. 226 cannot be detached from the context and viewed apart from the nature of the writs that are enumerated in the Article. Writs of certiorari cannot issue to a private body or tribunal having no judicial or quasi-judicial authority.

That the Government of India has a controlling and administrative authority over the Hindustan Shipyard, Ltd., will not make any difference to the jural character of the company. It is still a limited liability company and can in no sense be called a judicial or quasi judicial tribunal or public or statutory authority discharging judicial or quasi-judicial functions. A I R 1958 All 413, Rel. on; A I R 1952 Mad 151 and A I R 1954 Mad 67, Disting. (1960) 1 Lab L J 164 : A I R 1960 Andh Pra 518 (519, 520) (Prs 6, 7, 11, 13).

——Art. 226—Industrial Disputes Act (1947), S. 10-A—Certiorari—Writ will not issue to a private arbitral body which derives its jurisdiction from contract, or to a voluntary association which derives its jurisdiction from consent of members. 1962 Ker L J 865.

[Held overruled by AIR 1963 S C 874 in AIR 1963 Ker 324.]

166. Production of records.

——Art. 226 — Certiorari — Object of—Records—Duty of inferior Court or Tribunal.

When a superior Court issues a rule on an application for certiorari it is incumbent on the inferior Court or the quasi judicial body, to whom the rule is addressed to produce the entire records before the Court along with its return. The whole object of a writ of certiorari is to bring up the record of the inferior Court or other quasi judicial body for examination by the superior Court, so that the latter may be satisfied that the inferior Court or the quasi-judicial body has not gone beyond its jurisdiction and has exercised its jurisdiction within the limits fixed by the law. Messrs. Ghaio Mal and Sons v. State of Delhi (New Delhi Administration), (1959) S C J 105 : I L R (1959) Punj 277 : 1959 S C R 1424 : AIR 1959 S C 65 (69) (Pt A) (Pr 6).

——Art. 226 — Certiorari, writ of — Application for — Calling of record of proceedings before lower Court.

In an application for a writ of certiorari, it is ordinarily necessary that the record of the proceedings of the lower Court or the inferior officer, as the case may be, should be sent for and this is implied in the very nature of the writ. I L R (1952) Patiala 242 : AIR 1954 Pepsu 76 (76) (Pt A) (Pr 1).

——Art. 226 — Certiorari — Duty to produce all records when called for. I L R (1965) 1 Punj 57 : AIR 1965 Punj 284 (285) (Pt C) (Pr 3) (DB).

——Art. 226—Petition under—Documents necessary for disposal—Filing is necessary.

In matters where writ of Certiorari is prayed, it is necessary for the petitioners or the opposite parties to place on record every document which, in their opinion, is necessary for the disposal of the petition. In the absence of any document on the file of High

Court, the original record is summoned and the writ petition is decided by referring to the documents filed therein. 1963 Raj L W 274 : I L R (1963) 13 Raj 682.

■ —Art. 226—Certiorari, writ of—Application for quashing of order of removal from service — Notice — Proper return — State cannot claim privilege in respect of documents forming part of record of proceedings—(Evidence Act (1872), Ss. 123, 124 and 162).

The proper return to an order issuing notice upon an application for writ of certiorari to bring up the proceedings terminating in the order removing the applicant from service, should be a return producing the records forming the subject-matter of the proceedings for certiorari.

The records of the proceedings sought to be quashed must commence with the preliminaries for placing the petitioner under suspension. Every document in the Secretariat file starting therefrom and terminating in the orders sought to be quashed must necessarily form part of the proceedings.

It is not competent for the State to take objection for production of any of the documents forming part of the record, based on Ss. 123, 124 and 162, Evidence Act.

If any document not expressly excluded heretofore forming part of the said proceedings is apprehended to be injurious to public interest if disclosed, liberty is given to the respondent to produce the same in Court in a sealed cover with an explanatory note and the said document will be dealt with by the Court appropriately. Joseph John v. State, 1952 Ker L T 417 : ILR (1952) Trav.Co 857 : A I R 1953 Trav Co 363 (363, 364) (Prs 2, 5, 8) (FB).

167. Prohibition and certiorari.

See Note 183.

168. Quasi-judicial orders.

(a) Duty to act judicially.
(b) Duty to observe rules of natural justice.
See also Note 78.
(c) Essentials.
(d) Subjective opinion of authority.
(e) Enquiry before decision.
(f) Duty to decide objectively.
(g) Duty to act according to law.
(h) Deciding authority, party to dispute.
See Note 129.
(i) Duty to pass speaking orders.
(j) Discretionary orders.
(k) Illustrative cases of quasi-judicial orders.

See separate Notes in Part B (Notes 126 to 185) relating to various authorities and tribunals.

168. Quasi-judicial orders.

■ —Art. 32 - Quasi judicial orders—Test indicated. See Defence of India Rules (1962), R. 30-A (8). (1965) 2 S C A 147 : AIR 1966 S C 91.

■ —Art. 226 — Scope —Held, the Excise Appellate Authority under the Eastern Bengal and Assam Excise Act (1 of 1910) was not altogether an administrative body having no judicial or quasi judicial functions. See Eastern Bengal and Assam Excise Act (1 of 1910), S. 9. AIR 1958 S C 398.

—Art. 226—Civil P. C. (1908), S. 11 — Consolidation authority holding that the question of fact decided in earlier consolidation proceeding between same parties is res judicata — Order was not without jurisdiction and could not be quashed by certiorari—Proceedings under U. P. Consolidation of Holdings Act are judicial proceedings — Principles of res judicata would govern consolidation proceedings.

Where, in a proceeding under U. P. Consolidation of Holdings Act, having considered the fact that the question of succession had already been decided in another consolidation proceeding between the same parties relating to another village, the Consolidation Officer held that the question of succession operated as res judicata and could not be re-agitated by the parties in subsequent consolidation proceedings.

Held, that the order was not without jurisdiction and could not be quashed by Certiorari. Proceedings under the U. P Consolication of Holdings Act are essentially judicial proceedings inasmuch as under certain provisions of the Act the Consolidation authorities have been given the power to decide the question of title. It is not necessary that the principle of res judicata should apply to a certain proceeding only when the provisions of S. 11 C. P. C. have been specifically made applicable. The principle of res judicata is based on the need of giving a finality to judicial decision. Once a res is judicata it shall not be adjudged again : 1960 R D 323 and AIR 1960 S C 941 and AIR 1961 S C 1457, Foll. Even though S. 11 Civil P. C. had not been made applicable specifically to proceedings under the Consolidation of Holdings Act the principle would no doubt govern proceedings under the Act and a question of fact decided by one Consolidation Court in a particular manner should operate as res judicata between the same parties in consolidation proceedings with respect to another village otherwise there would be no finality or sanctity to the orders of a Consolidation Authority. 1964 All L J 1112 : 1964 All W R (H C) 784 : AIR 1965 All 296 (297, 298) (Prs 3, 4, 5, 7, 8).

—Art. 226—Quasi-judicial order—Order of Government without notice—Writ of certiorari.

Held, on facts that the order of the Government relating to assignment on Darkhast of Sivoijama land was a quasi-judicial order and not merely an administrative order and that the order of the Government setting at naught the order of the Board of Revenue without giving notice was illegal and ought to be set aside. AIR 1957 Andh Pra 447 (450) (Pt E) (Pr 13).

—Art. 226—Certiorari against Transport Authority under Motor Vehicles Act—Motor Vehicles Act (1939), Ss. 47 and 48—Order under whether administrative or quasi-judicial—Error apparent on face of record—Order quashed—(Motor Vehicles Act (1939), Ss. 47 and 48.)

The Regional Transport Authority acting under Ss. 47 and 48, Motor Vehicles Act, 1939 is acting in a judicial or quasi judicial capacity. He can neither alter the timings nor change the system of rotation so as to prejudice the parties arbitrarily or capriciously: Such an order passed by the Regional Transport Authority is a quasi-judicial order and not an administrative order and as such is subject to the certiorari jurisdiction of the High Court under Art. 226, Constitution of India. AIR 1952 Mad 276, Foll. (1955) Andhra W R 914 : 1955 Andh L T (Cri) 746 : AIR 1957 Andh Pra 301 (303) (Prs 5, 6).

■ —Art 226— Authority whether quasi-judicial or administrative—Test to determine.

In order to determine whether a particular statutory authority is a quasi-judicial body or a mere administrative body, tests to be applied are : -

(i) whether there is lis inter partes; (ii) whether there is a claim and an opposition; (iii) whether the decision is to be founded on the taking of evidence or on affidavits; (iv) whether the decision is actuated in whole or in part by questions of policy or expediency,

and if so, whether in arriving at the decision, the statutory body has to consider proposals and objections and evidence; and (v) whether in arriving at its decision the statutory body has only to consider policy and expediency.

Where before the appellate authority the dispute between the parties was as to who had title in respect of the land requisitioned and whether by virtue thereof the objector had a right to resist there was a lis and the matter had to be approached judicially for the purpose of a decision. AIR 1952 Assam 115 and AIR 1953 Assam 177 and AIR 1954 Assam 143, Disting. Prabhat Chandra Deka v. K. C. Barua, ILR (1959) 11 Assam 342 : AIR 1960 Assam 1 (5, 9, 10, 11) (Pt B) (Prs 13, 14, 35, 38, 40) (FB).

——**Art. 226—Certiorari and Prohibition — Writs of —Duty to act judically—Assam Land (Requisition and Acquisition) Act (25 of 1948 as amended in 1949), S. 3 (1) and (3).**

Before a writ of certiorari or prohibition could issue, it is necessary that there should be a tribunal or an officer having authority to determine questions affecting rights of subjects and having a duty to act judicially. Both the Provincial Government and the Sub-Divisional Officer who is authorised to act under S. 3 (1) of the Assam Land (Requisition and Acquisition) Act have the legal authority to form the opinion before acting under S. 3 (1) that the requisition of the land was necessary for any of the purposes defined in S. 3 (1). But the language used in S. 3 (1) indicates that a judicial approach is not contemplated. A judicial or quasi-judicial authority has to give its decision on the question of rights involved objectively. Its conclusions have to be arrived at by fixed and recognised standard. Even the discretion with which a judicial authority may be invested is to be exercised according to recognised principles. No such approach is expected from administrative authorities. This is one of the distinguishing features. The contemplated approach affords a basis for finding out whether the authority determining the questions affecting the rights of subjects is an administrative authority or judicial or quasi-judicial in character. Both the existence of a recognised purpose and also the need for requisitioning are matters to be decided by the authorities acting under S. 3 (1). For determining these matters no objective standards or tests are laid down. The determination is left to the subjective discretion of the authorities concerned. The mere existence of a right of appeal against an order is not enough to indicate that the officer whose order is subject to appeal is under an obligation to act judicially. The Provincial Government and any other officer of the Provincial Government who may be authorised to act under S. 3 (1) have an administrative function to perform. There is no difference in the nature of their function or duties. Even as an appellate authority the Provincial Government is under no obligation to act judicially. It is authorised to come to its decision by the exercise of its subjective discretion. Orders of the inferior and of the appellate authority both therefore would be administrative in character and no writ of prohibition or certiorari can issue. Case Law discussed. ILR (1952) 4 Assam 426 : AIR 1952 Assam 115 (117, 118) (Prs 8, 9, 13, 14) (DB).

——**Arts. 226, 227**—Quasi-judicial order — Order of State Government removing President of Municipality from office is quasi-judicial. AIR 1962 S C 1110, Applied. 67 Bom L R 11 : 1965 Mah L J 477 : ILR (1965) Bom 280 : AIR 1965 Bom 187 (189) (Pt A) (Pr 4) (DB).

——**Art. 226 — Administrative and quasi-judicial order—Difference.**

The difference between an administrative and a quasi-judicial order does not lie merely in this that in the case of a quasi-judicial order a writ of certiorari can be issued. The more fundamental difference between the two orders is that in the case of a quasi-judicial order the Court must require and demand from the authority exercising his functions that he will conform to the judicial process. ILR (1959) Bom 923 : 61 Bom L R 1 : AIR 1959 Bom 372 (375) (Pt A) (Pr 3) (DB).

——**Art. 226 — Administrative and quasi-judicial orders—Tests.**

The decision would be quasi judicial if in reaching that decision the authority is required first to ascertain certain facts by means of evidence and is then free to take such action as it may think fit on the facts so ascertained. In such a case the authority must consider the representations and objections of the parties affected and give them an opportunity to adduce and examine the evidence. On the other hand, the decision would be purely administrative if in taking that decision the authority is free to base its opinion on whatever material it thinks fit. One must, therefore look to the particular provisions of the statute in order to determine the question whether the authority acting under those provisions acts in an administrative or a quasi judicial capacity. AIR 1950 S C 222, Rel. on. 1960 M P L J 100 : 1960 Jab L J 135 : 1960 M P C 117 : 1960 Cri L J 613 : AIR 1960 Madh Pra 157 (159) (Pt A) (Pr 7) (DB).

——**Art. 226** — Order under Madras Hereditary Village Offices Act — High Court has jurisdiction to issue writ of certiorari in respect of such order. AIR 1952 S C 64, Foll. 1953-2 M L J 644 : 66 Mad L W 700 : AIR 1953 Mad 972 (973, 974) (Pt D) (Prs 4, 7).

——**Art. 226 — Judicial or quasi-judicial orders — Orders of settlement or Assistant Settlement Officer under Chapter X, Bihar Tenancy Act — (Tenancy Laws—Bihar Tenancy Act (8 of 1885), Chap. X).**

Chapter X of the Bihar Tenancy Act would clearly indicate that the Settlement Officer and the Assistant Settlement Officer have been vested with powers and duties of a judicial, or at any rate of a quasi-judicial character, and therefore both the Settlement Officer and the Assistant Settlement Officer are tribunals whose orders are amenable to be challenged and quashed by a writ in the nature of certiorari or a writ in the nature of prohibition. 1957 B L J R 292 : 1957 Pat L R 147 : AIR 1958 Pat 4 (7) (Pt B) (Pr 9) (DB).

——**Art. 226**—Treasure Trove Act (6 of 1878), Ss. 7, 18—Enquiry by Collector—Nature of proceedings—Quasi-judicial — Procedure. A I R 1956 Punj 235, **Reversed.** See Treasure Trove Act (1878), S. 7. AIR 1960 Punj 82.

——**Art. 226—Quasi-judicial orders—(Mineral Concession Rules (1949), Rr. 27, 28, 57 and 59)—(Mines and Minerals (Regulation and Development) Act, 1948).**

There is no question of violating the principles of natural justice where an authority acts in a purely ministerial or administrative capacity. In passing an executive order which may or not react to the detriment of a subject the authority is not bound to give the subject an opportunity of being heard.

In the matter of granting or refusing a mining lease under the Mineral Concession Rules, 1949, neither the State Government nor the Central Government were required by the Mines and Minerals (Regulation and Development) Act, 1948, or by the Mineral Concession Rules, 1949, framed thereunder, to act in a judicial or quasi-judicial manner. The orders passed by them were no more than ministerial or

administrative acts. The fact that the order of the State Government was made subject to review by the Central Government under Rr. 57 and 59 does not mean that these authorities were acting in a quasi-judicial manner. The authorities were not bound to hear the applicants. Except in so far as the priority between rival applicants may be determined with regard to time under R. 32, no guiding principles are laid down for determining the merits of the various applicants. AIR 1958 S C 398 and AIR 1950 S C 222 and AIR 1954 All 144 and AIR 1954 S C 440, Disting., 54 Cal W N 883 (P C), Rel. on; ILR (1957) Punj 39, Affirmed. 61 **Punj L R 489 : ILR (1959) Punj 1332 : AIR 1959 Punj 510 (514, 515) (Pt B) (Prs 15, 16) (DB).**

[Reversed in AIR 1960 S C 606].

——Art. 226—Quasi-judicial proceedings—Power of review.

By passing the Marwar Patta Act, the Government put fetters on its own power to deal with its property in the area comprised in the former State of Marwar and provided certain procedure for grant of Pattas of State lands. This Act confers rights on persons interested in the land for which a person makes an application to object to the grant of no objection certificate and the matter is decided according to the public interest and to have that objection decided in the manner provided by the Statute. The proceedings must be of a quasi-judicial nature and there can be no review of final orders passed in such proceedings unless there is a specific provision to that effect in the law. 1957 Raj L W 636 : ILR (1958) S Raj 72 : **AIR 1958 Raj 56 (58) (Pt B) (Pr 8) (DB).**

168 (a). Duty to act judicially.

■ **——Art. 226—Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 64 (4)—Order passed under S. 64 (4) — Order is quasi-judicial in nature—Failure to hear the trustees—Order is invalid.** Sri-la Sri Subramania v. State of Madras, **1965 S C D 918 : (1965) 1 S C J 711 : (1965) 2 Andh W R (S C) 167 : (1965) 2 Mad L J (SC) 167 : AIR 1965 SC 1578 (1581, 1582) (Pt A) (Prs 14, 16).**

■ **——Art. 226 — Quasi-judicial order — Mines and Minerals (Regulations and Development) Act (1948), S. 6—Rules under, Mineral Concession Rules (1949) (as they stood prior to 1954), R. 54 — Review application—Duty to give opportunity to be heard.** AIR 1959 Punj 510, **Reversed.** Shivji Nuthubhai v. Union of India, **1960 M P L J 516 : 1960 Nag L J 212 : 62 Pun L R 641 : ILR (1960) 2 Punj 43 : 1960 S C J 579 : (1960) 2 S C R 775 : AIR 1960 S C 606 (609) (Pr 9).**

——Art. 226 — "Judicial act" includes exercise of quasi judicial functions by administrative bodies or other authority obliged to exercise such functions and is used in constrast with what are purely ministerial acts. 1962 All L J 116.

——Art. 226 — Quasi-judicial tribunal — Commissioner holding enquiry against subordinate Government servant on charge of illegal gratification.

A decision of a judicial or quasi-judicial tribunal will be quashed if it contains a manifest error apparent on the face of the record. The enquiry held by the Commissioner against the subordinate Government servant regarding the charge of having accepted illegal gratification is quasi judicial and he is under a duty to act judicially. His decision is amenable to a writ of certiorari if a proper case is made out against it. **AIR 1960 All 323 (331, 332) (Pt D) (Pr 40).**

——Art. 226—Quasi-judicial decision and administrative act—Distinction—Test—Order under S. 7 (2), U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947)—Issue of writ of certiorari.

The essential test of a quasi-judicial decision which distinguishes it from an administrative act is that the law empowering the quasi-judicial authority to make a decision requires a judicial approach, either expressly or by necessary implication. AIR 1950 S C 222, Foll.

Since the proceedings under S. 7 (2) of the U. P. Act (1947) are administrative and not quasi-judicial no writ of certiorari can issue. **AIR 1959 All 440 (445, 446) (Pt C) (Prs 16, 17).**

——Art. 226 — Jurisdiction of High Court — Judicial or quasi-judicial or administrative powers—Test to decide.

The question whether a power is judicial or quasi-judicial or it is merely administrative has to be decided upon the language of the Statute, upon the nature of the power and the consequences of its exercise upon the rights of others and the exigencies of the situation. The main thing to be considered is whether the authority concerned has to decide a dispute between two parties or it has merely to take note of the dispute to inform its mind before it exercises the power conferred upon it in its discretion. In the former case it acts judicially or quasi judicially but in the latter case it acts administratively. AIR 1950 S C 222, Rel. on. **AIR 1956 All 603 (606) (Pt A) (Pr 12) (DB).**

——Art. 226—Acting judicially—Meaning of.

A writ can be issued not only against an inferior Court of Justice but also against statutory bodies or tribunals. By the phrase "acting judicially" what is meant is not merely strictly judicial acting but also quasi-judicial acting or, in other words, an acting analogous to judicial acting. The term 'judicial' does not necessarily mean acts of a judge or legal tribunal sitting for the determination of matters of law, but for the purpose of this question a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances and imposing liability or affecting the rights of others. There is, however, an important limitation to the principles above enunciated and the legislature may by express language or by necessary implication vest an absolute discretion in tribunal or a body which may not be bound to act judicially or quasi-judicially even though it may affect the rights and property of others. A quasi judicial act requires that a decision is to be given not arbitrarily or in the mere discretion of an authority but according to the facts and circumstances of the case as determined upon an enquiry held by the authority after giving an opportunity to the party to be affected of being heard and whenever necessary leading evidence in support of his contentions. The essential difference between an administrative or executive act on the one hand and a judicial and quasi judicial act on the other is that while in the former case, the authority vested with the power to give a decision affecting the rights of others, may be bound to enter upon an enquiry he is not bound to give a decision as a result of the enquiry, but may act in his discretion in utter disregard of the result of the enquiry, in the latter case such authority is bound by law to act on the facts and circumstances as determined upon the enquiry, in which a person to be affected is given full opportunity to place his case before the authority even though the decision of such authority, whether right or wrong may be final and may not be liable to be challenged in a Court of law. In order to determine whether a body is required to act quasi-judicially, the whole statute has to be considered and the decision has to be based upon a consideration of all the relevant provisions. When the

right to be affected is a natural or common law right of a person, there is a presumption that an authority vested with the power to affect such right must act quasi-judicially. But this presumption may be rebutted by an examination of the provisions of the statute. When the right to be affected is a creation of the statute itself no such presumption arises at all. Case law discussed. I L R (1952) 2 All 783 : 1952 R D (HC) 229 : 1952 All L J 342 : A I R 1952 All 63 (67, 68, 69) (Pt B) (Prs 32, 37, 38, 44, 45) (DB).

——Art. 226 — Error apparent on face of record — Quasi-judicial proceedings — Previous finding of criminal Court—Binding effect.

A quasi-judicial tribunal cannot ignore the findings and orders of competent criminal Courts in respect of an offence when the tribunal proceeds to take any action on the basis of the commission of that offence. A I R 1952 Mad 853, Rel. on. (1957) 2 Lab L J 238 : AIR 1956 Andh 203 (205) (Pt A) (Pr 9).

——Art. 226—Powers of High Court—Excise Appellate Authority — If merely Administrative body — Quasi-judicial functions in deciding appeals—Powers of High Court. See Eastern Bengal and Assam Excise Act (1 of 1910), S. 9 (2). AIR 1957 Assam 182 (DB).

——Art. 226 — Rules under E. B. & Assam Act, 1 of 1910— Rules 205, 207, 208, 209 — Scope of — Settlement of liquor shops — Choice is with lower authorities —Duty of appellate authority— Appellate authority can interfere only where the choice made is perverse or not in accordance with rules. See Eastern Bengal and Assam Excise Act (1 of 1910), S. 36. AIR 1957 Assam 182.

——Art. 226—Quasi-judicial order—University Authorities, Calcutta — Jurisdiction —Disciplinary action— Sub-committee appointed by Examination Board to investigate —Committee reporting direct to Syndicate —Syndicate in confirming report acts without jurisdiction. See Calcutta University Regulations, Ch. 25, Reg. (5). AIR 1957 Cal 428.

——Art. 226 — Quasi-judicial orders — Essentials — —Order of supersession of Municipality—No duty to act judicially—Municipalities—Bengal Municipal Act (15 of 1932), Ss. 553, 552. A I R 1955 N U C (Cal) 5591.

——Art. 226 —Quasi-judicial proceeding—[Hyderabad Public Servants Tribunal of Enquiry Act (23 of 1950).]

Where the decision affects the right of a party and where the Statute prescribes that the authority should hear the objections of a party, institute an enquiry, make an investigation and come to a conclusion after taking into consideration all the facts and circumstances of the case, it would be regarded as a quasi-judicial proceeding and as such amenable to the certiorari jurisdiction of the High Court.

Hence, a proceeding before a Tribunal constituted under the Hyderabad Public Servants' Tribunal of Enquiry Act is a quasi-judicial proceeding. The mere fact that the order of the Tribunal becomes enforceable only after the Government approves of the same would not make the order the less a quasi-judicial order to be corrected if need be by a writ of certiorari. A I R 1950 S C 188, Rel. on; A I R 1952 M B 105, Ref. ILR (1953) Hyd 648 : A I R 1954 Hyd 28 (30) (Pt A) (Pr 4) (DB).

——Art. 226 — Scope — Statutory authority when is said to act quasi-judicially.

Where a statutory authority has power to do any act which will prejudicially affect the subject, then even in the absence of two opposing parties apart from the authority, the determination by him will be quasi-judicial if the authority is required by the statute to act judicially. A I R 1950 S C 222 Foll. Madh B L R 1956 Civ 803 : A I R 1957 Madh B 4 (5) (Pt 6) (Pr 19) (DB).

——Art. 226—Question whether authority is required to act judicially or quasi-judicially must in the first instance be determined from express provisions of the Act under which it functions— If the provisions are silent then question has to be determined on consideretion of provisions of the Act and the cumulative effect of the nature of rights affected, manner of disposal and the objective criterion to be adopted. See Rice Milling Industry (Regulation) Act (21 of 1958), S. 5. AIR 1965 M P 247 (DB).

——Arts. 226 and 227—Administrative order—Decision of Excise Commissioner regarding confirmation or refusal to confirm sale of liquor shop is an administrative decision—Auction-purchaser is not entitled to hearing before Commissioner refuses to confirm the auction sale.

It is well settled that the rule of natural justice that a person whose rights are sought to be affected, by any action is entitled to a notice and a hearing is attracted only, where the authority making the order acts judicially or quasi-judicially. Again this rule about hearing does not apply where the power to make the order is exercised subjectively : A I R 1961 S C 705 ; A I R 1958 S C 578 ; A I R 1962 S C 1110, Rel. on.

The question whether the authority concerned is required to act judicially or quasi-judicially must in the first instance be determined from the express provisions of the Act under which it functions. If the provisions of the Act are silent, then the question whether the authority is required to act judicially must be determined on a consideration of the provisions of the Act and the cumulative effect of the nature of the rights affected, manner of disposal provided and the objective criterion to be adopted. The final determination of the authority cannot be regarded as a quasi judicial act unless the authority is required by the statute to act judicially or quasi-judicially. If the authority is not required to decide the matter before it objectively on the basis of the material before it but subjectively, then it cannot be held to be a quasi-judicial authority. A I R 1961 S C 705 ; AIR 1962 S C 1217 ; AIR 1962 S C 1110 ; 1950 S C R 621 ; A I R 1960 Madh Pra 157, Rel. on. A I R 1963 S C 786 and AIR 1962 S C 646, Disting.

In considering the question of the confirmation of the auction bid the Excise Commissioner can base his decision on whatever material he thinks fit and howsoever obtained in the course of his executive functions. The question has to be determined from the point of view of policy and expediency : and on considerations such as whether the person making the bid will be able to fulfil the contract and whether there was likelihood of a higher price still being obtained at a re-auction.

The order of the Excise Commissioner refusing to confirm sale may be appealable to the Board of Revenue. But from that mere fact it does not follow that in making the order refusing to confirm the sale the Excise Commisssioner discharged a quasi judicial function. AIR 1960 Madh Pra 157 ; 1943 (2) All E R 791; 1944 (1) All E R 179, Rel. on. 1964 Jab L J 242 : 1964 M P L J 237.

—Art. 226 — Judicial or quasi-judicial tribunal — Duty of.

It is not open to a Court or anybody, or officer, or authority, who is entrusted with quasi-judicial functions, to base his decision on mere conjecture and speculation. He is not entitled to make an order without reference to any evidence or any material at all. (1957-58) 12 F J R 59 : AIR 1957 Pat 647 (649) (Pt C) (Pr 15) (DB).

■ ——Art. 226 — Judicial or quasi-judicial Tribunal —Review—Power of—Extent of — Judicial or quasi-judicial tribunal — Whether has inherent power to re-call or review its own order on ground that it is erroneous on merits—Order under S. 42, East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948—Additional Director, held not competent to recall or review his order on merits. AIR 1959 Punj 457, Overruled.

Held, on facts, that the Additional Director was not competent to recall or review his orders on the merits and therefore the order, dated 18-3-1961 passed by the Additional Director has to be quashed.

The broad and unqualified proposition that Courts are empowered to recall or review their earlier erroneous and unjust orders whenever it is discovered that the error was due to their own mistaken view on the merits of the controversy cannot be accepted as correct. So also judicial and quasi-judicial tribunals do not possess, in this respect, any wider or more extensive inherent power than the Courts. Observations in the Full Bench decision in AIR 1959 Punj 457 in this respect are too broadly worded and do not represent the correct exposition of law. The contention that power to recall an erroneous order is distinct and different from power of review and is, therefore, inherent in every quasi-judicial tribunal, is supported neither by statute nor by any recognised principle or precedent, for, power to recall an order is only another name for the power to review it, and therefore, cannot be claimed as a separate and distinct jurisdiction.

Section 151, C. P. Code, undoubtedly reserves to the Court the inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court but this power, though undefined, and rightly so, cannot be utilised for permitting a judicial or a quasi-judicial tribunal to vary and alter any order passed by it on the ground that it is later considered to be erroneous on the merits. A I R 1963 S C 692, Rel. on. The case of void orders, or orders which are without jurisdiction certainly stands on a different footing. An order which is a nullity or which is invalid does not require to be set aside and may be properly ignored, for, it is not only bad but is incurably bad. It is automatically null and void without more ado, though it is sometimes convenient to have it declared to be so. Again, power to correct apparent clerical or similar mistakes may also be presumed, but only if they do not affect the substance of the decision; otherwise there can be no power of review on the merits except to the extent that the statute confers it. A I R 1959 Punj 457, **Overruled.** Deep Chand v. Addl. Director, Consolidation of Holdings, Punjab, **1964 Cur L J 128 : 66 Punj L R 318 : I L R (1964) 1 Punj 665 : A I R 1964 Punj 249 (257, 258, 259) (Prs 18, 22, 25, 26) (F B).**

——Art. 226—Judicial or executive act — Executive function required to be exercised in quasi judicial manner—Effect.

An executive function does not cease to be executive merely because it is to be exercised impartially and in accordance with principles of natural justice. It is not possible to hold that when an executive authority performs some judicial or quasi-judicial function, it ceases to be an executive authority while exercising that power. 59 Punj L R 199 : AIR 1958 Punj 302 (303, 304) (Pt D) (Prs 4, 5).

——Art. 226—Judicial or quasi-judicial orders.

Whether a particular function exercised by an administrative tribunal is a judicial function or not depends on the nature of decision and on the provisions of law according to which that decision is to be made. When a question arises, whether an authority created by an act is a quasi-judicial tribunal, then one has to see if the tribunal has a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment.

To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in support of it and that the authority has to decide the matter on a consideration of the evidence produced before it. If the decision is to be made by the authority on a purely subjective view of the matter and not objectively then it is the exercise of administrative and executive functions. A I R 1950 S C 188 and A I R 1956 S C 153, Rel. on. **I L R (1957) Punj 1728 : AIR 1958 Punj 35 (36, 37) (Pt A) (Pr 4).**

——Art. 226—Natural justice—Quasi-judicial orders —Duty to act judicially.

In the exercise of quasi-judicial function the doctrine of natural justice must be observed and complied with by the tribunal, if no procedure is laid down in the statute. The doctrine of natural justice in substance only means that the interested parties should have a fair and reasonable chance of putting their case before the authority or in other words they should have a fair and reasonable hearing. This doctrine is not concerned with the form of the proceedings taken but with the substance of the matter. **I L R (1957) Punj 1728 : AIR 1958 Punj 35 (36, 37) (Pt B) (Pr 4).**

——Art. 226 — Quasi-judicial orders — Order under Displaced persons (Verification of Claims) Act — (Displaced Persons (Claims) Act (1950), Ss. 5, 6) — (Displaced Persons (Supplementary Claims) Act (1954) — Displaced Persons (Debts Adjustment) Act (1951), Ss. 2 (3) and 32) — (Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 7).

The scope and object of the Displaced Persons (Claims) Act, 1950, as set out in the preamble is to provide for the registration and verification of claims of displaced persons in respect of immovable property in Pakistan. The Officers acting under this Act are under an obligation and duty to observe the provisions of the Civil Procedure Code. They have no administrative or executive functions to perform. These Officers discharge quasi-judicial functions.

It is clear from S. 7 of the now enacted Displaced Persons (Compensation and Rehabilitation) Act of 1954 that the displaced persons are to receive compensation on the basis of verified claims registered under the Displaced Persons (Verification of Claims) Act, 1950 and 1954. The proceedings and decisions under these Acts are quasi judicial and therefore these proceedings and decisions are subject to the controlling jurisdiction of High Courts under Art. 226 of the Constitution by issue of writs in the nature of certiorari and mandamus. A I R 1950 S C 188 Rel. on. **ILR (1957) Punj 348 : 59 Punj L R 27 : AIR 1957 Punj 186 (188, 189) (Pt A) (Prs 5, 6, 7).**

——Art. 226 — Quasi-judicial order — Order of Advocate-General under S. 92, C. P. Code—(C. P. Code (1908), Ss. 9 and 92).

The real test which distinguishes a quasi-judicial act from an administrative act, is the duty to act judicially. While the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi judicial act if the authority is nevertheless required by the statute to act judicially.

The decision of the Advocate General under S. 92, Civil P. C., whether the consent asked for should be given or not, is a decision affecting the rights of the persons. When the consent is sought for, it is the duty of the Advocate General to come to a definite decision as to whether such consent should be given or not. Even though the section does not specify the manner and the extent of the investigation, it is obvious that the section contemplates the necessary investigation and inquiries being made by the Advocate-General before he finally decides whether the sanction or consent applied for should be given or not. It is equally obvious that he has to make a judicial approach to the question in controversy and then to arrive at a decision after due consideration of the facts and the evidence made available to him. There cannot be any doubt that the decision which the Advocate-General arrives at under S. 92 of the Code of Civil Procedure is a quasi-judicial decision.

If it is established that in passing the order, the Advocate-General acted in excess of his jurisdiction or legal authority or that he failed to exercise the jurisdiction lawfully vested in him, the order is liable to be interfered with by the issue of a writ of certiorari. Case-law discussed. **ILR (1954) Trav-Co 369 : A I R 1954 Trav.Co 331 (336, 337, 338) (Pt B) (Prs 10 to 13) (DB).**

[Overruled in AIR 1962 Ker 90 (FB)].

168 (b). Duty to observe rules of natural justice.

See also Note 78.

——Art. 226—Procedure—Provided under S. 4, U. P. Government Land (Eviction and Rent Recovery) Act, 1953, is quasi-judicial—Both the parties are to be heard. See Tenancy Laws—U. P. Government Land (Eviction and Rent Recovery) Act (29 of 1953), S. 4. (1960) All L J 52.

——Art. 226—Judicial and quasi-judicial tribunals.

The Custodian in issuing a notification under S. 7 (3) of the Administration of Evacuee Property Ordinance (1949) and requisition under S. 10 (2) (1) exercises quasi judicial functions. If the orders are in excess of jurisdiction or are passed in violation of the fundamental principles of justice they can be corrected by the issue of a writ of certiorari by the High Court. **I L R (1952) Bom 378 : 53 Bom L R 621 : AIR 1951 Bom 440 (445) (Pt B) (Pr 4) (DB).**

——Art. 226 — Bengal Finance (Sales Tax) Act (6 of 1941), S. 11 (1)—Best judgment assessment—Decision is quasi-judicial — Authority must observe rules of natural justice and base his decision after considering evidence put in by assessee. **AIR 1965 Cal 498 (501, 502) (Pt B) (Prs 7, 11, 14, 15).**

——Art. 226—Central Excise Rules, R. 151—Proceedings for contravention of, are of quasi-judicial nature involving obligation to follow rules of natural justice. See Central Excise Rules, R. 151. **A I R 1962 Madh-Pra 112 (DB).**

168 (c). Essentials.

——Art. 226—Writ of certiorari—When may issue.

When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari. When the law under which the authority is making a decision itself requires a judicial approach decision will be quasi judicial. Prescribed forms of procedure are not necessary to make an enquiry judicial, provided in coming to the decision the well recognised principles of approach are required to be followed. Province of Bombay v. Khushaldas. (1950) 2 Mad L J 703 : 1950 S C J 451 : 80 Cal L J 330 : 1950 Mad W N 802 : 1950 S C R 621 : 53 Bom L R 1 : A I R 1950 S C 222 (225, 226) (Pt A) (Pr 7).

——Art. 226—Administrative and quasi judicial order—Tests. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7. 1965 All W R (H C) 736.

——Art. 226 — Judicial decision — Tests to find whether authority or tribunal functions judicially.

In order to determine whether a particular body is acting in a judicial capacity when performing a particular function, out of the various tests so far evolved two broad categories have to be taken into consideration, namely, (i) the character of the judgment and (ii) the procedural attributes in making the decision. It is necessary to find out whether the performance of the function terminates in the order that has conclusive effect. An authority acts in a judicial capacity when after investigation and deliberation it performs an act or makes a decision that is binding and conclusive and imposes obligations upon and affects the rights of individuals :

It has, in this respect, to be remembered that the answer to the question whether a particular body is acting in a judicial capacity when performing a particular function does not necessarily depend upon the degree in which that body's general characteristics resemble those of an ordinary Court although the degree of resemblance may be a factor influencing a decision that the function in question is judicial. (1964) 2 Andh L T 94 : AIR 1965 Andh-Pra 69 (72, 73) (Pt C) (Prs 10, 12, 15).

——Art. 226—Quasi-judicial orders — How to determine whether an order is quasi-judicial order.

In order to constitute an order as a quasi-judicial order, the determination must affect the rights and liabilities of subjects, which is arrived at after consideration of facts and circumstances by a competent authority although such authority may not be a Court in the regular sense of the term. Those elements, however, do not conclusively point to a quasi-judicial decision as distinguished from an administrative decision. (1878) 2 L R (I. R.) 371, (1926) A. C. 586, Rel. on.

In addition to the features mentioned above the authority should be under the duty to act judicially. This duty to act judicially may exist in situations other than those in which there is express statutory provision for the determination of an issue analogus to a lis inter partes : (1931) 2 K. B. 215, (1951) A. C. 66, (1952) 2 Q. B. 413, Rel. on.

The functions of an authority acting quasi-judicially may, in respect of the subject-matter under enquiry, be divided into separate compartments. It may thus act both in its judicial and administrative capacity in one and the same enquiry. It may be under a duty to act judicially only at a certain stage of its functions. And even in such a case writ will issue to quash an order if the decision is in excess of jurisdiction committed at a non judicial phase of its functions. (1964) 2 Andh L T 94 : AIR 1965 Andh-Pra 69 (73, 74, 75) (Pt D) (Prs 17, 20, 21).

——Art. 226—Quasi-judicial order.

A lis is not always necessary to hold that an order is a quasi-judicial one. (1931) 2 K B 215 (243) & AIR 1950 S C 222, Rel. on. A I R 1957 Andh-Pra 447 (450) (Pt D) (Pr 11).

——Art. 226—Quasi-judicial orders—Test.

In deciding whether certain order is a quasi-judicial order or not, the test that has got to be applied is the test laid down by the Supreme Court in A I R 1950 S C 222. The test is the famous test laid down by Lord Justice Atkin in Rex v. Electricity Commissioners; Ex parte London Electricity Joint Committee Co. (1924) 1 K B 171, and the test is 'Whether any body of persons having legal authority to determine questions affecting the rights of subject, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.' This definition lays down three tests. There must be a body of persons who must have legal authority to determine questions, the second test is that the questions which they have to determine affect the rights of subjects, and the third test is that a duty must be imposed upon this body of persons to act judicially. 61 Bom L R 1 : ILR 1959 Bom 923 : **AIR 1959 Bom 372 (375) (Pt B) (Pr 4) (DB).**

——Art. 226—Quasi-judicial orders.

The Court must look at the statute which sets up a tribunal or which provides for certain decisions by officers, to see whether that statute requires the tribunal or the officer to act judicially.

It is not necessary that there should be a formal lis before it could be said that the decision of the authority is a quasi-judicial decision. It is sufficient if there are proposals and opposition and evidence has to be taken by the authority. (1952) 2 Q B 413 (428), Rel. on. 61 Bom L R 1 : ILR (1959) Bom 923 : **AIR 1959 Bom 372 (375, 376) (Pt C) (Prs 4, 5, 6) (DB).**

——Art. 226 — Certiorari — Quasi judicial acts — Essential requisities—Judicial decision and administrative acts—Distinction.

There are three requisities each of which must be fulfilled in order that the act of a statutory body may be a quasi-judicial act. They are that the statutory body (1) must have legal authority (2) to determine questions affecting the rights of subjects and (3) must have the duty to act judicially. The first two characteristics are not exclusive to quasi-judicial tribunals. But the third test, namely, that the statutory body must have the duty to act judicially is the really decisive test : (1928) 1 K B 411 and AIR 1950 S C 222, Rel. on Even in performing an administrative act, the authority will have to apply its mind to the materials before it. But the distinction seems to lie in the method and manner of its arriving at the determination. A quasi judicial act necessarily pre supposes the application of some judicial process. The necessary element of judicial procedure marks off the region of administrative action from that of quasi-judicial determination. A judicial process excludes what is called a purely subjective satisfaction or personal opinion regarding a matter. If, on the other hand, a statute indicates with sufficient clearness that the personal satisfaction of the authority on certain matters about which he has to form opinion founds his iurisdiction to do certain acts or make certain orders, his function should be regarded as an executive function. **AIR 1961 J & K 47 (49, 50) (Pt B) (Prs 3, 5, 6) (DB).**

168 (d). Subjective opinion of authority.

——Art. 226—Natural justice — Decision of Reserve Bank being subjective cannot be challenged as violative of principles of natural justice. See Banking Companies Act (1949), S. 35-B (1) (b). **1964 Ker L T 824 : AIR 1966 Ker 6.**

168 (e). Enquiry before decision.

——Art. 226 — Tests to decide whether particular order is judicial or quasi judicial as distinguished from administrative order indicated. 1955 Andh W R 914 : 1955 Andh L T 746 : AIR 1957 Andh-Pra 301 (302, 303) (Pr 3, 8).

——Art. 226—Certiorari — Writ of—Application for registration as citizen—Collector must satisfy himself on matters enumerated in R. 9 of Citizenship Rules, by making enquiry though no personal hearing is reguired—Where there was nothing to show that such an enquiry was held the writ in the nature of certiorari could be issued. See Citizenship Act (1955), S. 5 (1) (a). **AIR 1961 Cal 299.**

[Overruled in AIR 1965 Cal 160].

● **——Arts. 226, 166 (1)—Appointment of Commission to enquire into the matter of succession to a noble man—Firman of Nizam in 1948—Report of Commission—Chief Minister of State accepting majority report—Nature of the order — Order is quasi-judicial—Challenge under Art. 226 — Prerogative right of Nizam to sanction succession—If survives—Power of the Government to confirm succession—Validity —** (Atiyat Enquiries Act and Hyderabad (Abolition of Jagirs) Regulation — Effect). See Ibid, Art. 166 (1). **AIR 1952 Hyd 163 (FB).**

——Art. 226 — M. B. Panchayat Act (68 of 1949), S. 20 — Action of Government under S. 20 is quasi-judicial.

It is clear from the language of S. 20 that before the order of dismissal is passed against Panchayat, it is to be given an opportunity to make representation. If the Panchayat chooses to adduce some evidence to disprove the charges levelled against them there is nothing in the section to stop them from doing so. An opportunity to show cause, therefore, may also involve making some kind of enquiry, hearing and weighing evidence and considering all the facts and circumstances bearing on the merits of the controversy, before the decision affecting the rights of the Panchayat is given.

In these circumstances it is right to infer that the Government is to act quasi-judicially under S. 20 of the Panchayat Vidhan. AIR 1950 S C 222 and AIR 1954 Madh B 181, Rel. on. **M B L J 1955 H C R 569 : AIR 1955 M B 173 (174) (Pt B) (Pr 3) (DB).**

168 (f). Duty to decide objectively.

——Art. 226 — Order under S. 26, Hyderabad City Police Act—Satisfaction of Commissioner—Finality— Interference by High Court. See Hyderabad City Police Act (9 of 1348-F), S. 26. **AIR 1954 Hyd 221 (DB).**

——Art. 226—Decision that particular group is backward—Must be based on objective approach—Does not depend on subjective satisfaction of State Government—Court can examine the basis of decision. See Ibid, Art. 15 (4). **AIR 1964 Ker 39.**

● **——Art. 226—Bihar Private Irrigation Works Act (B. and O. 5 of 1922), Ss. 3, 4 and 5—Action taken by Collector under Ss. 3 to 5—It is quasi-judicial.**

Where the Collector proceeds under Ss. 3 to 5 of the Bihar Private Irrrigation Works Act, 1922, he is a quasi-judicial authority and has to decide objectively on the basis of the materials placed before him. Collector of Monghyr v. Keshav Prasad Goenka, (1962) 2 S C A 708 : (1963) 1 S C R 98 : ILR 42 Pat 112 : 1962 B L J R 863 : AIR 1962 S C 1694 (1700) (Pt A) (Pr 9).

168 (g). Duty to act according to law.

● **——Art. 32—Scope—Rules made by Governor for transaction of business—Applicability to quasi-judicial acts.**

Per Das, C. J., Bhagwati and Subba Rao, JJ.—The concept of a quasi-judicial act implies that the act is not wholly judicial, it describes only a duty cast on

the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. The procedural rules made by the Governor for the convenient transaction of business of the State Government apply also to quasi-judicial acts, provided those rules conform to the principles of judicial procedure. Gullapalli Nageswara Rao v. Andhra Pradesh Road Transport Corpn. (1959) 2 Andh W R (SC) 156 : (1959) 2 Mad L J (SC) 156 : 1959 S C J 967 : 1958 Andh L T 1014 : (1959) 1 S C R (Supp) 319 : AIR 1959 S C 308 (326) (Pt F) (Pr 28).

——Art. 226 — Bengal Village Self-Government Act (5 of 1919) — Rules under, Rr. 6 and 22—Non-compliance with — Proceedings quashed — See Bengal Village Self-Government Act (5 of 1919). AIR 1955 N U C (Cal) 806.

——Arts. 226, 227 — Quasi-judicial order — Mineral Concession Rules (1960), R. 54 — Order of Central Government in revision under R. 54, setting aside order of State Government, refusing renewal of petitioner's mining lease and directing State Government to renew same — Order is quasi judicial and State Government is bound by directions of Central Government—Order not complied with, by State Government —Application lies under Arts. 226 and 227 for direction to State Government commanding it to carry out order of Central Government and to renew lease. AIR 1961 S C 182; AIR 1960 S C 606 and AIR 1964 S C 1643, Foll. 1964 Jab L J 625 : 1965 M P L J 79: AIR 1965 Madh Pra 159 (160) (Pt A) (Pr 3) (DB).

——Art. 226—Certiorari—Issue of—Order of cancellation of lease on ground of lessee's failure to keep correct accounts passed under Cl. (xvi) of R. 25 of Madhya Pradesh Minor Mineral Rules (1961)—Order is quasi-judicial — Order passed in contravention of provisions of Cl. (xvi) can be quashed by writ of certiorari — AIR 1962 Madh Pra 40, Rel. on. 1965 M P L J 51 : 1965 Jab L J 130 : AIR 1965 Madh Pra 153 (157) (Pt C) (Pr 10) (DB).

——Art. 226—Quasi-judicial order—Mines and Minerals (Regulations and Development) Act 1957, S. 13—Rules under—Mineral Concession Rules (1960), R. 54 —Revision application — Application barred by time —Still applicant is entitled to notice of hearing of application and opportunity to represent his case. AIR 1960 S C 606, Foll —Natural justice. 1964 M P L J (Notes) 155 : 1965 Jab L J 667 : 1965 M P L J 655.

——Art. 226 — Certiorari — Interference by High Court— Judicial or quasi-judicial tribunal—Decision of—Liability to be quashed by writ Grounds of—Erroneous decision—Necessity to prove mala fides.

A writ of certiorari will issue only if an authority exercising a judicial or a quasi judicial power acts without or in excess of its jurisdiction and not when in the exercise of its jurisdiction it has arrived at a decision which is erroneous or wrong. Irrespective of whether the decision is right or wrong it is not open to the High Court to issue a writ unless the officer or authority concerned has acted mala fide. 1951 K L T 714 : I L R (1951) T C 808 : AIR 1952 T C 1 (4) (Pt B) (Pr 12) (DB).

168 (h). Deciding authority party to dispute

See Note 129.

168 (i). Duty to pass speaking orders.

——Art. 226 — Quasi-judicial act — Order under S. 5 (3), C. P. & Berar Revocation of Land Revenue Exemption Act must give reasons — It is quasi-judicial act. AIR 1959 Madh Pra 339 (FB), Reversed. See C. P. & Berar Revocation of Land Revenue Exemption Act (37 of 1948), S. 5 (3). AIR 1965 S C 1222.

——Art. 226—Motor Vehicles Act (1939), Ss. 47 and 64-A—Order of Government under S. 64-A—Interference by writ.

The considerations which should weigh with transport authorities in the grant or refusal of a stage carriage permit must be germane to the matters mentioned in S. 47, Motor Vehicles Act. The exercise of the power by the Government must be 'bona fide' and unbiased. The orders of the tribunals must 'ex facie' disclose the reasons which operated on them in granting or refusing a permit. The orders must be passed after due notice to the parties affected thereby. If the aforesaid conditions are satisfied and the Government exercises its power under S. 64-A 'bona fide,' the High Court will not substitute its own notions and opinions for the policies or opinions of the Government. ILR (1956) Andh Pra 712 : AIR 1956 Andhra 217 (221) (Pt A) (Pr 19) (DB).

——Art. 226 — Authority exercising power concerning fundamental rights — Duty to give reasons for decision.

Where a power is conferred upon an authority to do an act which concerns the fundamental rights of a subject and an appeal is provided against the decision of such authority, although on the face of the statute the power conferred on the authority may appear to suggest that the authority had uncontrolled and arbitrary power, still the authority is bound to act on reasonable grounds and to give its reasons for coming to such a decision. A I R 1956 Bom 304 (315, 316) (Pt J) (Pr 21).

——Art. 226 — Quasi judicial orders — Discretion, exercise — Alternative reliefs — Granting of lesser relief should be supported by reasons — Non-speaking orders can be interfered with—Orders of Appeal Committee under West Bengal Secondary Education Act (37 of 1950), Ss. 36 (2) (q), 30 and Regulations 3 to 7).

Where the Appeal Committee on a teacher's appeal against the Management's order dismissing him from service, though found grave irregularities in the manner of termination of his services, did not give a clear finding that the dismissal was wrongful, but granted only the lesser alternative relief of compensation without recording any reasons for its refusal to grant the larger relief of re-instatement to which he was normally entitled the order being a non-speaking one could be interfered with.

Regulation 7 prescribes two alternative reliefs which the Appeal Committee may grant in favour of a dismissed teacher, if his appeal succeeds, namely either re-instatement or gratuity by way of compensation. The exercise by the Appeal Committee of the discretion thus impliedly vested by law should not be capricious but guided by principles of justice and in an objective manner. When from the facts found, it is clear that the dismissal is wrongful, the Petitioner becomes entitled to re-instatement, unless, for reasons which must appear he may be given the lesser relief of monetary compensation. The order not containing a clear finding as to the impropriety of dismissal and mentioning no reasons why re-instatement is not ordered, but merely allowing compensation which is also not in accordance with the provisions of Regulation 7 cannot be sustained. (1965) 10 Fac L R 223 (Cal).

——Art. 226—Decision by quasi-judicial tribunal — Reasons for decision when are required to be stated.

Neither principle nor authority requires that a quasi-judicial body giving its decision must give reasons in support of the decision. The only qualification to this rule is where an appeal is provided

against the decision of the quasi judicial body. In such a case the necessity of giving reasons in support of the decision is imported because unless reasons are given, it would not be possible for the appellate authority to examine the correctness of the decision. But apart from such case, there is no obligation on a quasi-judicial body to give reasons in support of the decision arrived at by it so long as the decision is reached after observing the principles of natural justice. (1965) 6 Guj L R 554 : ILR (1965) Guj 811: AIR 1966 Guj 175 (177) (Pt B) (Pr 2) (DB).

——Art. 226 — **Quasi-judicial orders must be speaking orders.**

Authorities vested with quasi-judicial powers would be well advised to assign reasons for their orders in such a form as to justify the orders being called what is described as 'speaking orders.' AIR 1961 Kerala 197 and (1951) 1 K B 711 (718), Rel. on. **1961 Ker L T 134 : 1961 Ker L J 469 : AIR 1961 Ker 301 (302) (Pt A) (Pr 3) (DB).**

——Art. 226—**Administrative order or quasi-judicial order—Order of removal of non-departmental branch Post-master—Reasons not given—Interference.**

The order of an administrative authority inflicting punishment on the employee is not of an administrative nature but a quasi-judicial one which is required to be a "speaking" order, i. e. one giving reasons for it so as to tell the superior authority why the inferior authority made that order, and the absence of reasons in it is fatal to its legality.

Where the punishing administrative authority ordered the removal of an employee—a non-departmental branch post-master, but failed to assign reasons in the order, for doing so, as required under the rules, the omission to give reasons amounted to a legal error which vitiated the exercise of the quasi-judicial power of the punishing authority. The employee becomes entitled to invoke the jurisdiction of the High Court under Art. 226 for claiming direction to the authority for the assignment of reasons ior the order. ILR (1961) 2 Ker 245 : 1960 Ker L J 1358 : 1960 Ker L T 1304 : (1961) 1 Lab L J 256 : A I R 1961 Ker 197 (198, 199) (Prs 4, 5, 7) (DB).

——Art. 226 — Industrial Disputes Act (1947), S. 12 (5) — Order under—Must give reasons—High Court under Art. 226 of Constitution can examine reasons given by Government. See Industrial Disputes Act (1947) S. 12 (5). **AIR 1964 Orissa 255 (DB).**

——Art. 226—Motor Vehicles Act (4 of 1939), S. 62—Order under — Must show on its face reasons for granting permit. See Motor Vehicles Act (1939), S. 62. AIR **1961 Pat 227.**

168 (j). Discretionary orders.

——Art. 226 — Quasi-judicial order — **Discretionary orders—Extraneous matters should not be considered —Consideration of earlier and later report in granting sanction to cut trees under provisions of Madras Preservation of Private Forests Act (1949), S. 3 (1) (a) is not illegal.**

Exercise of discretion in passing quasi-judicial orders must not be based on considerations of matters other than what is required by the statute.

Where the Collector had upon reports, rejected an earlier application of the petitioner for permission to cut some forest trees under the provisions of S. 3 (1) (a) of the Madras Preservation of Private Forests Act 1949, while passing orders on the subsequent application on the same subject upon fresh report, it is but proper that the Collector should weigh the earlier and later reports on the same subject in order to reach a conclusion and if he rejects the fresh application after consideration of both the reports, it cannot be said that the decision was tainted by consideration of something irrelevant. **1961 Ker L T 134 : 1961 Ker L J 469 : AIR 1961 Ker 301 (303) (Pt B) (Pr 4) (DB).**

——Arts. 226, 14 — Discretion—Imposition of heavy penalty by customs authorities in exercise of discretionary power - Discrimination cannot be established by citing solitary instance in which lesser penalty was imposed - No interference under Art. 226 unless abuse of power is established — See Ibid, Art. 14. **AIR 1965 Punj 305.**

168 (k). Illustrative cases of quasi-judicial orders.

See separate Notes in Part B (Notes 126 to 185) relating to various authorities and tribunals.

169. Rent Control Acts, orders under.

See also Note 126.

——Art. 226— Motor Vehicles Act (1939), S. 68-D (3)—Final scheme published as approved by officer concerned —Writ petitions to High Court — High Court setting aside scheme and sending it back for reconsideration —Order of High Court is analogous to remand —Order passed by the officer on reconsideration is fresh order and does not amount to review of his previous order—See Motor Vehicles Act (1939), S. 68-D (3). **AIR 1963 S C 1098.**

——Art. 226—Rent Control Legislation—Power vested in Government to exempt particular building or buildings from operation of Act — Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 13 — Constitutionality — Individual orders of Government passed under S. 13—Whether subject to judicial review under Art. 226—Grounds on which exemption cannot be justified. See Ibid. Art. 14. **(1962) 1 S C J 194 : (1962) 1 M L J (S C) 92 : (1962) 1 An W R (S C) 92 : A I R 1961 S C 1731.**

——Art. 226—Administrative order— Writ of certiorari — Order of Commissioner condoning delay in filing revision under U. P. (Temp) Control of Rent and Eviction Act is without jurisdiction— It is amenable to writ jurisdiction irrespective of whether it is administrative or quasi judicial. **1965 All L J 211.**

——Art. 226 - Order whether judicial or administrative— Test—Power to determine rights of parties — Not sufficient—No duty to act judicially— Order not judicial—Order of State Government under S. 7-F, U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), is only administrative and not quasi-judicial. (1963) All L J 752 Overruled). See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-F. **AIR 1964 All 148 (DB).**

——Art. 226—Judicial decision — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-F — Exercise of power under — State Government is under duty to act judicially.

The state Government is under a duty to act judicially when in the exercise of its powers under S. 7-F of the U. P. Control of Rent and Eviction Act it calls for the record of any case in which the Commissioner has granted or refused permission to sue the tenant for ejectment and reverses or alters the decision of the Commissioner. It follows that the State Government before making its decision under S. 7-F must observe the principles of natural justice and give an opportunity to the parties affected to show cause. 1963 All L J 752.

[Overruled in A I R 1964 All 148].

——Art. 226—Writ of certiorari—U. P. Act 3 of 1947, S. 7 F—State Government acting under — Does not act judicially or quasi-judicially. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-F. **1962 All L J 672.**

——Art. 226—Certiorari—Administrative orders. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 3. 1962 All L J 533.

——Art. 226—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), Ss. 7-A (1), 7-F, and 7 (2) — Powers of District Magistrate to cancel previous allotment order—Cancellation of previous allotment order before accommodation is let out or before tenant actually occupies some — Order of cancellation not judicial or quasi-judicial—Remedy under Art. 226 not open against such cancellation—Scope of S. 7-A (1)—Government allotting under S. 7-F — Proceedings under S. 7-A (1) not tenable— Allotment by Government—When open—Landlord letting by virtue of order under S. 7 (2)—Effect of—Order of Government and that of District Magistrate quashed. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-A (1). 1962 All L J 426.

——Art. 226—Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S 3 (1) —Revision against order refusing permission to file suit for eviction of tenant — Order of the Commissioner in revision is of a quasi-judicial nature— Hence it can be quashed if it suffers from apparent error of law. 1961 All W R (H C) 102 : 1961 All L J 32 : I L R (1961) 1 All 300.

——Art. 226—Certiorari—Application under section 3 (1), U. P. (Temporary) Control of Rent and Eviction Act—District Magistrate must weigh respective claims of landlord and tenant before granting or refusing the permission for filing suit for eviction of tenant — Provided he has acted in good faith and is not shown to have misdirected himself as to the purposes of the Act his order cannot be successfully challenged. 1961 All W R (H C) 102 : 1961 All L J 32 : I L R (1961) 1 All 300.

——Art. 226—Quasi-judicial order—Proceedings before Rent Controller—Order of allotment—Cancellation without giving opportunity of hearing—Validity (Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7).

The Rent Control and Eviction Officer has the power to review or recall an order of allotment He can cancel it if the order was obtained by fraud or misrepresentation. But before cancelling his order on this ground the Rent Control and Eviction Officer must inquire into the matter and formally pronounce the allottee guilty of fraud. The proceedings are quasi-judicial and the allottee must be given an opportunity to meet the charges of fraud or misrepresentation. Further, in the case of a tenant in possession his tenancy rights partake of the character of property rights. A man must not be deprived of his property without being given the opportunity of being heard. AIR 1954 All 144, Rel. on.

Where the order cancelling the allotment of the shop is passed without giving the petitioner a proper opportunity to show cause against the proposed action, it is an illegal order and liable to be quashed on that ground alone. 1959 All W R (H C) 214: A I R 1959 All 580 (582, 583) (Prs 7, 12).

——Art. 226—Since the proceedings under S. 7 (2) of the U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) are administrative and not quasi-judicial, no writ of certiorari can issue. AIR 1959 All 440 (446) (Pt C) (Fr 17).

——Art. 226—Determination of reasonable annual rent of shop—Duty of Rent Controller—Power whether quasi-judicial — Opportunity of being heard — Duty to give. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 2 (2) (f). 1959 All W R (H C) 187.

——Art. 226—Jurisdiction of High Court — Orders under Rent Control Act—Certiorari to quash.

Where the petitioner's application under S. 3, U. P. Control of Rent and Eviction Act, for permission to file a suit against his tenant for eviction was dismissed by the Rent Control Officer on the ground that it was not bona fide, after giving a fair opportunity to both sides to be heard and after the officer had made an inspection of the property in dispute, the decision was within the competence of the Rent Control Officer and could not be challenged in a writ petition. 1959 All L J 733.

——Art. 226—Administrative orders.

Administrative orders such as under S. 7-A of U. P. (Temporary) Control of Rent and Eviction Act can be quashed in exercise of the general powers conferred by Art. 226 of the Constitution to issue directions or orders, and an order passed without jurisdiction which adversely affects a person ought ordinarily to be set aside. A I R 1959 All 16, Foll. 1959 All W R (H C) 192 : 1959 All L J 263.

——Art. 226—Scope of S. 3 (4) of U. P. Act 3 of 1947—Suit filed on permission of Commissioner—Effect on application under S. 7-F — Powers of State Government — State Government was competent to consider the application — Rejection of the application on account of filing of suit held amounted to non-exercise of jurisdiction vested under S. 7-F. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (4). 1958 All L J 724.

——Art. 226 — Administrative orders—Order passed by Rent Control and Eviction Officer under S. 3 and S. 7 of the U. P. Act 3 of 1947—Nature of — Order is administrative — District Magistrate has no power to revise order passed by Rent Control and Eviction Officer—Power of Rent Control and Eviction Officer to rescind or modify his own previous order. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3. 1958 All L J 234.

——Art. 226 — Question of inconvenience to tenant—Duty of Rent Control and Eviction Officer to consider—Power of High Court to interfere in exercise of discretion under Art. 226, Constitution of India. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3. 1958 All L J 234.

——Art. 226 — Scope — Order of Rent Controller—Duty to give opportunity of being heard. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-F. A I R 1957 All 359.

——Art. 226—Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 7 (1)—Order under — Nature of revision — Writ petition—Maintainability.

An order under S. 7 (1), U. P. Act 3 of 1947 is an administrative order. The High Court can in the exercise of its powers under Art. 226 of the Constitution interfere with an administrative order if it is passed by an authority which is not competent to do so or is otherwise without jurisdiction. 1957 All L J 912.

——Art. 226 — Order of allotment made without ascertaining whether previous tenant has vacated—Quashing of order. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7. 1957 All L J 119.

——Art. 226 — Allotment order without complying with R. 7 — Government not interfering under S. 7-F—Nature of order—Issue of writ of certiorari against allotment order. See Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-F. I L R (1957) 2 All 463.

——Art. 226—Certiorari — Order of District Magistrate and Rent Control and Eviction Officer can-

celling order of allotment—(Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7).

The Rent Control and Eviction Officer passed an order of allotment under S. 7, U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), but subsequently, in pursuance of an order of the District Magistrate, cancelled that order. The allottee applied for a writ of certiorari.

Held, that an order of allotment is not a judicial or a quasi-judicial order and therefore a writ of certiorari could not issue. But in order to give redress to the petitioner against the illegal orders passed by the District Magistrate and on his command by the Rent Control and Eviction Officer High Court had jurisdiction to issue a writ of any other description as the situation may demand. In the circumstances of the case, High Court directed that a writ of prohibition should issue to the District Magistrate and the Rent Control and Eviction Officer forbidding them to enforce their order cancelling allotment.

A writ of mandamus should also issue to them directing them to give effect to the previous order of allotment. **1955 All L J 252 : A I R 1955 All 501 (505) (Pt E) (Pr 28) (DB).**

——**Art. 226**—Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-A —Exercise of jurisdiction in quasi-judicial capacity—Cancellation of order of allotment by Rent Control and Eviction Officer when amenable to writ of certiorari. **A I R 1955 N U C (All) 4811.**

——**Art. 226** — Nature of High Court's power — Incorrect decision by Rent Control Officer having jurisdiction — Decision will not be set aside. **A I R 1955 N U C (All) 2031.**

——**Art. 226**—Power of High Court to issue certiorari and prohibition—Order under S. 7-D of U. P. (Temporary) Control of Rent and Eviction Act 3 of 1947 held without jurisdiction — Order is quasi-judicial order — Enquiry cannot be dispensed with — High Court can issue certiorari and prohibition. **A I R 1955 N U C (All) 1717.**

——**Art. 226**—Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7-D —Quasi-judicial order — Order of Rent Control and Eviction Officer under S. 7-D is quasi-judicial. **A I R 1955 N U C (All) 1717.**

——**Art. 226**—Quasi-judicial order—Order under S. 3 (3), U. P. Rent Control and Eviction Act is quasi-judicial—Certiorari can issue — (Houses and Rents—U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3 (3)). **A I R 1955 N U C (All) 1714.**

——Art. 226 — Order under S. 7, U. P. (Temporary) Control of Rent and Eviction Act, 1947 — Petition under Art. 226 to quash an order—When lies.

Finding that accommodation should be let to A is not an order under S. 7 of the Act. It is actually an order directing the owner of accommodation to let it out to allottee that is an order under S. 7 — Finding actually amounts to expression of opinion, given reasons that he would in future pass an order under S. 7 in favour of A — Such expression of opinion has no statutory force and if it is set aside by Commissioner in revision, the latter's order also has no statutory force — No petition will lie to quash such order. **A I R 1954 All 606 (606, 607) (Prs 4, 5).**

——Art. 226 — Scope — (Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), Ss. 3, 7-F).

A writ in the nature of certiorari can be issued to judicial or quasi-judicial bodies. One acts in quasi-judicial capacity when one has to ascertain facts or law with respect to a certain dispute between the parties and in dealing which he is expected to act judicially even though he does not constitute a judicial body.

Sub-section (4) of S. 3 of U. P. Act 3 of 1947 makes the order of the Commissioner in revision final subject to any order passed by the State Government under S. 7-F. But under S. 7-F the State Government is given absolute discretion to pass any order it considers necessary for the ends of justice on perusal of the order. It is not required to give notice to the parties or to afford them opportunities to lay or to argue their case before it. In passing such a discretionary order the State Government does not act in a quasi-judicial capacity. Therefore no writ of certiorari can be issued to the Government in connection with its orders under S. 7-F of the Act. **A I R 1954 All 232 (233, 234) (Prs 3, 5, 6) (DB).**

[Overruled in A I R 1965 S C 1767.]

——Art. 226—Order of allotment, validity. See Houses and Rents — U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S. 7. **AIR 1954 All 6 (DB).**

——Art. 226—Houses and Rents — U. P. Temporary Control of Rent and Eviction Act (1947), S. 7—Allotment of accommodation—Jurisdiction of Rent Control Officer—(Civil P. C. (1908), S. 9—Special Tribunal) — (Evidence Act (1872), S. 115). See Houses and Rents—U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S. 7. **AIR 1953 All 458.**

——Art. 226—Houses and Rents — U. P. Temporary Control of Rent and Eviction Act (1947), S. 17—Rules under, Rr. 6 and 7 — Order without considering the claim of landlord cannot stand. See Houses and Rents—U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S. 17. **AIR 1953 All 354.**

——Art. 226 — Quasi-judicial Order — Order under Cl. 28, C. P. and Berar Rent Control Order for vacating premises — Interference. See Houses and Rents—Central Provinces and Berar Rent Control Order (1947), Cl. 28. **I L R (1958) Bom 563.**

——Art. 226—Powers of High Court — Interference with order of appellate or revising tribunal — Order reviewed on reconsidering facts not considered before —High Court will not interfere. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 23 (2-A). **1958 Nag L J (Notes) 41.**

——Art. 226 — West Bengal Premises Rent Control (Temporary Provisions) Act (1948), S. 7 — Amount paid by lessee towards costs of repairs of premises for purposes of development — Amount whether is premium or salami — Wrong order made by Rent Controller—Writ of certiorari if can be issued against Rent Controller. See Houses and Rents—West Bengal Premises Rent Control (Temporary Provisions) Act (38 of 1948), S. 7. **A I R 1952 Cal 56.**

——Art. 226 — West Bengal Premises Rent Control (Temporary Provisions) Act (1948), S. 32 (4)—Powers of Appellate Authority—'Decide the appeal,' meaning of—Order in excess of jurisdiction—Writ of certiorari or prohibition — (Special Tribunal). See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (38 of 1948), S. 32 (4). **('51) 87 Cal L Jour 180.**

● **——Arts. 226 and 227 — Order of Rent Controller under special enactment.**

Per Majority (Qamar Hasan J., Contra): When the Rent Controller enquires into the case before him under the special enactment he is exercising the powers as a persona designata and as such his decision is subject only to the certiorari and not revi-

sional jurisdiction of the High Court. Case-law reviewed.

Per Qamar Hasan, J.—The Rent Controller is subject to the extraordinary jurisdiction of the High Court under S. 17 of the Hyderabad High Court Act.

Per Full Bench —After the 26th of January 1950, though not in revision but in the exercise of its powers of superintendence, the High Court can always set right the order passed by a Court of a Tribunal or any authority. The powers under the revisional jurisdiction, though to a certain extent limited in their scope, are wider than the powers under certiorari. Kishorilal v. Raja Rameshwardas, I L R (1952) Hyd 854 : A I R 1953 Hyd 67 (68, 71, 73) (Prs 2, 6, 18) (FB).

——Art. 226—Order for eviction passed under Cl. 9 of Travancore Cochin Building (Lease and Rent Control) Order (1950) — Can be executed under S. 14 — Even if the order is wrong the discretionary jurisdiction conferred by Arts. 226 and 227 cannot be exercised so as to correct an error of such kind by substituting an order which is manifestly just with an order which would be manifestly unjust. See Houses and Rents—Kerala Building (Lease and Rent Control) Act (16 of 1959), S. 14. I L R (1963) 1 Ker 402.

——Art. 226—Appeal against order passed without jurisdiction—Duty of District Judge. See Houses and Rents — M. B. Sthan Niyantran Vidhan (15 of 1950), S. 9. AIR 1954 Madh Bha 191 (DB).

——Art. 226—Interference—Grounds—Landlord and tenant—Finding about sub-letting—Absence of direct evidence—Interference. See Houses and Rents - C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3) (iii). 1958 M P L J (Notes) 126.

——Art. 226—Interference — Grounds—Rent Control Act—Order under — Hardship to tenant — If ground for interference. See Houses and Rents — C. P. and Berar Regulation of Letting of Accommodation Act (11 of 1946). 1958 M P L J (Notes) 35.

——Art. 226—Improper exercise of power of requisition under S. 3(3), Madras Buildings (Lease and Rent Control) Act (25 of 1949) — Writ of certiorari. See Houses and Rents—Madras Building (Lease and Rent Control) Act (25 of 1949), S. 3(3). (1955) 1 Mad L J 454 : 68 Mad L W 224 : A I R 1955 N U C (Mad) 3217.

——Art. 226—Appellate authority reducing rent arbitrarily and in disregard of provisions of law—Manifest injustice — Order can be quashed by writ of certiorari. See Houses and Rents — C. P and Berar Letting of Houses and Rent Control Order (1949), Cl. 4. AIR 1953 Nag 284 (DB).

——Art. 226—Certiorari — (Civil P. C. (1908), S. 9—Special Tribunal) - (Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cls. 13 and 21 (3)).

Order in remand, while holding applicant's claim for relief under Item (a) of Cl. 13(3)(vi) of C. P. and Berar Letting of Houses and Rent Control Order was barred by Sub-Cl. (9 of that clause, directing A. D. C. to investigate his claim for relief under Item (c) of Sub-Cl. (3) (vi)—A. D. C. exceeds in jurisdiction in holding that claim under latter clause also was barred for the same reason as for relief under former clause and not investigating the genuineness of that claim as directed by High Court—Hence his order will be quashed on that ground even if it is conceded that powers of High Court to issue writs are restricted by the provision in the Order which makes A. D. C.'s orders final. 1953 Nag L J 279 : I L R (1953) Nag 226 : A I R 1953 Nag 148 (150) (Pt C) (Pr 8) (DB).

——Art. 226—Certiorari—C. P. and Berar Letting of Houses and Rent Control Order (1947), Cl. 4—Retrospective fixation — (Civil P. C. (1908), S. 9 — Special Tribunal). See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 4. AIR 1953 Nag 146.

——Art. 226—Certiorari — Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 5 — Tax enhanced before date of petition cannot be taken into account — Order which does so is unsustainable — (Civil P. C (1908), S. 9 — Special Tribunal). See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 5. AIR 1953 Nag 146.

——Art. 226—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3) (vi)—Landlord's needs — Order by Rent Controller — Certiorari. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3)(vi). A I R 1953 Nag 144.

——Art. 226—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cls. 13, 23 and 25—Allotment of house to Government servant — Subsequent retirement from service Effect — Termination of tenancy—Law applicable—Notice by Rent Controller to vacate house on retirement — Validity — T. P. Act (1882), S. 106. See Houses and Rents — C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13. AIR 1953 Nag 31.

——Art. 226—C. P. and Berar Letting of Houses and Rent Control Order, Cls. 13 and 21—Writ — Certiorari—Essentials.

The writ of certiorari lies if two conditions are fulfilled, The decision of the authority must be judicial or quasi-judicial and the challenge must be in respect of excess or want of jurisdiction of the deciding authority. AIR 1950 S C 222 (227), Foll.

There can be no doubt that the question whether the landlord is entitled to a permission under Cl. 13, C, P. and Berar Letting of Houses and Rent Control Order is at any rate a quasi-judicial determination. If therefore the order in appeal is without jurisdiction the case is fit for issue of the writ. 1951 Nag L J (Notes) 102 (DB).

——Art. 226— C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3) (vi) (a) — Landlord's application for possession on ground of bona fide requirement —Order refusing application—Order if can be quashed by way of writ of certiorari. See Houses and Rents—C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3) (vi) (a). AIR 1952 Nag 4.

——Art. 226— Certiorari — Allotment of house to Government servant — Subsequent retirement from service — No automatic termination of tenancy — Notice by Rent Controller to vacate house or retirement quashed. See Houses and Rents—C. P and Berar Letting of Houses and Rent Control Order (1949), Cl. 13. 1952 Nag L J 400 (DB).

——Art. 226—C. P. and Berar House Rent Control Order, Cl. 13 (vi)—Certiorari or mandamus.

Landlord applying for eviction—Tenant contesting maintainability—Rent Controller holding application competent—Landlord appealing—A. D C. dismissing appeal as not maintainable— Certiorari and not mandamus is appropriate writ. 1951 Nag L J (Notes) 107 (DB).

●——Art. 226—Order against dead person — Order for possession. See Houses and Rents — C. P. and Berar House Rent Coutrol Order, Cl. 23 (1). 1951 Nag L J (Notes) 103 (FB).

——Art. 226 — Orissa House Rent Control Act (31 of 1958), S. 7 (1) Cl. 4, Proviso — Order passed under,

technically illegal—No substantial injury caused thereby to writ-petitioner—Held, discretionary power under Art. 226 should not be exercised to interfere with order. AIR 1952 S C 192, Rel. on. **I L R (1965) Cut 574.**

—Art. 226 - Applicability — Magistrate directing payment of arrears of rent to landlords within specified time—In case of default, tenant liable to eviction—Amount deposited in Court — Direction complied with — Writ application is maintainable — Houses and Rents — Orissa House Rent Control Act (13 of 1958), S. 7.

Where in a writ petition against an appellate order of the District Judge whereby the tenant was allowed to continue occupation of the premises on payment of arrears of rent within a specified time to the landlords, it was contended that the writ petition was not maintainable because the amount was not paid to the landlords but was deposited in Court with a prayer to the Court that the amount should not be handed over to them :

Held, that depositing the entire amount in Court to the credit of the landlords was full compliance with the order of the Magistrate in terms and the order of eviction did not operate on the performance of the conditions imposed, so that their contention that the writ application was not maintainable as the tenant did not comply with the direction was devoid of force. (1964) 6 O J D 152 : 30 Cut L T 497.

—Art. 226 — Error apparent on face of record — Rent control case for eviction of tenant on ground of landlord's bona fide requirements — No findings as to fair rent - Direction that rent should be paid from certain date at rate higher than that claimed by landlord is error apparent on face of record—Houses and Rents—Orissa House Rent Control Act (13 of 1958), S. 7. (1964) 6 O J D 152 : 30 Cut L T 497.

—Art. 226—Houses and Rents— Orissa House Rent Control Act (11 of 1951), S. 7—Act not in force during period in dispute—Rent Controller fixing fair rent at varying rates—Fixation not under any statutory provision but as persona designata - Discretion of Rent Controller cannot be interfered with under Art. 226 of Constitution. See Houses and Rents — Orissa House Rent Control Act (11 of 1951), S. 7. (1961) 3 Orissa J D 169.

—Art. 226 — Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (1947), S. 11 (2) (a) (as amended by Bihar Act 16 of 1955) — Allotment order without satisfying conditions mentioned in S. 11 (2) (a) about notice — Order is ultra vires and can be quashed. See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947) (as amended by Bihar Act 16 of 1955), S. 11 (2) (a). **AIR 1961 Pat 254.**

—Art. 226 — Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (1947), S. 11 —Wrong decision of Rent Controller on misconstruction of S. 11 — Order cannot be interfered with under Arts. 226 and 227. See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11. **AIR 1955 Pat 142.**

—Art. 226 — Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (1947), S. 11 (1) (a) — Non-payment of rent — Irregular payment amounts to — No error of law - No interference with decision of Rent Controller under Art. 226, Constitution of India. See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), S. 11 (1) (a). **AIR 1955 Pat 142.**

—Art. 226 — Determination of standard rent — Improvements and alteration in premises — Interference under Art. 226 - See Houses and Rents — Jaipur Rent Control Order (1947), S. 6 (2). **AIR 1955 NUC (Raj) 4655.**

—Art. 226 — Patent error of law — Houses and Rents - Jaipur Rent Control Order (1947), S. 6 (2) and Second Sch., S. 1 (b) (i).

The express meaning of S. 1 (b) (i) of the second schedule of the Jaipur Rent Control Order is that in case the premises were on hire on the 1st day of September, 1939 then the standard rent is to be fixed on the rent payable on the 1st day of September, 1939. Where the Collector in appeal held that as the shop was not given on rent on the first day of September 1939, but was previously let out, second schedule of the Jaipur Rent Control Order did not apply to this case and the standard rent was, therefore, determined under the provisions of S. 6 (2) of the Order, the Collector in deciding the appeal has committed a patent error in interpreting S. 1 (b) (i) of the second schedule of the Order and he has exercised his jurisdiction erroneously under S. 6 (2) of the Order which it was not open for him so to do, if he had not misconstrued the plain meaning of the provisions of the second schedule of the Order. Under these circumstances, it is the duty of the High Court to correct the error committed by an inferior Court and to direct it to exercise its jurisdiction according to law. The decision of the Collector acting as an appellate authority in a case under the Jaipur Rent Control Order is in exercise of his judicial or quasi-judicial functions and consequently his decision is amenable to the jurisdiction of the High Court in issuing a writ of certiorari under Art. 226 of the Constitution of India. A I R 1951 Bom 303, Rel. on. 1952 Raj L W 29 : I L R (1951) 1 Raj 639 : AIR 1952 Raj 107 (108, 109) (Prs 1, 3, 5) (DB).

—Art 226 — Application by owner for writ of certiorari against Rent Control authorities to quash order of allotment of building to R — Allotment order found void and quashed — But it is beyond scope of the application for a writ to direct R to surrender possession to petitioner with mesne profits. **AIR 1955 N U C (Sau) 4113.**

—Art. 226 — Order of Rent Controller under Travancore-Cochin Buildings (Lease and Rent Control) Order, 1950 erroneous but not without jurisdiction —High Court will not interfere — The question as to whether business which is in fact conducted by the husband of the landlord can be said to be a business that the landlord is carrying on, within the meaning of clause (3) to S. 9 is a matter which can, and has to be decided by the authorities under the Act and the parties are bound by the final order passed in the proceedings however erroneous it may be—Tribunal having authority has jurisdiction to decide rightly or wrongly—(Houses and Rents—Travancore-Cochin Buildings (Lease and Rent Control) Order (1950), S. 9 (3). **ILR (1951) T C 624 : 1951 Ker L T 638 : AIR 1952 Trav-Co 125 (126) (Pt A) (Pr 8).**

—Art. 226 — Certiorari — Application for eviction of tenant under Rent Control Act — Jurisdiction of Rent Controller on denial of landlord's title. See Houses and Rents — Travancore-Cochin Buildings (Lease and Rent Control) Order (1950), S. 9 (1), Proviso 2. **AIR 1954 Trav. Co 291 (DB).**

—Art. 226 - Certiorari, writ of—Erroneous decision —No interference.

Certiorari will not lie when the authority entrusted with the decision of a question acts within jurisdiction and the only criticism is that this decision is erroneous. AIR 1952 T C 1, AIR 1952 T C 125, AIR 1950 S C 222 and AIR 1951 S C 115, Foll.

The Travancore Buildings Rent Control Order (1122) creates a self-sufficient and complete machinery for the decision and disposal of matters specified

therein and if the authorities functioning thereunder decide matters within their jurisdiction, it is beyond the competence of the High Court to interfere with such exercise even though their decision may appear to be erroneous. 1952 Ker L T 355 : AIR 1953 T C 70 (74) (Pt D) (Pr 10).

170. Requisitioning order.

——Art. 226 — Application asking for not only writ of certiorari but any suitable orders — Application is maintainable even against administrative order — U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 3.

When the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. A perusal of the provisions of the U. P. (Temporary) Accommodation Requisition Act, 1947, will show that it does not require the District Magistrate to make a judicial approach when he has to requisition an accommodation under S. 3. He is under no obligation to call for objections, to take evidence and to give a hearing. It is doubtful whether the order passed by the District Magistrate in such a case is quasi-judicial in its nature. In such a case a writ of certiorari is not permissible. Nevertheless, Art. 226 is now so wide that if any authority acts against law then an application under that article is maintainable against the authority for the issue of proper directions to act according to law. Where in an application under Art. 226 in the prayer the applicant has asked for suitable orders to be passed as may be thought fit and proper and not for a writ of certiorari only, the application against such an order is maintainable. 1952 R D (HC) 161 : 1952 All W R (HC) 241 : 1952 All L J 163 : ILR (1953) 1 All 216 : AIR 1952 All 836 (838) (Pt A) (Fr 3) (DB).

——Art. 226—Order under S. 3, Assam Land (Requisition and Acquisition) Act, 1948, is administrative order — Finding on question of 'public purpose' — Interference under Arts. 226 and 227. See Assam Land (Requisition and Acquisition) Act (25 of 1948), S. 3 (as amended by Order dated 24-4-52). AIR 1952 Assam 143 (DB).

——Art. 226 — Order under S. 3, Assam Land (Requisition and Acquisition) Act — Nature of proceedings—Proceedings are not judicial or quasi-judicial —They can be challenged only on ground of excess of jurisdiction or mala fides. See Assam Land (Requisition and Acquisition) Act (5 of 1948), S. 3. AIR 1953 Assam 177 (DB)

——Art. 226 — Assam Land Requisition and Acquisition Act (1948), S. 3 (1)—Owner residing in building continuously for period of one year preceding date of order — Order requisitioning it. See Assam Land (Requisition and Acquisition) Act (25 of 1948), Sec. 3 (1). AIR 1953 Assam 177 (DB).

——Art. 226—Assam Land (Requisition and Acquisition) Act (1948), S. 3 — Order under — Nature of proceedings. See Assam Land (Requisition and Acquisition) Act (25 of 1948), S. 3. AIR 1953 Assam 177.

——Art. 226 — Certiorari or prohibition — Issue of writ — Orders under S. 3 (1) and (3) of Assam Land (Requisition and Acquisition) Act.

Before a writ of certiorari or prohibition could issue, it is necessary that there should be a tribunal or an officer having authority to determine questions affecting rights of subjects and having a duty to act judicially. No such writ can issue against an order of the officer of the Provincial Government authorised to act under S. 3 (1) of Assam Land (Requisition and Acquisition) Act, 1948, or of the Provincial Government on appeal under S. 3 (3) of the Act, as such orders are administrative in character. There is no difference in the nature of their function or duties. Even as an appellate authority, the Provincial Government is under no obligation to act judicially. It is authorised to come to its decision by the exercise of its subjective discretion. ILR (1952) 4 Assam 426 : AIR 1952 Assam 115 (117, 118) (Prs 8, 9, 13, 14) (DB).

——Art. 226 — Powers of High Court—Land Requisition—Declaration of vacancy—How far conclusive —High Court exercising powers under Art. 226, if can go behind declaration. See Bombay Land Requisition Act (33 of 1948), S. 6 (4) (a). ILR (1959) Bom 390.

——Art. 226—Administrative order—Bombay Land Requisition Act, S. 5 (1) — Order of requisition — Nature of — If subject to writ. See Bombay Land Requisition Act, S. 5 (1). AIR 1951 Bom 131 (DB).

——Art. 226 — Certiorari — Act of requisition is not quasi-judicial act—Writs of certiorari or prohibition cannot lie. See Houses and Rents — Bombay Land Requisition Act (33 of 1948), S. 5 (1). AIR 1950 Bom 158.

——Art. 226—Certiorari—Vacant premises of which landlord gives intimation to Government—Requisition of such premises is quasi-judicial act — Declaration of Government is conclusive evidence—Writ of certiorari can be issued. See Houses and Rents—Bombay Land Requisition Act (33 of 1948), S. 6 (4), First Proviso. AIR 1950 Bom 144.

——Art. 226—Requisitioning of premises for Government servant—No choice of accommodation—Public purpose—Necessity of—Doctrine of Eminent Domain. See Houses and Rents—West Bengal Premises Requisition and Control (Temporary Provisions) Act (5 of 1947), S. 3 (1). ('61) 65 Cal W N 794.

——Art. 226—Order of requisition to rehabilitate refugee under W. B. Security Ordinance 2 of 1949—If facts are established, Court can be asked to issue mandamus — Writ of certiorari is not appropriate remedy. 55 Cal W N 297 : ILR (1952) 1 Cal 168 : AIR 1951 Cal 346 (347) (Pt C) (Pr 2) (DB).

——Art. 226—Power to issue writ—Order of Government requisitioning property.

Under Art. 226 of the Constitution, writs of certiorari and prohibition cannot issue unless the impugned order is a judicial or a quasi-judicial one, and an order of Government requisitioning property does not fall in either category. 1951 N L J 346 : ILR (1951) Nag 791 : AIR 1951 Nag 33 (35) (Pt A) (Pr 8) (DB).

——Arts. 226 and 227 — Certiorari — Requisition of premises under S. 3, Requisition and Acquisition of Immovable Property Act—Whether premises were required bona fide for their personal use by owners is a question purely of fact—Even an erroneous finding on the question cannot entitle High Court to interfere with the order of requisition when the Collector and Chief Commissioner have acted within the bounds of their jurisdiction and without doing any violence to principles of natural justice. AIR 1952 S C 192 and AIR 1954 S C 440 and AIR 1958 S C 398, Rel. on. 64 Punj L R 379 : AIR 1962 Punj 387 (389) (Pt D) (Pr 8).

——Art 226—'To show cause', meaning of — Objection to requisition dismissed without giving hearing —Effect. See Requisitioning and Acquisition of Immovable Property Act (30 of 1952), S. 3 (1) (a). AIR 1954 Punj 251 (DB).

——Art. 226—Power of High Court—Decision of requisitioning authority as to public purpose—Interference — E. P. Requisitioning of Immovable Property (Temporary Powers) Act, 1948.

The decision of the requisitioning authority under the E. P. Requisitioning of Immovable Property (Temporary Powers) Act, 1948, that the property was required for a public purpose, is not subject to review by the High Court and it cannot interfere. AIR 1952 Punj 55 and AIR 1950 SC 222, Foll. **54 Punj LR 366: AIR 1953 Punj 193 (194) (Pt A) (Pr 5) (DB).**

171. Revenue and tenancy authorities.

——Art. 226 — Certiorari — Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951)— Rules under, Rule 5 — Exercise of powers under, by Revenue Board—Decision of Board can be scrutinised under Art. 226. See Tenancy Laws—U. P. Zamindari Abolition and Land Reforms Act (1 of 1951)—Rules under, Rule 5. **AIR 1955 N U C (All) 2277.**

——Art. 226—Administrative orders—Enquiry under or quasi-judicial enquiry. See Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 20, Proviso. AIR 1958 Andh Pra 522 (DB).

——Art. 226 — Order made by Revenue Authority under Standing Order—Order is quasi-judicial. See Grant—Madras Revenue Board's Standing Order No. 15, Paragraph 15. **AIR 1957 Andhra Pra 447.**

——Art. 226 — Dispute prior to West Bengal Bargadars Act—Jurisdiction of Conciliation Board—Power of High Court under Art. 226—See Tenancy Laws—West Bargadars Act (2 of 1950), S. 7. **AIR 1955 N U C (Cal) 194.**

——Art. 226 — Proceeding under S. 84-D of Bombay Tenancy and Agricultural Lands Act—Nature of—It is neither judicial nor quasi-judicial. See Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 84-D (inserted by Bombay Act 38 of 1957). **AIR 1963 Guj 107 (DB).**

——Art. 226 — Administrative order — Lumberdar stopped from collecting land revenue by Revenue Minister and same asked to be collected by patwari—Order is not by way of punishment but an administrative order. See J. & K. Land Revenue Act (12 of 1996), S. 20. **AIR 1965 J & K 102.**

——Art. 226—Administrative order — Natural justice —Order of Revenue Minister refusing permission to alienation—Not in quasi judicial capacity—Certiorari —Principles of natural justice not applicable. See J. & K. Alienation of Land (Temporary Restriction) Act (21 of 1959), S. 3 (2). **AIR 1961 J & K 47 (DB).**

——Art. 226—Administrative order — Writ of certiorari.

Where the land under dispute is waste land in a town as defined in R. 64 (f) in S. 4, Ch. 1 in Part II of Assam Land Revenue Manual (applied to Manipur), the appropriate rule governing the matter will be R. 67 in that section. The judicial element required to make the decision judicial or quasi-judicial is wanting and orders passed under R. 67 are purely executive or administrative. Such orders, therefore, are not amenable to a writ of certiorari. AIR 1950 S C 222; AIR 1951 Bom 131 and AIR 1952 S C 192, Rel. on. **AIR 1957 Manipur 4 (5, 6) (Pt A) (Prs 6, 9).**

——Art. 226 — Order setting aside sale under S. 211, Bombay Land Revenue Code—Whether judicial or administrative order. See Bombay Land Revenue Code (5 of 1879), S. 211. **ILR (1958) Mys 620.**

——Art. 226—Administrative orders—Orders of Subordinate Revenue Officers in their administrative capacity—They are subject to interference by higher revenue officers in appeal, revision or power of superintendence. **ILR (1964) Cut 89 : AIR 1964 Orissa 176 (180) (Pt B) (Pr 17) (DB).**

——Art. 226 — Order under S. 17, Punjab Tenancy Act is not an administrative order but is quasi-judicial —Order by Tahsildar without notice to landlord for division of produce—Order is within the jurisdiction of Revenue Officer—Cannot be quashed by certiorari. See Tenancy Laws—Punjab Tenancy Act (16 of 1889), S. 17. **AIR 1952 Pepsu 102.**

——Art. 226—Revenue Board not exercising jurisdiction under S. 7 of Rajasthan Protection of Tenants Ordinance — High Court can issue writ of certiorari — (Houses and Rents — Rajasthan Protection of Tenants Ordinance (1948), S. 7).

Decision of the Revenue Board under the Rajasthan Protection of Tenants Ordinance, 1948 is a judicial or quasi-judicial act. Where the Revenue Board and the Sub-Divisional Officer refused to exercise their jurisdiction under S. 7 of the Ordinance, application to the High Court for issue of a writ of certiorari, directing the authorities to exercise their jurisdiction according to law is maintainable. AIR 1951 Bom 303, Relied on. **1951 Raj L W 963 : ILR (1951) 1 Raj 505 (DB).**

——Art. 226 — Certiorari or prohibition, writ of— Order of Chief Commissioner under S. 305, Rewa Land Revenue and Tenancy Code, 1935, restoring possession of State bandh to pattadar tenant.

Where the Chief Commissioner after the passing of the new Constitution, orders restoration of possession to a pattadar tenant who was dispossessed not by a Government order but by a note of the Revenue Minister prior to the Constitution and which note on the merits was highly inequitable and altogether in contravention of the mandatory provisions of S. 47, Rewa Land Revenue and Tenancy Code, 1935, the order of the Chief Commissioner is valid under S. 305 of the Code and also equitable. A writ of certiorari or of prohibition cannot issue against the authorities ordering restoration in such a case.

Further the order of the Commissioner re-instating the tenant, is purely an executive act and not even quasi-judicial one and therefore cannot be revised by the writ.

The fact that the matter in dispute between the parties has already been taken up by the ordinary Court at the choice of the applicant himself is another reason for refusing to issue the writ. **AIR 1951 Vind Pra 5 (7, 8) (Prs 8, 9, 10, 11).**

172. Revision, power wider than.

See Note 183.

173. Sales tax law, orders under.

——Art. 226 — M. P. General Sales Tax Act, 1958 (II of 1959), S. 33 (4) — Sales Tax proceedings are quasi-judicial — Rules of natural justice are to be observed.

The taxing authorities performing the duties under the M. P. Sales Tax Act exercise quasi-judicial functions and as such they must observe the rules of natural justice. Therefore, where an amount due as arrears of tax is sought to be recovered from the petitioner on the assumptions that he was a member of the Hindu undivided family owning the concern, that the money charged for payment of the arrears really belonged to that family and that when the petitioner separated he had undertaken to pay the arrears of tax but the same were contested, the petitioner had to be given an opportunity to substantiate his case that he was not liable for the tax That being so the procedure was contrary to law. **1965 M P L J 798 : (1965) 16 S T C 869 : 1965 Jab L J 923.**

——Art. 226 —Orissa Sales Tax Act (1947), Ss. 20, 22 and 2 (c)—Collector deciding particular person to be a "dealer" within meaning of S. 2 (c) and levying assessment—Neither Certificate Officer nor High Court in petition under Art. 226 against orders of certificate

officer has power to go into that question—(Bihar and Orissa Public Demands Recovery Act (4 of 1914), Ss. 10, 60, 62). See Sales Tax — Orissa Sales Tax Act (14 of 1947), S. 20. AIR 1952 Orissa 231 (DB).

——Art. 226—Judicial or quasi-judicial order—Bihar Sales Tax Act, 1947, S. 21 — Power of Commissioner under S. 21 is of a judicial or quasi-judicial character and determinition of question in exercise of that power is liable to be revised by Board of Revenue. See Sales Tax—Bihar Sales Tax Act (19 of 1947), S. 21. ILR 36 Pat 103.

174. Sea Customs Act, orders under.

■ ——Art. 226 — Quasi-judicial tribunal — Customs authority functioning under S. 167 (8), Sea Customs Act, 1878.

An order of a customs authority imposing confiscation and penalties under S. 167 (8) of the Sea Customs Act is quasi-judicial. The customs authority has the duty to act judicially in deciding the question of confiscation and penalty. A I R 1958 S C 119, Rel. on. Pioneer Traders v. Chief Controller of Imports and Exports, Pondicherry, (1963) 2 S C A 243 : (1964) 1 S C J 595 : (1963) Supp 1 S C R 349 : AIR 1963 S C 734 (740, 741) (Pt C) (Pr 14).

■ ——Art. 226—Quasi-judicial act—Order of confiscation or penalty under Sea Customs Act—Nature of —Application for writ of certiorari whether lies—Sea Customs Act (1878), S. 167 (8).

An order of confiscation or penalty under the Sea Customs Act is not a mere administrative or executive act but is really a quasi-judicial act and therefore, an application for a writ of certiorari lies in respect of such order. AIR 1957 S C 648 and AIR 1958 S C 119, Foll. Sewpujanrai Indrasanrai, Ltd. v. Collector of Customs, 1958 Cr L J 1355 : (1958) S C J 1199 : (1958) M L J (Cr) 929 : 1959 S C R 821 : A I R 1958 S C 845 (849, 850) (Pt A) (Pr 9).

——Art. 226 — Certiorari — Quasi judicial orders — Order confiscating goods and imposing penalty under Sea Customs Act, is quasi judicial — Certiorari can be issued. AIR 1957 S C 648 and AIR 1958 S C 119 and A.I R 1958 S C 845, Foll. 1960 Cr L J 1307 : I L R (1960) 12 Assam 271 : A I R 1960 Assam 150 (152, 153) (Pt A) (Pr 6) (DB).

——Art. 226 — Administrative orders — Order of assessment under S. 87, Sea Customs Act is administrative and not quasi-judicial. See Sea Customs Act (1878), S. 87. AIR 1959 Bom 372 (DB).

——Art. 226 — Sea Customs Act (1878), S. 182 and S. 167 (37)—Confiscation of goods — Order made by Customs Officer under S. 167 (37)—It is quasi-judicial —Order in excess of jurisdiction—Writ of certiorari will lie.

An order of confiscation under S. 167 (37) of goods imported made by the Customs Officer after adjudication under S. 182 of the Sea Customs Act, 1878, is quasi-judicial in character, hence a writ of certiorari will lie under Art. 226 of the Constitution if there is an excess of jurisdiction. AIR 1961 Cal 636, Rel. on. A I R 1959 Bom 372 and A I R 1961 Andh Pra 170, Disting. 1963 (1) Cri L J 749 : A I R 1963 Cal 331 (332, 333) (Pt A) (Pr 8).

——Art. 226 — Quasi-judicial order — Order under Sea Customs Act — Customs Authorities revising assessment or imposing penalty—Interference.

The Customs Authorities in making assessment were primarily an administrative body but in so far as they sought to revise the assessment or impose penalty for an alleged misdeclaration, after giving the petitioner an opportunity of being heard they performed their functions as a quasi-judicial body and as such are subject to the High Court's supervisory jurisdiction. Where there are disputed questions of fact, which the High Court cannot conveniently determine the Court will refuse to interfere. But, if there is an attempt to assess the duty under a wrong heading, in an arbitrary manner, and if this is clear upon the admitted facts the Court has ample jurisdiction to interfere : A I R 1958 S C 86, Rel. on. AIR 1958 Cal 694 (696) (Pt B) (Pr 5).

——Art. 226—Order imposing fine under S. 167, Sea Customs Act subsequently converted into order imposing personal penalty without hearing party — Case not fit for interference — (Sea Customs Act (1878), S. 167).

When an order made against certain parties is in any way altered, it is but just and fair that it should be altered in their presence, although they may have no conceivable case to make out against the alteration.

Hence, where the Collector of Customs after giving opportunity to the party for showing cause against liability imposes fine under S. 167, Sea Customs Act, but subsequently converts the order into one imposing personal penalty without giving the party an opportunity of showing cause against the alteration, the order is to be deprecated. The irregularity does not, however, make the case fit for interference under Art. 226 of the Constitution of India as the alteration is not one of substance, the party made liable and quantum of penalty not being altered. AIR 1955 Cal 241 (243, 244) (Pt A) (Pr 7) (DB).

——Art. 226—Sea Customs Act (1878), S. 182—Special tribunal—Procedure — Customs authorities imposing duty acting in high handed and arbitrary manner—Power of civil Court to issue writ of certiorari against customs authorities—S. 198 if operates as bar to such proceedings—Civil P. C. (1908), S. 9, See Sea Customs Act (1878), S. 182. AIR 1950 Cal 103.

——Art. 226—Quasi-judicial authority—Wrong exercise of judicial discretion by—Collector of Customs directing confiscation of goods under S. 167 (8) of the Sea Customs Act (1878), by wrong exercise of discretion — Order held should be quashed — Sea Customs Act (1878), S. 167 (8).

The High Court under Art. 226 has the power to quash the order of the Collector of Customs made on a demonstrably absurd basis that a particular article fell within a particular class. The Collector of Customs when acting under S. 167 of the Sea Customs Act is acting in a quasi-judicial capacity. When discretion is vested in such a quasi judicial tribunal, such discretion must be exercised judicially and not arbitrarily. Under the third column of item 8 of S. 167 the customs authorities have got the discretion either to confiscate or not in a particular case. The Collector must decide in each particular case if there were circumstances which would call for the drastic punishment of confiscation.

Held, on the facts of the case that the Collector as a quasi-judicial tribunal had not exercised his discretion judicially, and hence the order of the Collector should be quashed. A I R 1957 S C 733, Dist. 74 Mad L W 672 : 1961 Mad L J (Cr) 675 : (1961) 2 Mad L J 443 : A I R 1962 Mad 164 (167, 168, 169) (Prs 6, 7, 8, 10) (DB).

——Art. 226 — Quasi-judicial order — Order under S. 167 (8) of the Sea Customs Act—Sea Customs Act (1878), S. 167 (8).

The restrictions imposed by the Sea Customs Act and the Foreign Exchange Regulation Act on the import of gold do not themselves constitute revenue or penal laws, despite the use of the words 'offence" and "punishment" in S. 167 (8) of the Sea Customs Act

among others and they are civil proceedings. The decision arrived at by the appropriate Customs Officer in such proceedings to impose the penalties prescribed for instance, by S. 167 (8) of the Sea Customs Act is quasi-judicial in its scope. Such an order is liable to correction by the issue of a writ of certiorari. **I L R (1959) Mad 222 : 72 Mad L W 104 : (1959) 2 M L J 35: AIR 1959 Mad 142 (151) (Pt D) (Prs 43, 44) (DB).**

——Art. 226 — Order under S. 167 (8) of the Sea Customs Act (1878).

The restrictions imposed by the Sea Customs Act and the Foreign Exchange Regulation Act on the import of gold do not themselves constitute revenue or penal laws, despite the use of the words "offence" and "punishment" in S. 167 (8) of the Sea Customs Act among others. Penalties including confiscation imposed under S. 167 (8) of the Sea Customs Act do not constitute them criminal proceedings. They are civil proceedings. The decision arrived at by the appropriate Customs Officer in such proceedings to impose the penalties prescribed, for instance, by S. 167 (8) of the Sea Customs Act, is quasi-judicial in its scope. Such an order is liable to correction by the issue of a writ of certiorari. **72 Mad L W 104 : (1959) 2 Mad L J 35 : I L R (1959) Mad 222 : AIR 1959 Mad 142 (151) (Pt D) (Prs 43, 44) (D B).**

[Overruled on another point in (1961) 2 M L J 382 (F B) & Reversed on another point in AIR 1962 S C 316.]

——Art. 226—Quasi-judicial order—Order of confiscation or penalty under Sea Customs Act — (Sea Customs Act (1878), Ss. 167 (8), 182 and 183)

The Collector of Customs under the Sea Customs Act is under a duty to act judicially in ordering confiscation or imposing a penalty. The use of the word "adjudge" in Ss. 182 and 183 involves the idea of judicial approach. Hence, an order of confiscation or penalty under the Act is amenable to the jurisdiction of the High Court. AIR 1952 Cal 656, Rel. on. **70 Mad LW 328 : 1957 Mad W N 256 : (1957) Mad L J (Cr) 283 : (1957) 2 Mad L J 41 : I L R (1957) Mad 642 : AIR 1957 Mad 496 (500, 501) (Pt A) (Pr 9) (D B).**

——Art. 226 — Collector of Central Excise is not Court—Discharges quasi-judicial function—Principles of natural justice apply — Order under S. 167 (8)—Interference by High Court. See Sea Customs Act (1878), S. 167 (8). **1963 (2) Cr L J 467 (Mys).**

—Art. 226 — Personal penalty under Sea Customs Act—Finding, either express or implied that the person was concerned in the offence of importation or exportation of goods, prohibited or restricted by the Act, necessary before levying penalty. See Sea Customs Act (1878), S. 167. **1964 (1) Cri L J 545 : AIR 1964 Punj 222.**

——Art. 226 — Decision of Customs authorities based on wrong interpretation of item on Import Trade Control Policy is open to review by High Court—Tariff Act (1939), Sch. I, Item 80 (3). AIR 1961 S C 1506, Rel. on. **('64) 66 Pun L R 1029.**

——Art. 226 — Certiorari — Proceedings under Sea Customs Act—Nature of—Principle of natural justice has to be observed — Assessing authorities bound to give reasons for their conclusions — Orders not mentioning such reasons—Liable to be quashed by a writ of certiorari. See Sea Customs Act (1878), S. 30. **AIR 1962 Punj 360.**

—Art. 226 — Natural justice — Proceedings under S. 182, Sea Customs Act—Duty to give opportunity to be heard. See Sea Customs Act (1878), S. 182. **AIR 1958 Punj 35.**

175. Stage at which can issue.

See also Notes 88 and 93.

—Art. 226 — Certiorari — Order cancelling Motor Vehicle permit – Petition for quashing order filed before expiry of period of permit — Petition does not become infructuous because of expiry of permit during its pendency — Subsistence of order would act to the prejudice of petitioner and affect him adversely as under Motor Vehicles Act it can bar him from getting his permit renewed — Motor Vehicles Act (1939), Ss. 58 and 60. **1962 All L J 116.**

——Art. 226 — Order by Rent Control Officer that premises are vacant — Proceedings for allotment not terminated—If bars application for writ — (Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7 (2)).

Where the Rent Control Officer has held that premises are vacant, but has not passed an order of allotment, this finding irrevocably affects the right of the landlord in respect of a property of which he is the owner. The passing of this order constitutes an imminent threat to the fundamental right of citizen to hold and dispose of his property. The fact that the proceedings for allotment have not yet terminated is not an absolute bar against the maintainability of a petition under Art. 226. **AIR 1959 All 440 (444) (Pt A) (Pr 11).**

——Art. 226 — Certiorari — Proceedings relating to disciplinary matters—Relief at intermediate stage.

In disciplinary proceedings it is normally not desirable that the Courts should interfere before the proceedings have terminated. If interference were made by Courts at intermediary stages it would result in unnecessary delay. **I L R (1956) 1 All 622 : 1955 All L J 375 : AIR 1955 All 512 (515) (Pt C) (Pr 15) (DB).**

——Art. 226 —Wrong order— Interference—Civil P.C. (1908), O. 6, R. 17—"At any stage" — Means, even at stage of suit or earlier—Applies to election petition—Tribunal may pass wrong order—Order is not open to scrutiny by certiorari under Art. 226. See Civil P. C. (1908), O. 6, R. 17. **AIR 1955 N U C (All) 1750.**

——Art. 226 — Applicability — Decision of quasi-judicial tribunal—Power of High Court—When can be invoked—Tenancy Laws—Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 52).

When the Legislature, by S. 52 of the Bombay Act (67 of 1948), has conferred the power of investigation into the existence, the history and the merits of the debts upon the Manager, the High Court cannot take upon themselves the duty to hold that investigation. The proceedings must be continued before the Manager and the Collector, and the jurisdiction of the High Court can only be invoked for rectifying mistakes or errors committed by those Officers after the claim has been investigated by those officers in the manner provided by law. **59 Bom L R 339 : I L R (1957) Bom 656 : AIR 1957 Bom 155 (160) (Pt F) (Pr 13) (DB).**

——Art. 226—Writ of certiorari, if lies after judgment, for quashing conviction.

Per Chakravarti J.—Where an indictment has been tried and judgment pronounced, certiorari to quash will not be granted. But there is distinction between quashing an indictment and quashing the whole proceedings for want of jurisdiction and in the latter type of case, the writ would seem to lie even after the determination. This jurisdiction, however, is only procedural jurisdiction or jurisdiction in respect of the particular case in a tribunal otherwise competent, for when there was a total lack of authority in the person or persons who tried a case, the proceedings were not merely voidable but wholly void and in

such cases no certiorari would lie. When it cannot possibly be said that the Special Judge in the case was a mere usurper of authority or a pretender, because the provision of law providing for the constitution of Special Courts, is not in itself ultra vires, the fact that the trial has been concluded is not therefore a bar to the quashing of the conviction on certiorari in the case. In any event, Article 226 of Constitution speaks not of the English writs but of writs "in the nature of" those writs and consequently there is no reason why the High Courts in India should always confine themselves strictly to the Crown Side Practice in England. Anwar Ali v. State of West Bengal, 1952 Cri LJ 450 : AIR 1952 Cal 150 (163, 164) (Pt D) (Pr 93) (FB).

——**Art. 226 — Certiorari—(Industrial Disputes (Appellate Tribunal) Act (1950), S. 18).**

An application for the issue of a writ of certiorari against the Labour Appellate Tribunal made within 30 days prescribed by S. 18 of the Industrial Disputes (Appellate Tribunal) Act is not premature. I L R (1953) Mys 287 : AIR 1953 Mys 59 (60) (Pt B) (Pr 5) (DB).

176. Stamp Act, orders under.

——**Art. 226** — Stamp Act (2 of 1899), Ss. 31, 32 and 33—Document submitted to Collector under S. 31—Determination of duty—Subsequent order of impounding document — Validity — Quashing of. See Stamp Act (1899), S. 31. **AIR 1951 All 851 (DB).**

——**Art. 226**—Decision as to proper stamp—Decisions of Collector under S. 31 or of Chief Controlling Revenue Authority under S. 53 (2) are not quasi-judicial but are administrative. See Bombay Stamp Act (60 of 1958), S. 31. (1965) 6 Guj L R 554 : I L R (1965) Guj 811 : AIR 1966 Guj 175 (DB).

177. Statutary bodies, powers and duties of.
See also Note 126.
(a) Power to be exercised according to statute creating it.
(b) Exercise of discretion.
(c) Mala fides.
(d) Duty to act on evidence.
(e) Procedural irregularity.

177. Statutory bodies, powers and duties of.
See also Note 126.

——**Art. 226—Jurisdiction of High Court—Service rules made by Devaswom Board — Force of—Infringement not justiciable.**

The service rules relating to promotion, rank, etc., in Government servants have not the force of law and that infringement of the same cannot properly be brought up to the High Court under Art. 226 of the Constitution.

Held, that the rules in question were made by the Devaswom Board for guidance in matters relating to promotion, etc., and the mere fact that these rules were made by virtue of a provision in the statute empowering the Board to make rules does not invest the same with statutory force. **AIR 1959 Ker 21 (23) (Pt B) (Pr 7) (DB).**

——**Art. 226 — Jurisdiction of High Court—Orders of Cochin Devaswom Board under Act 15 of 1950 — Interference.**

The High Court has ample jurisdiction to interfere with the orders of Statutory Bodies created and functioning under a statute like the Cochin Devaswom Board, a statutory body constituted and functioning under Travancore Cochin Act 15 of 1950. AIR 1958 Ker 164, Rel on. **1959 Ker L R 692 : 1959 Ker L T 816.**

■ ——**Art. 226—Writ of certiorari against statutory tribunal—Jurisdictional issue—Wrong decision—Nature of jurisdiction exercised by High Court—(Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948). Ss. 2 (7) and 9—Scope).** Varadarajaswamivari Temple v. Sri Krishnapppa, 71 Mad L W 711 : (1958) 2 Mad L J 463 : I L R (1958) Mad 1023 : AIR 1959 Mad 40 (42, 43, 48, 49, 55) (Pt B) (Prs 5, 7, 38, 40, 41, 72) (FB).

——**Art. 226—No breach of statutory rule—Relief under Article.**

A contravention of the resolution of the Capital Oustees Board promising that no land of an evacuee which is less than fifty acres would be required for the purpose of allotment to capital oustees is not a breach of a statute or a statutory rule in regard to which the High Court can in its supervisory jurisdiction give relief. 56 Punj L R 286 : AIR 1954 Punj 241 (243, 244) (Pt B) (Prs 24, 32) (DB).

——**Art. 226 — Right to relief—Statutory bodies — Contravention of statutory duties—High Court can interfere under Art. 226.**

Where certain duties are cast by the Statute, and powers are conferred by the statute, a contravention of the powers conferred by the statutory rules can be challenged under Art. 226 of the Constitution. AIR 1953 Punj 88; AIR 1956 All 70; AIR 1956 All 460 and AIR 1957 Orissa 226, Rel. on. AIR 1955 Cal 56; AIR 1955 Cal 543; AIR 1957 Cal 720, Disting.

Where a municipal employee's discharge was ordered by the Chairman of the Municipal Committee who had no authority or power to do so, the High Court can grant relief to the employee under Art. 226. ILR (1958) 8 Raj 1016.

——Art. 226 — Notification prohibiting transfer of land — Registering Officer cannot refuse to register transfer if Ss. 34, 35 of Reg. Act are satisfied — Remedy. See Registration Act (1908), S. 34. **AIR 1954 Raj 53 (DB).**

177 (a). **Power to be exercised according to statute creating it.**

■ ——**Art. 226—Engineer in service of District Board—Board terminating his service by paying salary in lieu of notice—Petition by him under Art. 226 for declaring the order unlawful and for restoring him in service—Maintainability—High Court has jurisdiction to entertain the petition—Jurisdiction is not restricted by S. 21 (b) of Specific Relief Act.**

Where in a petition under Art. 226 by an Engineer whose employment under a District Board was terminated by the Board after giving him salary for three months in lieu of notice the petitioner prayed for a writ in the nature of certiorari for quashing the resolution of the Board and a writ in the nature of mandamus for restoring him in service and it was contended by the Board that the jurisdiction of the High Court even under Art. 226 of the Constitution was restricted by S. 21 (b) of the Specific Relief Act and that the remedy, if any, of the petitioner was to claim damages by suit for wrongful termination of employment and not a petition for a writ:

Held that the powers of a statutory body are always subject to the statute which has constituted it and must be exercised consistently with the statute, and the Courts have, in appropriate cases, the power to declare an action of the body illegal or ultra vires, even if the action relates to determination of employment of a servant. 1957 AC 488, Rel. on; AIR 1937 All 284 and AIR 1961 All 502 and AIR 1958 SC 1050, Disting. Held further that the High Court had the jurisdiction to declare the decision of the Board, as ultra vires though it may be exercised only when

the Court is satisfied that departure is called for from the rule that a contract of service will not ordinarily be specifically enforced. S. R. Tewari v. District Board, Agra, (1964) 3 S C R 55 : 1963 All L J 944 : 1964 S C D 314 : ILR (1963) 2 All 883 : (1964) 2 S C J 300 : (1964) 1 Lab L J 1 : AIR 1964 SC 1680 (1682, 1683) (Pt A) (Prs 6, 7, 8).

● —Art. 226—Extent and scope of Court's powers in relation to acts of statutory bodies —U. P. District Boards Act (X of 1922), Ss. 82 and 84 — Scope of powers of dismissal and termination of service.

Under the Common Law the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well recognised exceptions. It is open to the Courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Art. 311 of the Constitution of India (1950) continues to remain in service even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly, under the Industrial law jurisdiction of the labour and Industrial tribunals to compel the employer to employ a worker whom he does not desire to employ is recognised. The Courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute even if by making the declaration the body is compelled to do something which it does not desire to do. The jurisdiction to declare the decision of the District Board as ultra vires, exists though it may be exercised only when the Court is satisfied that departure is called for from the rule that a contract of service will not ordinarily be specifically enforced.

By S. 82 of the District Boards Act, 1922, power of the Board to decide questions arising in respect of the service including the power to punish, dismiss, transfer and control servants of the Board is statutorily delegated to the President in case of servants drawing a salary exceeding Rs. 40 per mensem and to the Secretary for other servants. But the exercise of the power is subject to the conditions prescribed in the provisos. Upon the exercise of the power under S. 82 vested in the Board, the President and the Secretary, there is yet another set of restrictions imposed by S. 84. The power is subject among others to the rules imposing conditions on the appointment of persons to offices, or to particular office requiring professional skill and on the punishment or dismissal of persons so appointed and to rules relating to servants of the Board. The rule providing for the procedure for termination of employment of servants of the Board is a rule relating to servants of the Board and may properly be made under S. 84 (d) read with S. 172 (2). Power to appoint ordinarily carries with it power to terminate appointment and a power to terminate may in the absence of restrictions express or implied be exercised subject to the conditions prescribed in that behalf, by the authority competent to appoint. The power to terminate employment is therefore to be found in S. 82 and the method of its exercise is prescribed by the rules referred to in S. 84. The rules deal with the conditions under which an officer or servant may be dismissed (the dismissal being by way of punishment) and also under which determination of employment may take place. The expression 'dismissal' in the Fourth Proviso to S. 82 does not include termination of employment simpliciter. In the law relating to master and servant, expression "dismissal" has acquired a limited meaning — determination of employment as a method of punishment for misconduct or other cause. An order of determination of employment which is not of the nature of an order of dismissal, was by virtue of the Rules framed under Cl. (d) of S. 84 to be exercised consistently with R. 3-A and an order of dismissal involving punishment must be made consistently with the Rule or regulation framed under S. 84 (b) and (d). S. R. Tewari v. The District Board, Agra, (1964) 3 S C R 55: (1964) 2 S C J 300 : 1963 All L J 944 : 1964 S C D 314 : ILR (1963) 2 All 883 : (1964) 1 Lab L J 1 : AIR 1964 S C 1680 (1685, 1686) (Pt B) (Prs 11, 13).

● —Art. 226 — Quasi-judicial or administrative function — Bengal Court of Wards Act, 1879, S. 18 — Court of Wards is a statutory body with powers granted to it under S. 18—Its action cannot be attacked on ground that it had erred in its conclusion—Statute confides on it and not to any outside authority, authority to judge whether act is beneficial to the estate—Exercise of this authority can be attacked on ground of absence of bona fide or on ground that it was fraud on the power—It can also be attacked on ground that court of ward did not in fact apply its mind to the question whether act was for benefit of estate or the ward — Where it has applied its mind and given thought to the question, its decision is not liable to be questioned on ground that it was erroneous on merits or that it was reached without considering some aspects that ought to have been considered, unless the failure is of such a character as to amount to their being no exercise of judgment at all — See Bengal Court of Wards Act (9 of 1879), S. 18. A I R 1956 S C 446.

—— Art. 226 —Certiorari—Principles of natural justice —Order by Sales-tax Officer in violation of mandatory provisions of S. 7 (3), Proviso, U. P. Sales Tax Act—Petitioner entitled to writ of certiorari — (Sales-tax — U. P. Sales Tax Act (XV of 1948), S. 7 (3), Proviso). AIR 1955 N U C (All) 6091.

——Art. 226 — Right to relief — Statutory body — Adoption of Fundamental Rules —Validity—Enforcement by writ— Commissioners under Calcutta Port Act, 1890, instead of framing rules, adopting Fundamental Rules framed by Government— Rules so adopted are valid and statutory rules— Their observance can be enforced by a writ —See Calcutta Port Act (III of 1890), S. 3 (1) (d). AIR 1957 Cal 720.

177 (b). Exercise of discretion.

——Art. 226 —Discretion—Income-tax recovery proceedings —Order granting or vacating stay — Order must conform to rules of reason and justice — Ex parte order vacating stay, passed on extraneous considerations and incorrect information — Order is violative of principles of natural justice — Order can be set aside under Art. 226 —Income-tax Act (1922), S. 45.

The power to grant or vacate a stay may be quasi-judicial or administrative in nature. Even if it is administrative it is not an arbitrary one. It has to be exercised according to the rules of reason and justice and not according to one's fancy or humour. The discretion vested in the Inspecting Assistant Commissioner is not arbitrary and fanciful. (1947) 15 I. T. R. (Sup.) 104, Rel. on. Art. 226 of the Constitution confers on the High Court ample jurisdiction to set aside an arbitrary order passed by a statutory authority. Appropriate orders, as may be necessary to meet the ends of justice, can be passed in respect of an administrative action. A I R 1961 S C 372 (380) and A I R 1961 S C 1731, Foll. Thus the order, vacating stay, passed on extraneous considerations and incorrect information and also without affording an opportunity of explanation to the assessee is arbitrary and violative of principles of natural justice and can be set aside under Art. 226. (1965) 2 I T J 85 : A I R 1966 All 176 (180, 181) (Pt B) (Prs 20, 21, 24).

——Art. 226—Representation of the People Act (1951), Ss. 90 (5), 90 (6)—Amendment application dismissed

on ground that delay will result in not deciding election within six months—It is not judicial exercise of discretion — (Civil P. C. (1908), O. 6, R. 17) — See Representation of the People Act (1951), S. 90 (5). AIR 1958 All 705.

——Art. 226—Discretionary order —Breach of conditions of permit —Cancellation is matter of discretion —Interference by High Court under Art. 226. See Motor Vehicles Act (1939), S. 60 (1). AIR 1957 Andh Pra 882 (DB).

——Art. 226 — Building in imminent danger of collapsing - Demolition — Commissioner's discretion to invoke power under R. 5 (4) of Sch. 17, Calcutta Municipal Act (1951)—Court's interference with such discretion— See Municipalities — Calcutta Muncipal Act (33 of 1951), Sch. XVII-Rule 5 (4). ('64) 68 Cal W N 1172.

——Art. 226 — No writ to compel exercise of discretion in particular fashion can be issued. A I R 1955 NUC (Trav-Co) 5996.

177 (c). Mala fides.

——Art. 226 — Board acting under S. 56 of the U. P. Muslim Wakf Act and not at instance of any person —Board cannot be said to be acting mala fide. See U. P. Muslim Wakf Act (13 of 1936), S. 56. AIR 1965 All 333.

——Art. 226—Mala fides.

Delay on the part of the Examination Board in communicating the result of the enquiry and the punishment imposed on the candidate for certain malpractices in the examination does not prove want of bona fides on the part of the Board. 1955 Andhra W R 439 : AIR 1955 N U C (Andhra) 5823.

——Art. 226—Interference—Grounds — Absence of mala fides in order of subordinate tribunal—(Assam Land Requisition and Acquisition Act (25 of 1948), S. 3 (1)).

From time to time the Municipal Board refused to grant licence to the petitioner to run the market and thereafter some negotiations were going on for taking the land on rent. Ultimately steps were also taken for acquisition of the land under the Land Acquisition Act. It was said that all this showed that the Municipal Board was acting mala fide in ultimately asking the Government to requisition the land under the Assam Act, 25 of 1948.

Held, that the circumstances did not make out a case of mala fides so as to justify the High Court's interference with the impugned order under Art. 226 of the Constitution. ILR (1959) 11 Assam 287 : AIR 1960 Assam 18 (20) (Pt C) (Pr 4) (DB).

——Art. 226 — Party alleging mala fides must, in his pleadings, set out particulars and substantiate same by satisfactory evidence—Court would hesitate to attribute mala fides to any one and particularly to statutory bodies, excepting on convincing grounds. Civil P. C. (1908), O. 6, R. 10. (1965) 2 Mys L J 365 (DB).

177 (d). Duty to act on evidence.

——Art. 226—Order of Additional District Magistrate rejecting landlord's claim for release of shop in his favour — Relevant reasons given for arriving at conclusion that shop was not bona fide needed by landlord for his own use—Held, that it was within the competence of the Additional District Magistrate to form an opinion and as long as he did it on the material before him which was relevant to the point on which the opinion had to be formed, the High Court in exercise of its writ jurisdiction could not interfere with the order made by him. 1964 All W R (H C) 296 : 1964 All L J 710.

——Art. 226 — Railway Establishment Code (1951) App. 13, Part B, R. 1—Exercise of statutory powers —When can be declared ultra vires — Cause which is non-existent — Cannot reasonably be 'due cause' within R. 1.

It is established that the doctrine of ultra vires which attaches to any statutory power requires not only that it must not exceed the power conferred by the statute, that it must not only be exercised in good faith but also that it must not be exercised arbitrarily or capriciously, but 'reasonably'. The statutory authority cannot do what he likes but must follow the course which reason dictates. Even though the Court cannot substitute its own view as to what should be the proper course in such circumstances, it should interfere if the statutory authority has come to a decision that no reasonable body would have come to. (1925) A C 578 and (1947) 2 All E R 680, Rel. on. It is clear that no reasonable man could consider a cause which is non-existent as a 'due cause' within R. 1 of Part B of App. 13 of the Code. A I R 1965 Cal 389 (394, 395) (Pt F) (Prs 21, 22, 28).

——Art. 226—Duty of subordinate tribunals.

A statutory Tribunal entrusted with statutory functions and exercising statutory jurisdiction should not allow itself to be influenced by irrelevant and extraneous considerations in passing quasi-judicial orders in discharge of its duties. He must keep his capacity as a tribunal distinct and separate from his executive capacity, and must not permit his official superiors in the executive department to interfere in any manner with the exercise of his duties and functions as a Tribunal. If it is found that he permitted himself to be influenced by the directions of his official superior that order will be struck down. AIR 1960 J & K 19 (21) (Pt A) (Pr 7).

177 (e). Procedural irregularity.

——Art. 226—Andhra Pradesh Regional Committee Order (1958), Pr. 3—Regional Committee constituted under—Defect in procedure in holding its meetings—Bill in pursuance of its report passed into an Act—Art. 212 (1) applies—Validity cannot be questioned on grounds of irregularity of procedure—Court will not give ineffective declaration as to its validity. See Ibid, Art. 371 (1). AIR 1965 Andh. Pra 306.

178. Stranger, application by.

See Note 6.

179. Submission to or acquiescence in jurisdiction.

See also Notes 98 and 148.

——Art. 32 — Applicability — (Income-tax Act (1922), S. 5 (7-A) — Order of transfer under—Acquiescence and submission to jurisdiction — Assessee's right to relief.

Where none of the petitioners raised any objection to their cases being transferred under S. 5 (7-A) Income-tax Act and in fact submitted to the jurisdiction of the Income-tax Officers to whom their cases had been transferred :

Held, that the petitioners were not entitled to invoke the jurisdiction of the Supreme Court under Art. 32. Halsbury's Laws of England (3rd Edn.), Vol. II, p. 140, para. 265 : (1907) 97 L T 551 and AIR 1927 Mad 130 (FB), Rel. on. Messrs Pannalal Binjaraj v. Union of India, 1957 S C A 660 : (1957) 31 I T R 565 : 1957 S C R 233 : AIR 1957 S C 397 (412) (Pt I) (Pr 45).

——Art. 226—Objection to jurisdiction not taken at earliest opportunity—High Court in writ jurisdiction will not permit such objection to be taken before it for first time.

Objection to jurisdiction must be taken at the earliest possible opportunity, and if a party has not taken such an objection the High Court in its writ jurisdiction will not permit him to take any such objection. 1965 All L J 996 : 1965 All W R (H C) 779.

—— Art. 226—Objection as to jurisdiction not taken at earliest opportunity before authority whose jurisdiction is challenged cannot be allowed to be raised for first time in writ petition. See Houses and Rents – U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 7F. 1965 All W R (H C) 736.

——Art. 226—Question of law or jurisdiction—If can be raised for the first time in second appeal—Position under S. 115, C. P. Code and Art. 226 of Constitution compared. See C. P. Code (1908), S. 100. A I R 1964 All 136.

——Art. 226 — Domestic Tribunals — Jurisdiction—Person submitting to and taking a chance to get a decision from it in his favour — Jurisdiction cannot be later challenged. AIR 1957 S C 397 & 1960 All L J 20, Foll. ILR (1963) 1 All 432 (D B).

——Arts. 226, 311—Certiorari—Acquiescence in jurisdiction—Dismissal order of police servant based on report of departmental proceedings conducted by officer not having requisite qualifications—Objections to jurisdiction not raised before enquiring officer although opportunity to raise such objection was offered—Omission debars police servant from challenging by a petition for certiorari, the dismissal order on that ground not raised before the subordinate tribunal—It is open to petitioner to explain his omission in an adequate manner. AIR 1959 All 710, Rel. on. AIR 1962 All 114 (116, 117) (Pt B) (Prs 8, 9) (DB).

——Art. 226—U. P. Police Regulation, Paras. 479, 490—Jurisdiction of subordinate authority not questioned before the authority—Question of jurisdiction cannot be raised for first time before High Court, when it depends upon investigation of facts — Jurisdiction of Dy. S. P. to hold departmental inquiry not questioned before any of the subordinate authorities cannot be raised in writ petition. A I R 1956 All 578, Dissented from. AIR 1961 All 169 (172, 173) (Pt C) (Prs 15, 16).

——Art. 226—Certiorari—No failure of justice—Writ will not issue.

A writ of prohibition will issue to stay further proceedings in an inferior Court where on the face of the proceedings of that Court there is a total absence of jurisdiction, notwithstanding the fact that the petitioner may have consented to or acquiesced in the exercise of the Court's jurisdiction. That, however, is not so in the case of certiorari the issue of which is discretionary; and the Court may refuse the writ, notwithstanding the fact that the order sought to be quashed was made by a Tribunal acting without jurisdiction. The High Court will refuse to interfere unless it is satisfied that the justice of the case requires it. AIR 1957 S C 227, Foll. 1960 All L J 441 : 1960 All W R (HC) 307 : ILR (1960) 1 All 744.

——Art. 226 — Submission to jurisdiction of tribunal —Effect of—Initial want of jurisdiction – Waiver.

In cases where a person submitted to the jurisdiction of a tribunal different considerations may arise when a relief of certiorari is claimed. But even in those cases it may be said that if there is an initial want of jurisdiction, the mere fact that the petitioner has failed to raise an objection to the want of jurisdiction in the trial Court, will not disentitle him to a relief by the High Court.

Thus when the Licensing Board constituted under the U. P. Excise Act for discharging certain administrative functions is not properly constituted, any decision taken by such a body will necessarily be without jurisdiction. It is no bar to the petitioners coming to the High Court under Art. 226 of the Constitution and challenging the constitution of the Board itself.

There can be no waiver of the right to point out that the statutory body was not properly constituted at all. It is not a case of the exercise of jurisdiction but of the initial want of jurisdiction. A I R 1957 All 773 (777) (Pt C) (Prs 13, 14).

——Art. 226 — Madras District Boards Act (14 of 1920), Ss. 79, 86 and 111 — S. 79 does not violate Art. 14 of the Constitution on ground that right of appeal is discriminatory—Nor is discretion in regard to choice of persons for exemption under S. 111 unguided by any rules – Lessee having agreed to pay cess—High Court could not exercise extraordinary jurisdiction even if levy of cess was not valid. See Madras District Boards Act (4 of 1920), S. 79. A I R 1963 Andh Pra 288.

——Art. 226 — Jurisdiction of — Consent — If can confer.

It is open to the Government of Andhra to admit facts upon which jurisdiction of the High Court rests although they cannot confer jurisdiction on the High Court by their consent or by mere waiver of the question of jurisdiction. ILR (1956) Andhra 448.

——Art 226—Civil P. C. (1908), S. 9 — Consent cannot give or oust jurisdiction. See Civil P. C. (1908), S. 9. A I R 1956 Hyd 129.

——Art. 226 — Writ of Certiorari — Submission of applicant to jurisdiction—Effect.

In the matter of issue of a writ by way of certiorari the High Court's powers are discretionary, and where the applicant armed with the point which would oust the jurisdiction of the subordinate tribunal elected to get the case decided by the Court on its merits, he must be taken to have submitted to its jurisdiction and he cannot be allowed later to repudiate that decision in a petition for a writ of certiorari. ILR (1954) Hyd 983 : A I R 1955 Hyd 97 (98) (Pt A) (Pr 2) (DB).

——Art. 226—Certiorari—Submission to jurisdiction.

Where there is a statutory duty on the part of the petitioner to have raised the objection as to jurisdiction before the cause was gone into on its merit but he fails to demur in terms of the statute, he cannot be permitted to challenge that jurisdiction by way of certiorari. Case-law discussed.

On facts held that the applicant was not disentitled to the relief by submitting to the jurisdiction of the authority whose order he sought to impugn. ILR (1955) Hyd 337 : A I R 1955 Hyd 82 (95) (Pt E) (Prs 50, 51) (DB).

——Art. 226—Writ of certiorari, a discretionary remedy—Submission to or acquiescence in jurisdiction.

In the matter of issue of a writ by way of certiorari the High Court's powers are discretionary, and where the applicant armed with the point which would oust the jurisdiction of the subordinate tribunal has elected to argue the case on its merits before that Court, he must be taken to have submitted to its jurisdiction. He cannot be allowed later to repudiate that decision in a petition for a writ of certiorari. (1914) 1 K B 608; (1919) 2 K B 734; A I R 1927 Mad 130 (FB); AIR 1938 Mad 69 and A I R 1953 Mad 472, Rel. on.

Where the petitioner had submitted to the jurisdiction of an arbitrator to whom a dispute had been referred under S. 48, Hyderabad Co-operative Societies Act and had also filed a revision under S. 51 of that Act before the Registrar, the petitioner will not

be allowed to invoke the jurisdiction of the High Court to quash the order of the Registrar on the ground that the reference to the arbitrator was without jurisdiction. I L R (1954) Hyd 689 : A I R 1955 Hyd 33 (34) (Pt B) (Prs 7, 8) (DB).

——Art. 226—Certiorari—Grounds.

The petitioner who had submitted to the review jurisdiction and argued the case on merits before an authority cannot repudiate the order passed by it in the review proceedings by applying for certiorari on the ground that it was not open to that authority to review its original decision. Case-law, Rel. on. I L R (1954) Hyd 632 : A I R 1954 Hyd 210 (211) (Pt A) (Pr 5) (DB).

——Art. 226—Estoppel—Order without jurisdiction —Acquiescence—Effect.

Where there is a patent want of jurisdiction, i. e., a want of jurisdiction apparent on the face of the proceedings, acquiescence by submission to jurisdiction will not cure it, and the proceedings are eminently liable to be quashed by certiorari. A I R 1960 J & K 29 (31, 32, 33, 34) (Prs 10, 13, 22).

——Art. 226 — Jurisdiction of subordinate Tribunal —Estoppel against pleading want of — Discretion of High Court.

In a case where a person submits to the jurisdiction of a subordinate tribunal without objecting to its jurisdiction he cannot be heard to urge in certiorari proceedings that the subordinate Tribunal had no jurisdiction, except perhaps where it is shown by his affidavit that he had no knowledge of the facts which constituted the defect of jurisdiction of the subordinate tribunal. The principle applies a fortiori, where the petitioner himself moved the subordinate tribunal and invited it to adjudicate upon his grievance. A I R 1927 Mad 130 (FB) and A I R 1954 Bom 202 and AIR 1957 S C 397, Rel. on.

Even if there be some technical error of law or formal defect of jurisdiction in a given case, the High Court is not bound to issue a writ of certiorari unless it is satisfied that the interests of justice demand the granting of such a writ. A I R 1959 J & K 98 (102) (Pt C) (Prs 15, 17) (DB).

——Art. 226 — Jurisdiction of High Court—Tribunal not having jurisdiction—Petitioner submitting to jurisdiction—Jurisdiction of High Court to interfere under Art. 226 is not thereby limited. 1959 Ker L J 1425 : 1960 Ker L T 85 : A I R 1960 Ker 229 (231) (Pt B) (Pr 13) (DB).

——Arts. 226, 227 — Estoppel — Proceedings under S. 145, Criminal P. C.—Petitioner inviting adjudication — Right to challenge decision being illegal — (Evidence Act (1872), S 115) — (Criminal P. C. (1898), S. 145).

Where the petitioner in proceedings under S. 145, Criminal P. C., himself asked for an adjudication of his status it is not open to him in proceedings under Arts. 226 and 227 to say that the decision was bad on the ground that the question ought not to have been decided by the Magistrate in proceedings under S. 145 merely because the question raised by him is decided against him. The mere fact that the Magistrate considered this point does not amount to illegality especially when his conclusion on the question of possession is mainly based on another finding. 1958 Ker L J 1195 : 1958 Ker L T 1067 : 1958 Mad L J (Cr) 985 : ILR (1959) Ker 70 : 1959 Cri L J 1082 : A I R 1959 Ker 275 (276) (Pt B) (Pr 5) (DB).

——Arts. 226 and 227—Jurisdiction—Submission to or acquiescence in — Effect — (Panchayat — M. B. Panchayat Vidhan (LVIII of 1949), Ss. 75 and 89).

Where the petitioner failed to raise any objection to the jurisdiction of the Nyaya Panchayat to try the complaint preferred by him under the M. B. Panchayat Vidhan and of the Sessions Judge to hear and decide the revision petition filed by the accused persons, the petitioner cannot be allowed to raise a question of jurisdiction on a petition under Arts. 226 and 227. (1914) 1 K B 608, Foll. 1957 Jab L J 65 : 1957 M P C 91 : 1957 M P L J 244 : 1957 Cr L J 759 : ILR (1957) M P 57 : A I R 1957 Madh Pra 58 (59, 60) (Pt A) (Pr 3) (DB).

——Art. 226 — Jurisdiction — Proceedings before Labour Appellate Tribunal covering not only order of Industrial Tribunal on application by the employer company but also on application by worker.

Questions whether there was substantial question of law and the Tribunal had jurisdiction not determined by Appellate Tribunal—Participation in proceedings held would not disentitle employer to the discretionary relief of writ of certiorari — (Industrial Disputes (Appellate Tribunal Act (1950), S. 7). (1956) 10 F J R 54 : (1956) 1 Lab L J 508 : (1956) 1 M L J 462 : AIR 1956 Mad 589 (592) (Pt B) (Pr 15).

——Art. 226—Certiorari—Submission to jurisdiction.

Normally, when a party voluntarily submitted in the jurisdiction of a Tribunal which had no jurisdiction he would not be heard in proceedings under Art. 226 of the Constitution to say that the Tribunal had no jurisdiction merely because the decision of the Tribunal went against him. But it is not that submission to jurisdiction that confers jurisdiction on the Tribunal. It is merely a case of a factor being taken into account before the Court decides whether it should exercise its discretion in favour of the applicant before it. ILR (1957) Mad 631 : 1955 Mad W N 865 : 68 Mad L W 777 : (1955) 2 M L J 612 : AIR 1956 Mad 146 (150) (Pt D) (Pr 22).

——Arts. 226 and 311 — Certiorari — Submission to jurisdiction.

It is not open to the petitioner in proceedings under Art. 226 of the Constitution to object to the jurisdiction of the District Judge exercised to conduct an enquiry under Art. 311, because the petitioner had submitted to it. (1956) 1 Lab L J 516 : (1956) 2 M L J 145.

——Art. 226—Petitioner submitting to jurisdiction of Revenue Court—Bar of grant of relief under Article —(Tenancy Laws — Tanjore Tenants and Pannaiyal Protection Act (XIV of 1952), S. 13 (2)).

In invoking the extraordinary jurisdiction of the High Court under Art. 226 the fact that the petitioner submitted to the jurisdiction of the revenue Court and availed himself of the opportunity of participating in the enquiry bars the grant of any relief under Art. 226. AIR 1927 Mad 130, Foll. 68 L W 164 : (1955) 1 M L J 258 : 1955 Mad W N 176 : AIR 1955 N U C (Mad) 3197.

——Art. 226—Petitioner submitting to jurisdiction of Revenue Board — Petitioner is precluded from questioning jurisdiction in writ of 'Certiorari'—(Tenancy Laws—Madras Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1948), S. 18). (1953) 1 M L J 362 : AIR 1953 Mad 472 (472) (Pt A) (Pr 3).

——Art. 226—Submission to jurisdiction—Effect.

Where the petitioners submitted to the jurisdiction of the Regional Transport Authority, it is too late to question the jurisdiction of the Tribunal to which they have submitted on the ground that the proceedings of the Regional Transport Authority were illegal as the earlier proceedings legally instituted and pursued were not finally disposed of. Failure to object to jurisdiction before the lower Court is a bar to obtain-

ing a writ of certiorari, whether the objection to jurisdiction is based on a pure point of law or based on facts which were or should have been within the knowledge of the petitioners during the proceedings in the lower Court. A I R 1927 Mad 130 (FB), Foll. **AIR 1953 Mad 59 (60) (Pt A) (Pr 1).**

——**Arts. 226 and 311 — Conduct of petitioner — Departmental enquiry — Acquiescence and submission to jurisdiction of Enquiry Officer without raising any objections—Petitioner cannot be allowed to challenge jurisdiction of Enquiry Officer—Evidence Act (1872), S. 115.**

Where in a departmental enquiry against a civil servant the servant has acquiesced and submitted to the jurisdiction of the enquiry officer and has taken part in the enquiry without raising any objection to his competency to hold the enquiry the civil servant cannot, after the whole enquiry is over and after the enquiry officer has found against him, turn round and contend that the officer was not competent to hold the enquiry on ground that he was not properly nominated. AIR 1957 S C 397 and AIR 1965 Mys 41 and AIR 1953 Mad 59 and A I R 1954 Bom 202, Rel. on. **(1965) 1 Mys L J 422 : (1965) 2 Lab L J 583 : AIR 1965 Mys 283 (285) (Pt D) (Pr 7) (DB).**

——**Art. 226—Jurisdiction—Submission to or acquiescence in — Certiorari - Proceedings under Motor Vehicles Act — Objection regarding invalidity of constitution of R. T. A. not raised before Authorities under Act—Petitioner availing himself of chance of being successful before Authorities — Petitioner debarred from raising objection — (Motor Vehicles Act (1939), S. 44 (2)).**

Where in the proceedings under Motor Vehicles Act, the petitioner did not raise any objection before the Authorities under the Act regarding the invalidity of the Constitution of R. T. A. and regarding lack of jurisdiction on the ground of its invalid constitution, but availed himself of a chance of being successful before those Authorities ;

Held, in a writ petition challenging orders of Authorities under the Act that the petitioner precluded himself from urging his contention in the writ proceedings to invoke the jurisdiction under Art. 226 : **AIR 1964 Andh Pra 36** and A I R 1961 Raj 98 FB). Dissent from ; AIR 1956 Andh Pra 232 and AIR 1957 S C 397, Rel. on. **(1964) 1 Mys L J 318 : AIR 1965 Mys 41 (44, 45, 46) (Pt C) (Prs 6, 7) (DB).**

——**Art. 226**—Evidence Act (1872), S. 115—Acquiescence in jurisdiction — Tribunal not having jurisdiction to decide question referred to it — No objection raised as to want of jurisdiction — Petitioner not estopped from raising objection in writ petition—See Evidence Act (1872), S. 115. **AIR 1963 Pat 118.**

——**Art. 226** — Bihar Panchayat Raj Act (1947) (7 of 1948), S. 65 — Scope—Suit for declaration of title and recovery of possession—Jurisdiction—Objection not taken before Gram Cutcherry—Effect—(Civil P. C. (1908), Ss. 9 and 21). See Panchayats—Bihar Panchayat Raj. Act (1947) (7 of 1948), S. 65. **AIR 1958 Pat 105.**

——**Art. 226**—Evidence Act (1872), S. 115—Failure to raise objection — Effect. See Evidence Act (1872), S. 115. **AIR 1957 Pat 732.**

——**Art. 226**—Submission to jurisdiction—Effect. See Civil P. C. (1908), S. 9. **AIR 1956 Pat 294.**

——**Art. 226** — Patiala Recovery of State Dues Act (2002 B. K.), S. 6—Absence of certificate under—Proceedings before Collector are not rendered without jurisdiction — It is a case of irregular assumption of jurisdiction and not of inherent lack of it—No objection taken for long time — Irregularity should be considered as waived—Remedy under Art. 226 is not meant to correct technical errors—Power under, to be used only in cases of hardship and grave injustice—See Patiala Recovery of State Dues Act (2002 B. K.), S. 6. **AIR 1955 Pepsu 129.**

——**Art. 226 – Absence of jurisdiction — Failure to raise objection.**

It is true that if a party does not raise any objection to the jurisdiction of a Court of tribunal, which depends upon the allegations and proof of certain facts, that party will not be allowed to raise objection about jurisdiction in an application under Art. 226. Where, however, the lack of jurisdiction is patent, the mere fact that no objection was taken before the statutory authority would not disable the applicant from raising such question in an application under Art. 226. The High Court is bound to issue a prohibition in the case of total absence of jurisdiction on the face of the proceedings, although the applicant for the writ has consented to or acquiesced in the exercise of jurisdiction by the inferior Court. **1953 Raj L W 324 : I L R (1953) 3 Raj 13 : AIR 1953 Raj 193 (196) (Pt A) (Pr 9) (DB).**

——**Art. 226**—Issue of permit under Motor Vehicles Act—Review granted by Government—Jurisdiction of Government not challenged by petitioner—He cannot get relief under Art. 226. **AIR 1955 N U C (Trav. Co) 5772.**

180. Tenancy laws, orders under.

See Note 171.

181. Transport authority, orders of.

●——Art. 226 — Scheme notified under S. 68-D, Motor Vehicles Act — Effect on permits of private operators — Powers of I. T. A. — Renewal of private permits not legal — Appeal Board can set aside such renewals — Board can act in revisional powers if appeal is incompetent — Decision of Appeal Board being correct in law, no interference under Arts. 226 and 227. See Motor Vehicles Act (1939), S. 68-D. **AIR 1962 SC 1135.**

●——Arts. 32, 226—Regional Transport Authority granting permit acts as quasi-judicial authority. See Ibid, Art. 14. **AIR 1960 SC 801.**

●——**Arts. 32, 154, 163, 166 — Scope — Scheme proposed by Transport Undertaking under Section 68-C, Motor Vehicles Act, 1939 — Scheme framed — If ultra vires the Act — (Natural justice) — (Motor Vehicles Act (1939) (as amended by Act C of 1956), Chap. IV-A) — (Motor Vehicles Rules (1939), Rr. 8, 9 and 10).**

Whether an administrative tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder. If there is a lis ordinarily there will be a duty on the part of the said authority to act judicially. AIR 1950 SC 222, AIR 1958 SC 398 and AIR 1958 SC 578, Rel. on.

Per S. R. Das, C. J., N. H. Bhagwati and Subba Rao, JJ.; Wanchoo and Sinha, JJ., Contra. — The Motor Vehicles Act imposes a duty on the State Government to decide the act judicially in approving or modifying the scheme proposed by the Transport Undertaking. Even if the grounds of attack against the scheme are confined only to the purpose mentioned in S. 68-C, the position will not be different, for, even in that case there is a dispute between the State Transport Undertaking and the person excluded in respect of the scheme, though the objections are limited to the purpose of the scheme. In either view the said two provisions, Ss. 68-C and 68-D, comply with the criteria of a judicial act. (1948) AC 87, Expl. and Disting.

Where pursuant to the rules, the Minister who was in charge of Transport, had made an order

directing the Secretary to Government, to hear objection filed under S. 68-D against the scheme proposed by the State Transport Department, and the Secretary to the Government Transport Department, gave a personal hearing to the parties who had filed objections, and the Minister in charge of Transport Department made his order approving the scheme, it must be said that the State Government gave hearing to the parties, for filing objections in the manner prescribed by the Rules made by the Governor.

But such a hearing given by the Secretary, Transport Department, offends the principle of natural justice and the proceeding and the hearing given, in violation of that principle are bad.

Wanchoo, J., Contra. — Taking into account the express provisions contained in Chap. IV-A and the Rules framed thereunder, the conclusion is that the hearing under S. 68-D (2) was not before a quasi-judicial tribunal and the decision was not a quasi-judicial act and the State Government was acting purely administratively. 1948 AC 87, AIR 1950 SC 222, AIR 1958 SC 398 and AIR 1958 SC 578, Rel. on. Considering the nature and the scope of the hearing under S. 68-D (2) it seems that there is really no lis. Therefore, it cannot be said that the nature of the hearing in this case makes the State Government a quasi-judicial tribunal and the decision a quasi-judicial act within the meaning of the principles laid down in Advani's case, AIR 1950 SC 222, Rel. on. Where the hearing is administrative, it is not essential that the Minister must hear, so long as a hearing is given by an officer of the Government. 1915 AC 120 (132), Rel. on.

Sinha, J., contra (agreeing with Wanchoo, J.) — The State Government, in approving the published scheme, was not discharging any judicial or quasi-judicial function. On the other hand, in doing so the State Government was only performing its normal administrative function.

There is no lis between rival claims, no determinate tribunal to determine any lis, and no procedure prescribed in Chap. IV-A approximating or even stimulating judicial procedure. That being so, there is no question of any bias. Gullapalli Nageswara Rao v. Andhra Pradesh Road Transport Corpn., **(1959) 2 Andh WR (SC) 156: (1959) 2 Mad LJ (SC) 156: 1959 SCJ 967: 1958 Andh LT 1014: (1959) 1 SCR (Supp) 319: AIR 1959 SC 308 (322, 323, 325, 326, 327, 333, 334, 335, 339, 340, 341) (Pt E) (Prs 21, 22, 27, 30, 31, 47, 49, 50, 51, 63, 67).**

●——**Art. 226** — Order of State Government interfering with order of subordinate transport authority in the matter of granting permit for stage carriage — Interference by High Court in writ proceedings — See Motor Vehicles Act (1939), S. 64-A (Madras Amendment). **AIR 1956 SC 463.**

● ——**Art. 226**—Nature of functions performed by Regional Transport Authority Board and State Government under Motor Vehicles Act — See Motor Vehicles Act (1939), S. 47. **AIR 1956 SC 463.**

——**Art. 226** — Certiorari and mandamus — Nationalisation of bus transport services — R.T.A. offering alternative routes to displaced operators in lieu of compensation — Offer accepted — Offer and acceptance recorded in resolution by R.T.A.— Writ petition by existing operator on alternative route, for certiorari to quash resolution and for mandamus commanding R. T. A. not to permit displaced operators to operate on alternative route — Not maintainable — Recording of resolution purely administrative act — Prima facie loss in petitioner's earnings on account of increase in competition not sufficient for grant of mandamus. AIR 1961 All 214. **Reversed. ILR (1961) 1 All 52: AIR 1962 All 551 (552, 553, 561) (Pt A) (Prs 5, 6, 7, 61) (DB).**

——**Art. 226 — Certiorari — Cancellation of Motor permit under S. 60, Motor Vehicles Act — Order quasi-judicial and is amenable to the writ — Essentials of judicial act — Motor Vehicles Act (1939), S. 60.**

The order of a Regional Transport Authority cancelling a permit under S. 60 of the Motor Vehicles Act is in its character quasi-judicial and is therefore amenable to a writ of certiorari. AIR 1959 SC 694, Foll.

The expression 'judicial act' includes the exercise of quasi-judicial functions by administrative bodies or other authorities obliged to exercise such functions and is used in contrast with what are purely ministerial acts. AIR 1954 SC 440, Rel. on.

The presence of two parties before an authority one proposing and the other opposing is not essential to render the order of the authority judicial or quasi-judicial; nor is a lis necessary in order that a determination may be a judicial or quasi-judicial one. AIR 1950 SC 222, Rel. on. **1962 All LJ 116.**

——**Art. 226 — Administrative orders — U. P. Motor Vehicles Taxation Act (V of 1935), S. 4 (2) and Rr. 5 and 6 framed thereunder — State Transport Authority — Classification of route as 'A' class route — Interference.**

The Regional Transport Authority recommended in favour of classifying a particular route as 'B' class but the State Transport Authority under S. 4 (2), U. P. Motor Vehicles Taxation Act, reclassified it as an 'A' class route without giving any opportunity to the petitioner or other persons plying for hire on that route.

Held, (1) that the power given to the State Transport Authority by S. 4 of the Act is not a judicial power but is an administrative power. (2) That neither S. 4 of the Act nor the rules framed thereunder, imposed any duty on the State Transport Authority to give any notice or to hear or give an opportunity to permit-holders before it re-classified the route. It could not be said that there was contravention of the rule of natural justice which cannot and in fact does not exist independently of the statutory provisions under which the impugned action is taken. AIR 1958 SC 398, Rel. on; AIR 1954 All 144, Dist.; C. M. A. No. 237 of 1957, dated 7-1-1959 (All), Dissented from. (3) That the re-classification of the route had not the effect of changing the route. Whatever changes have occurred are for purposes of the U. P. Motor Vehicles Taxation Act, 1935 and that too for the purpose of determining the amount of tax to be paid for the motor vehicles plying on that particular route. (4) That the petitioner was not entitled to any relief under Art. 226 and the petition was liable to be dismissed. **1961 All LJ 249: AIR 1961 All 374 (376, 377) (Pt B) (Prs 8 to 13).**

——**Art. 226** — Motor Vehicles Act (1939), S. 58 — Regional Transport Authority — It is in nature of quasi-judicial body — Refusal to renew permit on ground of conviction — Proof — Report of Superintendent of Police — Action on — Propriety — See Motor Vehicles Act (1939), S. 58. **AIR 1958 All 30.**

——**Art. 226 — Certiorari — Grounds of certiorari — Writ to quash order of Transport Authority under Motor Vehicles Act refusing to renew permits coupled with writ of mandamus directing**

proper authority to reconsider application — Maintainability — (Motor Vehicles Act (1939), S. 55).

The Legislature has placed certain restrictions on the rights of a person to carry on business of plying public carriers under the Motor Vehicles Act and the restrictions may be justified in law, but the petitioner under Art. 226 can challenge the order passed by a quasi-judicial body on the ground that it is not in accordance with the provisions of the Motor Vehicles Act.

Where the petitioner seeks relief by means of a writ of certiorari for quashing an order passed by the Transport Authority refusing to renew its permits to ply public carriers (Originally granted as it had to carry out a certain contract) on the ground that the contract had come to an end and as such went beyond S. 55 of the Motor Vehicles Act, the petition cannot be rejected on the ground that the petitioner is seeking to enforce a privilege. What it was seeking to enforce was its fundamental right to carry on business of plying public carriers.

The right which the petitioner claimed or had been enjoying was not a conditional one. A particular privilege may be granted to a person because of a certain circumstance but that does not make the right to carry on business a conditional one.

Where the order of the Transport Authority refusing to renew the permit was based entirely on the ground that the contract had come to an end, a further prayer for mandamus in such a case, directing the Transport Authority, to consider the petitioner's application for the renewal of its permits in accordance with law cannot refuse to be considered on the ground that the relief will be infructuous inasmuch as even if the application is sent back for reconsideration it is likely to be rejected on the ground that the previous permits were irregular, since the question whether the permits were regular or irregular had not been gone into by the proper authority, and when the matter goes back to the Regional Transport Authority the Regional Transport Authority will have to go into that question if it is raised by any of the parties. The High Court will not usurp the jurisdiction of the Regional Transport Authority to determine the question whether the previous permits granted were valid in law or not. AIR 1956 Mad 143, Disting. **(1956) All LJ 655: 1956 All WR (HC) 604.**

——Art. 226 — Certiorari, writ of — Orders of Transport Authority under Motor Vehicles Act — (Motor Vehicles Act (1939), Ss. 55, 58).

The Transport Authority when granting or refusing permits acts as a quasi-judicial body and any decision arrived at by the Regional Transport Authority under Motor Vehicles Act is liable to be interfered with by the High Court by means of a writ of certiorari. A writ of certiorari can also be issued on the ground that the inferior tribunal has committed an error of law on the face of the record. **(1956) All LJ 655: 1956 All WR (HC) 604.**

——Art. 226 — Principles of natural justice — Hearing petitioner — Motor Vehicles Act does not give party right to appear and be heard — It is not violation of natural justice which requires that person should have opportunity at least at some stage — This opportunity is afforded at appellate stage — Regional Authority has discretion in granting permit — Act does not require him to act judicially in this matter — (Motor Vehicles Act (1939), S. 47). **AIR 1955 NUC (All) 3589.**

——Art. 226 — Judicial or quasi-judicial proceedings — Motor permit — Renewal — Proceedings for — Regional Transport Authority does not act as judicial or quasi-judicial authority — It is only appellate authority that acts as such — No grievance that appellate authority did not deny right to adduce evidence and be heard — There is no irregularity in procedure — Opinion of appellate authority that petitioner should not be given permit based upon relevant consideration — High Court will not interfere even though the view was wrong — (Motor Vehicles Act (1939), Ss. 58, 64) — (Motor Vehicles Rules (1940), Rr. 72, 73). **AIR 1955 NUC (All) 3540.**

——Art. 226 — Motor Vehicles Act (1939), S. 60 — Cancellation of permit upon breach of conditions by Regional Authority — State Transport Authority — Tribunal maintaining cancellation — Petition under Art. 226 — Sufficiency of grounds cannot be questioned — See Motor Vehicles Act, S. 60. **AIR 1955 NUC (All) 2743.**

——Art. 226—State Transport Authority hearing appeal, not constituted and composed as provided by S. 44 (2) — Order passed is without jurisdiction and is nullity — Certiorari will issue in spite of want of objection. See Motor Vehicles Act, (1939) (As amended by Act C of 1956), S. 44. **AIR 1964 Andh Pra 36 (FB).**

——Art. 226 — Motor Vehicles Act (1939), S. 68-D—Nature of order under—Order disclosing consideration of main points — No discussion under topical headings — Order cannot be challenged on the ground that all objections were not considered — Tribunal is not required to state its conclusions minutely on each question raised — Order of quasi-judicial Tribunal need not contain all attributes of judgment — See Motor Vehicles Act (1939), S. 68-D. **AIR 1960 Andh Pra 214 (DB).**

——Art. 226 — Motor Vehicles Act (1939 as amended by Act 100 of 1956), S. 68-D — Hearing objections, if judicial function — Powers if can be delegated to Secretary—(Constitution of India. Art. 166 (3) — Rules under and Art. 226). — See Motor Vehicles Act (1939 as amended by Act 100 of 1956), S. 68-D. **AIR 1959 Andh Pra 292.**

——Art. 226 — Transport Authorities under Motor Vehicles Act — Whether exercise judicial or quasi-judicial functions — Order suspending permit without recording or considering evidence — (Motor Vehicles Act (1939), S. 60) — (Special Tribunal).

Held, on facts that the order of suspension should be quashed by a writ of certiorari as the R. T. A. had erred in giving its judgment merely on the report of the Deputy Superintendent of Police in preference to the statements made by certain respectable witnesses. **1956 Andhra LT 309: 1956 Andhra WR 192: AIR 1957 AP 608 (609) (Pr 4).**

——Art. 226 — Certiorari against Transport Authority under Motor Vehicles Act (1939), Ss. 47 and 48 — Order under, is not administrative but judicial or quasi-judicial — Error apparent on face of record — Order quashed — (Motor Vehicles Act (1939), Ss. 47, 48). **1955 Andh WR 914: 1955 Andh LT 746: AIR 1957 Andh Pra 301 (303) (Pr 5, 6)**

——Art. 226 — Motor Vehicles Act (1939), S. 64 — Order of appellate authority, should be a speaking order — Appellate authority has to decide judicially and its decision is amenable to a writ of certiorari by the High Court — See Motor Vehicles Act (1939), S. 64. **AIR 1961 Assam 56.**

——Art. 226 — Quasi-judicial bodies — Regional Transport Authority constituted under the Motor Vehicles Act — Jurisdiction of High Court.

A writ of certiorari will issue against the administrative body acting in a quasi-judicial capacity if such a body has exceeded its jurisdiction or has failed to exercise jurisdiction vested in it or has failed to observe the principles of natural justice in the exercise of its jurisdiction or it has committed a manifest error of law. The Regional Transport Authority in dealing with the applications for grant or refusal of a permit under the Motor Vehicles Act acts in a quasi-judicial capacity. The decision therefore of the Regional Transport Authority will be amenable to a writ of certiorari by the High Court. ILR (1959) 11 Assam 447: AIR 1960 Assam 100 (102, 103) (Pt A) (Prs 3, 4) (DB).

——Art. 226 — Motor Vehicles Act (1939), Ss. 64, 47 — Powers of Appellate Board — Appellate Board can consider respective merits of various applicants in order to prefer one as against other — Board cannot direct Regional Transport Authority to start afresh with renotifying route and invite fresh applications — See Motor Vehicles Act (1939), S. 64. **AIR 1960 Assam 100.**

——Art. 226 — Motor Vehicles Act (1939), S. 53 — Scope — Refusal of permit — Grounds for — Fitness of person held no ground — See Motor Vehicles Act (1939), S. 53. **AIR 1959 Assam 106.**

——Art. 226 — Motor Vehicles Act (1939), Ss. 58 and 62 — Application for issue of temporary permit under S. 62 — Prayer for issue of permit for 3 years if can be ignored — Issue of temporary permits for three months — Subsequent refusal to renew — Validity — See Motor Vehicles Act (1939), S. 58. **AIR 1953 Assam 74.**

——Art. 226 — Certiorari — Mala fides — Grant of permit — Extraneous matters taken into account — Effect — Order granting permit — Validity. See Motor Vehicles Act (1939), S. 47. **AIR 1957 Cal 638.**

——Art. 226 — Certiorari — Order granting stage carriage permit to petitioner — Order reversed in appeal on a wrong interpretation of R. 57-A, Bengal Motor Vehicles Rules — Petition under Art. 226 — **Held**, that although no direction could be effectively given with regard to the permit which had already expired, order of appellate authority must be set aside — (Bengal Motor Vehicles Rules (1940), R. 57-A). **99 Cal LJ 133: 61 Cal WN 550: AIR 1957 Cal 462 (463) (Pt B) (Pr 6).**

——Art. 226 — Power of fixing fare-stages by R. T. A. under S. 44, Motor Vehicles Act is administrative and not quasi-judicial — Such exercise of power is not liable to be corrected by High Court in a writ petition. AIR 1964 SC 1573, Rel. on. **1965 Ker LT 1186: 1965 Ker LJ 993: (1966) 2 Ker LR 409: AIR 1966 Ker 137 (139) (Pt B) (Pr 12) (DB).**

——Art. 226 — Statutory bodies — Discretionary matters — Grant of stage carriage permits by Transport Authority under Motor Vehicles Act — Interference in writ proceedings — Motor Vehicles Act (1939), S. 47 (1) (a) and (e).

By and large, the assessment of the rival claims of the different applicants for stage carriage permit must be left to the authorities under the Motor Vehicles Act. It is only in cases where they deviated from well-established principles or took into consideration extraneous matters or had bound themselves by rigid rules which have affected the exercise of the free discretion vested in them that the High Court will be entitled to interfere in writ proceedings.

The Transport Authorities in Kerala do not commit any error in following the principles laid down in the Madras G. O. No. 1298 dated 28th April, 1956, while granting a stage carriage permit. Where after applying the principles of the Madras G. O., an applicant A was found to be the most qualified person for the grant of the stage carriage permit.

Held, that maintaining healthy competition was not a valid ground for ignoring his claims and granting the permit to the applicant who had obtained nearly 50 per cent of the marks obtained by A, unless the conclusion was reached that the grant of a further permit to A would be against public interest. **AIR 1964 Ker 253 (254) (Prs 4, 7, 8).**

——Art. 226 — Certiorari — Administrative Order — Motor Vehicles Act (1939) (as amended by Madras Act 20 of 1948), S. 43-A — Order under G. O. M. S. 1298 dated 28-4-1956 — Non-compliance with — Matter not justiciable.

In an appeal against the order of R. T. A. granting permits after allotting marks to each applicant for ensuring viability in accordance with Madras Government Order G. O. M. S. 1298 dated 28-4-1956 the State Transport Appellate Tribunal did not allot any marks for ensuring viability. The order of State Transport Appellate Tribunal was challenged. The evidence indicated that the marks as allotted by R. T. A. without taking into consideration the viability, were not equal.

Held, that (i) the correctness or otherwise of the marks allotted under the G. O. was not a matter that was justiciable under Articles 226 and 227 of the Constitution. S. C. Civil Appeal 198 of 1962 decided on 17-9-1962, Foll.

(ii) In view of the words "other things being equal" in the order the allotment of marks for viability was necessary only when other things were equal. O. P. No. 1999 of 1962, Affirmed. **1963 Ker LT 191.**

——Art. 226 — Certiorari — Transport Authority granting bus permit to one of several applicants — Discretion exercised in accordance with provisions of Motor Vehicles Act — High Court will not issue writ — Motor Vehicles Act (1939), S. 47.

The main criterion on which bus permits have to be made is in the interest of the travelling public. Where the authority has discussed the claim of the different applicants and selected one as the best suited for granting the permit in the interests of the travelling public, giving valid and convincing reasons, its order cannot be interfered with by the issue of a writ of certiorari.

After all, primarily, it is the duty and the obligation of the authorities of the Motor Vehicles Act to grant or refuse to grant a particular permit to a particular person. The High Court under Art. 226 of the Constitution can only see that the provisions of the Motor Vehicles Act and the rules made thereunder had been complied with. There is a complete and precise scheme for regulating the issue of permits providing what matters are to be taken into consideration by the authority as relevant in granting a permit and if the provisions have been complied with the Court will not interfere with the discretion exercised by such authority and convert itself into a Court of Appeal and then, examine the correctness or otherwise of the orders

made by the Tribunal. AIR 1952 SC 192, AIR 1954 SC 44 and (1952) 1 KB 338, Rel. on. **1961 Ker LJ 669: 1961 Ker LT 553.**

——Art. 226 — Scope — Violation of condition attached to permit under S. 48 (a) (iii), Motor Vehicles Act — Cancellation of permit — Legality. See Motor Vehicles Act (1939), S. 60 (1). **AIR 1957 Ker 35.**

——**Art. 226 — Application for permit rejected on untenable grounds — High Court remitting case back for decision — Authority cannot decline to deal with the application.**

A Transport Authority cannot decline to deal with an application for a permit legally and properly merely because it had rejected it earlier on untenable grounds, more particularly when the High Court has remitted application to it for such consideration. **1965 MPLJ (Notes) 168.**

——Art. 226 — Power of selection of persons for grant of permit under Motor Vehicles Act rests with the Authorities — High Court will not interfere unless decision is based on irrelevant or invalid considerations. See Motor Vehicles Act (1939), S. 47. **1964 MPLJ (Notes) 201.**

——Art. 226 — Decisions of questions of fact under the Motor Vehicles Act have been left to Transport Authorities — Their decision should not be interfered with in writ proceedings unless decision is based on irrelevant consideration or on invalid consideration. AIR 1965 SC 107, Rel. on. **1964 MPLJ (Notes) 169.**

——Art. 226 — Powers of Transport Authorities — They perform executive functions in quasi-judicial manner — Competitive claims—Considerations to be taken into account — Failure to bring out all grounds of preference — No ground for interference under Art. 226 of Constitution. See Motor Vehicles Act (1939), S. 47. **AIR 1962 Madh Pra 199 (DB).**

——Art. 226 — Jurisdiction of High Court — Applications for stage carriage permit under S. 47, Motor Vehicles Act — Rival claimants A and B for particular route — Permit granted to A — Point urged in writ proceedings that previously A's application for permit was rejected on ground of his inexperience in business — **Held,** that the previous order could not be taken into consideration, for each order, when it comes up, has to be examined on its own merits — It may well be that the earlier orders may be wrong or that the claimant did not place before the Transport Authorities sufficient material to establish his previous experience of the business — **Held,** further that even if the impugned order was erroneous, it could not be assailed in writ proceedings because the High Court could not allow proceedings in certiorari to assume the cloak of an appeal in disguise. It has, in fact, no jurisdiction to do so. AIR 1959 Mad 492; AIR 1958 SC 398 and M. P. No. 212 of 1960, Rel. on. **ILR (1963) Madh Pra 238: 1962 MPC 129: 1962 MPLJ 570: (1962) Jab LJ 941: AIR 1962 Madh Pra 199 (201) (Pt A) (Pr 5) (DB).**

——Art. 226 — Illegal order — Interference — Regional Transport Authority cannot grant temporary permit when application under S. 46 is pending — Grant of temporary permit illegal — High Court will interfere under Art. 226 even though remedy by way of revision not availed of. See Motor Vehicles Act (1939), S. 46. **1961 MPLJ (Notes) 141.**

——Arts. 226, 227 — Motor Vehicles Act (1939), Section 60 — Order granting permit to B in preference to A — Appeal by A on ground that B had obtained permit by fraud — Proper remedy — S. T. A. refusing to enquire into matter — Does not amount to failure to exercise jurisdiction. See Motor Vehicles Act (1939), S. 60. **AIR 1959 Madh Pra 320.**

——**Art. 226 — Interference — Grounds.**

Whether or not the High Court may agree with the decision of the Appellate Authority acting under the provisions of the Motor Vehicles Act, if it cannot be said that there was any excessive exercise or non-exercise of jurisdiction or any apparent error on record which has resulted in manifest injustice the High Court will not scrutinise the matter for itself in a writ proceeding even if a different view may be taken of it. **1957 Jab LJ 724: 1957 MPC 344: AIR 1958 Madh Pra 9 (11) (Pt F) (Pr 9).**

——**Art. 226 — Writ against order of State Transport Appellate Tribunal under S. 64, Motor Vehicles Act — Interference.**

Where in appeal filed against the order of R. T. A. refusing to grant permit to any of the applicants the State Transport Appellate Tribunal after considering the merits of the claims of the respective appellants grants the permit to one of them the order cannot be challenged under Art. 226. The question of allotment of marks is entirely one for the Tribunal and any error in that respect cannot be corrected by the High Court in proceedings under Art. 226. It is entirely within the jurisdiction of the Tribunal to refuse to grant permit to one of the appellants on the ground that he is almost a monopolist over that route and the matter cannot be raised in proceedings under Art. 226. **ILR (1964) 2 Mad 631: AIR 1966 Mad 1 (6) (Pt D) (Pr 10) (DB).**

——**Art. 226 — Motor Vehicles Act (1939), S. 43-A (Madras) — G. O. No. 1298 of 1956 issued by Madras Government containing directions for issue of stage carriage permits — Order declared invalid — Regional Transport Authorities and Appellate Tribunal relying on the order in exercising their quasi-judicial functions — Their orders are not judicial and can be set aside under Art. 226 — Existence of error of law manifest on record not necessary — Setting aside of decision of only Appellate Tribunal held sufficient.**

The existence of the Madras Government order No. G. O. 1298 of 1956 issued under S. 43-A of the Motor Vehicles Act 1939 and containing directions for issuing stage carriage permits which has been declared invalid by the Supreme Court had necessarily the effect of fettering the independent discretion of the quasi-judicial authorities like the Regional Transport Authorities and the Appellate Tribunal functioning under the Act and the consequence was inevitable that the decision reached by that quasi-judicial authority could no longer be regarded as having proceeded independent of the directions contained in the Government order, except perhaps in cases where that authority specifically stated for reasons recorded that it was not pursuing the directions contained in the Government order. Undoubtedly the result is that the decision reached by the authority is no longer a judicial one and looked at in that light, it is not a question whether there exists any error of law manifest on record or whether there is a legal misconduct in the disposal of the matter. It is clear that, if the mode of disposal of a judicial matter is unjudicial, the High Court can interfere in the exercise of its writ jurisdiction. AIR 1964 SC 1573, Rel. on.

Held that in the circumstances of the case, it would be sufficient if the order of the State Transport Appellate Tribunal alone was quashed and the matter remitted for reconsideration of the appeals before that authority. **ILR (1964) 2 Mad 821: AIR 1965 Mad 473 (475, 476, 477) (Prs 8, 11, 13) (DB).**

[**Partially Reversed** in AIR 1966 SC 1366.]

——Art. 226 — Certiorari — Order of State Transport Appellate Tribunal granting permit suffering from constraining influence of Government orders — Order of Tribunal is vitiated and writ of certiorari will issue — But bare citation of Government orders cannot be tantamount to proof of constraining or compelling influence — **Held** on facts that appellant was entitled to urge his ground within ambit of S. 64 (1) (f), Motor Vehicles Act, that grant in favour of second respondent was vitiated by constraining influence of Government orders and that, therefore, appellant was entitled to issue of writ of certiorari quashing grant of permit to second respondent — Motor Vehicles Act (1939), S. 64 (1) (a) (Madras Amendment). **ILR (1965) 2 Mad 256.**

——**Art. 226** — Motor Vehicles Act (1939), Section 47 — Mark system — Applications for grant of stage-carriage permits — Possession of facilities on date of hearing of Regional Transport Authority is alone relevant for assessment — State Transport Appellate Tribunal taking notice of subsequently acquired facilities and setting aside assessment of marks — It commits error of law justifying interference in certiorari. See Motor Vehicles Act (1939), S. 47. **(1963) 2 Mad LJ 405: AIR 1964 Mad 266 (DB).**

——**Art. 226 — Discretion of State Transport Appellate Tribunal — Interference — (Motor Vehicles Act (1939), S. 42 (1)).**

Where the State Transport Appellate Tribunal had actually considered the record of service of a person applying for a permit to ply stage carriage, it was for that authority to decide what importance it would attach to his previous bad record. That subject was very properly within the jurisdiction of the Tribunal. It is not for the High Court under Art. 226 to substitute its discretion for that of the State Transport Appellate Tribunal in a matter of this kind. **1959 Mad WN 281: 1959 Mad LJ (Cr) 280: 1959 Cri LJ 1192: (1959) 1 Mad LJ 256: AIR 1959 Mad 453 (454) (Pt A) (Pr 5).**

——Art. 226 — Quasi-judicial orders — Cancellation or suspension of permits under S. 60, Motor Vehicles Act. See Motor Vehicles Act (1939), S. 44 (5). **AIR 1957 Mad 387 (DB).**

——Art. 226 — Certiorari — Motor Vehicles Act (1939), S. 68 — Rules under — Rule 160-B is intra vires — 'Individual cases of application of Rule 160-B is subject to review under Art. 226. AIR 1954 Mad 690, Rel. on. **1955 Mad WN 910: (1956) 1 MLJ 179: 69 Mad LW 1051: ILR (1956) Mad 1272: AIR 1956 Mad 349 (352) (Pt E) (Pr 15).**

——**Art. 226 — Application against Regional Transport Authority — (Motor Vehicles Act (1939), S. 44).**

A Regional Transport Authority acts in the exercise of judicial or quasi-judicial functions and therefore its action can be called in question before the High Court on an application under Art. 226. AIR 1953 SC 79, Disting. **(1953) 1 MLJ 533: 1953 Mad WN 250: 66 Mad LW 310: ILR (1954) Mad 36: AIR 1953 Mad 709 (710, 711) (Pt C) (Pr 6) (DB).**

——**Art. 226 — Motor Vehicles Act (1939), S. 64 — Powers of appellate authority.**

A right of appeal can only be conferred by a statute and the scope of that appeal is also confined to the limits prescribed by the statute. The Regional Transport Authority in exercise of his original jurisdiction, and the Central Road Traffic Board and the Government in discharge of their appellate and revisional jurisdiction are bound to act judicially. The Central Road Traffic Board cannot therefore give a relief to an appellant in respect of a matter not covered by the appeal to the detriment of a person not a party to that appeal. The order made by the Central Road Traffic Board being without jurisdiction, the fact that the Government in revision refused to interfere, could not give it higher sanctity or make it any the less an order passed without jurisdiction. And a writ of certiorari can be issued as fundamental principles of jurisprudence are violated. 1927-1 KB 491, 1934-1 KB 277, Rel. on. **ILR (1952) Mad 306: 1951 Mad WN 776 (2): 64 Mad LW 860: 1951-2 Mad LJ 406: AIR 1952 Mad 39 (39, 40) (Prs 4, 6).**

——**Art. 226 — Grounds for issue — Order of suspension of permit to run a bus by the Regional Transport Authority on the ground of overloading — Presence during the proceedings before the Board of the Secretary of the Transport Authority who detected the overloading and suggested action being taken — If ground for issue of writ.**

A suspension order issued by the Regional Transport Authority was sought to be quashed on the ground that the presence of the Secretary of the Transport Board at the meeting of the Board vitiated the whole proceedings as it was the Secretary himself who put up the note that action should be taken against the petitioner for overloading and he also happened to be the person who actually detected the overloading.

Held, that as there was no decision of the Secretary which was the subject-matter of an appeal before the Transport Authority nor had he any personal interest in the matter, his presence cannot be a ground for quashing the order. **52 Cr LJ 1023: 1951 Mad WN 395: 64 LW 450: (1951) 1 MLJ 673: AIR 1951 Mad 852 (2) (853) (Pr 2) (DB).**

——**Art. 226** — Certiorari — Motor Vehicles Act (1939), Ss. 57 (3) and (5), 47, 64 — Provisions of S. 57 (3) and (5) are mandatory — Grant of permits by State Transport Authority without receiving representations and without hearing persons making representations — Grant of permits is arbitrary and without jurisdiction — Defect cannot be cured by appellate authority. See Motor Vehicles Act (1939), S. 57 (3) and (5). **AIR 1960 Manipur 36.**

——Art. 226 — Application for revised timings — Order by Regional Transport Authority tentatively altering timings — Order is illegal — Order set aside in revision by State Transport Appellate Tribunal — Latter order not to be interfered with under Art. 226 of the Constitution on ground that though correct it was not rested on proper ground. See Motor Vehicles Act (1939), S. 48 (3) (xxi). **AIR 1962 Mys 87 (DB).**

——**Art. 226 — Writ against Regional Transport Authority (Motor Vehicles Act (1939), S. 57).**

High Court can interfere and issue a writ against statutory Tribunals like the Regional Transport Authority and the Provincial Transport Authority if it is shown that their decisions disclose a violation of the provisions of the Motor Vehicles Act and are proved to be arbitrary. **18 Cut LT 296: AIR 1953 Orissa 235 (236) (Pt A) (Pr 5) (DB).**

——Art. 226 — Writ of certiorari — Jurisdiction to issue — Order of Chairman, Provincial Transport Authority, deciding incompetent appeal under S. 64, Motor Vehicles Act — Writ to quash — If can issue.

A writ of certiorari would lie not only against the orders of a Court but also against an order of a tribunal exercising judicial functions though such a tribunal is not a Court. The Chairman, Provincial Transport Authority, hearing and disposing of an appeal under S. 64 of the Motor Vehicles Act is not a Court, as ordinarily understood, but his order made in such an appeal is clearly a judicial act being one passed after hearing the parties and after deciding between a proposal and an opposition, and when an order is made without or in excess of jurisdiction (e. g., on an incompetent appeal), a writ will issue to quash the order. ILR (1944) Kar (PC) 119, AIR 1948 Mad 454, Rel. on. **16 Cut LT 202: AIR 1951 Orissa 81 (84) (Pt D) (Pr 8) (DB).**

——Art. 226 — Motor Vehicles Act (1939), Sections 47 (1), 64-A — Grant of permit — Application under S. 64-A against order of Appeal Board — Transport Minister taking relevant matters into consideration — No error in exercise of discretion and revisional powers — Order not interfered with under Art. 226 — Motor Vehicles Act (1939), Sections 47 (1), 64-A. **1964 BLJR 459: ILR 44 Pat 282.**

——Art. 226 — Motor Vehicles Act (1939), S. 64 — Grant of permit by Regional Transport Authority — Appeal Board setting aside the order — Ground not relevant for decision — Order held arbitrary and set aside under Art. 226. See Motor Vehicles Act (1939), S. 64. **AIR 1961 Pat 484.**

——Arts. 226 and 19 (1) (g) — Right to carry on business of transport on public road — Extent of — State Government granting licence to ply buses on particular road to A in addition to that granted previously to B — Absence of notice to B — Order is not invalid and cannot be challenged by B by way of writ petition — Motor Vehicles Act (1939), S. 47 and S. 64-A (Bihar Amendment). See Ibid, Art. 19 (1) (g). **AIR 1957 Pat 340 (DB).**

——Art. 226 — Decisions by quasi-judicial Tribunal — Issue of writs — (C. P. Code (1908), S. 9) — (Special Tribunal) — (Motor Vehicles Act (1939), S. 64).

The writs in Art. 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals, or bodies or officers acted wholly without jurisdiction or in excess thereof or in violation of the principles of natural justice, and however extensive that jurisdiction may be, it is not wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned. AIR 1952 SC 192 and AIR 1951 SC 217, Rel. on.

There is a basic difference between want of jurisdiction and illegal and irregular exercise of jurisdiction. Where there is illegality or irregularity in the exercise of jurisdiction, the defect, if any, can be corrected according to the procedure established by the law by way of appeal or revision; and where the appellate Court has pronounced its decision against the petitioner, the matter having been finally decided, it should not be ordinarily reopened in a proceeding by way of a writ.

Transport Authorities are bodies exercising quasi-judicial functions and have to act within the framework of the Motor Vehicles Act, 1939, in deciding matters which are placed before them and which affect valuable rights of parties; but when the appellate body has dealt with the matter on merits, it is perhaps too late for the High Court to interfere by a writ of certiorari to quash the orders of those Authorities when there is nothing to show that the appellate authority acted without jurisdiction, or in violation of fundamental principles of justice. **1953 BLJR 40: 32 Pat 43: AIR 1953 Pat 75 (76, 77) (Prs 6, 7) (DB).**

——Art. 226 — Claims Tribunal — Powers of — S. 110-C of Motor Vehicles Act does not clothe Tribunal with all powers of Civil Court so as to attract provisions of O. 16, C. P. C. — Rules of natural justice to be complied with — Order disallowing production of witness — Order held contravened rules of natural justice — Order quashed. See Motor Vehicles Act (1939), S. 110-C. **AIR 1965 Punj 477.**

——Art. 226 — Order of Chief Commissioner in appeal against order of State Transport Authority is quasi-judicial — Jurisdiction of High Court under Art. 226, can be invoked only if there is manifest error of law — Motor Vehicles Act (1939), S. 64. **63 Punj LR 930: AIR 1962 Punj 64 (65) (Pt A) (Pr 4) (DB).**

——Art. 226 — Variation in the condition of permit granted to the petitioner under S. 48 of the Motor Vehicles Act — Notice as required by Section 48 (3) (xxi) not given to petitioner — Change causing great financial loss to petitioner — As the non-issue of the notice as required by the statute had resulted in manifest injustice to the petitioner the High Court could interfere under Art. 226 of the Constitution. **64 Punj LR 34: AIR 1962 Punj 17 (21) (Pt B) (Pr 7).**

——Art. 226 — State Transport Authority acting under S. 62 of the Motor Vehicles Act (1939) — Decision can be interfered with under Art. 226.

The State Transport Authority acts in a quasi-judicial manner while granting temporary permits under S. 62 of the Motor Vehicles Act. Where there is no material on the record for holding that there was a particular temporary need, mere assertion by the authority that there was such a temporary need without any basis, would not be a compliance with the statutory provisions of S. 62 of the Act in order to justify the grant of temporary permit. Under such circumstances, the High Court is justified in issuing a writ of certiorari and quashing the impugned finding. AIR 1952 SC 192 and AIR 1954 Raj 33 and AIR 1956 Madh Bha 231 and AIR 1959 Mys 120, Rel. on. **64 Punj LR 34: AIR 1962 Punj 17 (21, 22, 23) (Pt C) (Prs 10, 11).**

——Art. 226 — Motor Vehicles Act (1939), S. 33 — Natural justice — Order passed under S. 33 of Act is quasi-judicial — Hearing not given to party concerned — Order is invalid. **1965 Raj LW 49: ILR (1965) 15 Raj 100: AIR 1965 Raj 149 (150, 151) (Pt A) (Prs 4, 6) (DB).**

——Art. 226 — Motor Vehicles Act (1939), S. 33 — Quasi-judicial act — Suspension of registration certificate is quasi-judicial act.

To determine whether an administrative act has to be performed judicially, the test is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially. The question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular case and the construction of the particular statute with the assistance of the general principles laid down in judicial decisions. AIR 1950 SC 222 and AIR 1959 SC 107 and AIR 1954 SC 728 and AIR 1957 SC 232 and AIR 1958 SC 398, Rel. on. **A quasi-**

judicial act is also an administrative act, though a duty is cast on the executive authority acting quasi-judicially to conform to norms of judicial procedure in performing the act in exercise of executive powers. AIR 1959 SC 308, Rel. on.

Looking to the language of S. 33 of the Motor Vehicles Act, it is evident that the decision that the authority has to reach before passing the requisite orders is not contemplated to be a capricious or an arbitrary one, but should only be reached in a reasonable manner and after an opportunity is given to the owner of the vehicle of making a representation, if any. Sub-s. (2) of S. 35 of the Act is more or less assimilated to the procedural provisions of hearing appeals under S. 64. This affords a further clue to get at the true character of the proceedings before the registering authority or the prescribed authority. Hence, in view of the grave consequences that will result in denial of a vested right to an owner of a motor vehicle, the administrative act taken under S. 33 of the Act must be construed to be quasi-judicial in character. The suspension of registration certificate is a matter of infliction of punishment for a wrong act on the part of the owner of the motor vehicle and is not merely one of policy. AIR 1959 SC 107 and AIR 1950 SC 222 and AIR 1959 SC 308, Foll. (1952) 1 All ER 480, Rel. on. **1965 Raj LW 49: ILR (1965) 15 Raj 100: AIR 1965 Raj 149 (151, 152) (Pt B) (Prs 6, 7) (DB).**

——**Art. 226** — Quasi-judicial order — Motor Vehicles Act (1939), S. 64-A — Necessary parties — Applicants for fresh permits applying for revision without impleading existing operators — S. T. A. relaxing restrictions on issue of permits and remanding case to R. T. A. for disposal — Existing operators ought to have been impleaded as respondents in revision although final order was not passed. See Motor Vehicles Act (1939), Section 64-A. **AIR 1964 Raj 275 (DB).**

——Art. 226 — Plying of buses on particular route — Operators acquire proprietary right — Right affected — Existing operators must be given opportunity of being heard. See Motor Vehicles Act (1939), S. 42. **AIR 1962 Raj 174 (DB).**

——**Art. 226** — Order by appellate authority under Motor Vehicles Act when it was illegally constituted suffers from patent want of jurisdiction. See Motor Vehicles Act (1939 as amended in 1950), S. 44. **AIR 1960 Raj 105 (DB).**

——**Art. 226 — Other remedy — Appeal pending before Appellate Tribunal of State Transport Authority — Petition before High Court agitating same — (Motor Vehicles Act (1939), S. 35).**

Where the petitioners have come up to the High Court, in a matter which is properly pending before the Appellate Tribunal of the State Transport Authority, it is for that Tribunal to decide the question on the merits whether the temporary permit granted by the Regional Transport Authority to the opposite party was in accordance with law or not, and it is not for the High Court to interpose its decision on that point at this stage. **1957 Raj LW 488: ILR (1957) 7 Raj 1025: AIR 1958 Raj 165 (166, 167) (Prs 5, 6) (DB).**

● ——**Art. 226** — Certiorari — Motor Vehicles Act (1939), S. 47 (1) (c) — Rajasthan Motor Vehicles Rules (1951), R. 90 — Few more permits granted on route on which existing stage carriages were not running daily — Order is not liable to be quashed by writ of certiorari — Order is not repugnant to condition regarding adequacy of existing road passenger transport service. Malik Ram **v.** Regional Transport Authority, Jaipur, **1956 Raj LW 257: ILR (1956) 6 Raj 751: AIR 1956 Raj 142 (145) (Pt C) (Pr 13) (FB).**

——**Art. 226 — Certiorari — Decision on collateral point—Powers of Appellate Authority under S. 64, Motor Vehicles Act — Decision on question of limitation and locus standi — Interference with on writ of certiorari— (Motor Vehicles Act (1939), S. 64) — (Rajasthan Motor Vehicles Ordinance (XIV of 1950), Rules under R. 108).**

In every case it has to be seen whether the decision which is challenged by a writ of certiorari is on a point collateral to the merits of the case or a part of the very issue which a lower Court has to enquire into. If it is the former, certiorari will lie; but if it is the latter, certiorari will not be granted. The question whether the matter is collateral or part of the very issue in the case depends upon the powers granted to the tribunal by the Legislature. If the legislature entrusts the tribunal with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction on finding that it does exist to proceed further or do something more, the tribunal will have the jurisdiction to decide the matter and it will not be collateral.

Reading S. 64, Motor Vehicles Act, with R. 108 framed under Rajasthan Motor Vehicles Ordinance, the conclusion is obvious that the appellate authority has the widest power and has jurisdiction to determine questions of limitation and locus standi and the High Court cannot interfere with their decision on a writ of certiorari even though it may be wrong. AIR 1952 SC 319, Applied. **ILR (1953) 3 Raj 931: 1954 RLW 649: AIR 1955 Raj 19 (23, 24) (Pt C) (Prs 9, 10, 11a) (DB).**

——**Art. 226 — Mala fides — [Motor Vehicles Act (1939), S. 62].**

Regional Transport Authority exercising powers of issuing temporary and non-temporary permits, acts as quasi-judicial authority — Certiorari will issue if it acts without jurisdiction or refuses to exercise jurisdiction or acts illegally or with material irregularity — Authority exercising powers under S. 62, Motor Vehicles Act, and granting temporary permit — It is for the authority to decide the need for temporary permit — High Court will not interfere because it considers that there was no need for temporary permit, unless the action of the authority is mala fide. AIR 1952 SC 192, Rel. on: AIR 1948 Mad 400: AIR 1951 All 257 (FB): AIR 1953 Assam 74, Considered. **1953 Raj LW 440: ILR (1953) 3 Raj 250: AIR 1954 Raj 78 (80) (Pr 7) (DB).**

——**Art. 226 (1)** — Writ of certiorari — R. T. A. acting under S. 62, Motor Vehicles Act is quasi-judicial authority. See Motor Vehicles Act (1939), S. 62. **AIR 1954 Raj 33 (DB).**

——**Art. 226** — Judicial authority — Appellate authority under Motor Vehicles Act is a quasi-judicial authority. See Motor Vehicles Act (1939), S. 64. **AIR 1953 Raj 193.**

——**Art. 226 — Motor Vehicles Act (1939), Sections 58 (2) and 47 — Application for renewal of permit — Discretion of Regional Transport Authority — No absolute right to renewal at old rate — Renewal of permit at a rate below prescribed minimum — Petitioner cannot accept permit and repudiate the rate.**

The grant of a permit is entirely within the discretion of the Regional Transport Authority and there is neither an absolute right to a permit or a

renewal thereof, nor again to its being given at the old rate.

Where the petitioner under Art. 226 had been granted the renewal of his permit on his offering a rate below the prescribed minimum under an apprehension that he would lose his permit in case he did not offer a lower bid as required by the Regional Transport Authority, it is not open to the petitioner to accept the renewal of the permit and to repudiate the condition requiring him to charge fares at the agreed rate. If the proceedings of the Regional Transport Authority and the final decision taken by it are illegal then the entire proceedings and the decision must be set aside. The petitioner cannot have it both ways, namely, to retain the benefit of the permit and to disown the rate at which it was granted. If he seeks to operate the routes under the renewed permit then he has to abide by the permit together with its conditions. **8 Sau LR 90: AIR 1955 Sau 57 (59, 60) (Pt D) (Prs 8, 10) (DB).**

——Art. 226 — Certiorari — Issue of stage carriage permits under Motor Vehicles Act — **(Motor Vehicles Act (1939), S. 48).**

Grant of a permit is entirely within the discretion of the Transport authorities to be exercised according to Motor Vehicles Act which provides for what matters are to be taken into consideration — The remedies for the redress of grievances or the correction of errors are found in the statute itself and should generally be resorted to — Act under which applications were made superseded during their pendency — Issue of permits on those applications when they have not been renewed under new Act is mere irregularity in exercise of jurisdiction and can be waived — When parties join issues in the proceedings and object to the applications on merits they cannot question authority to issue the permits, on the ground of irregularity in the proceedings under Art. 226 — Order is also not vitiated on the ground of arbitrariness because it states that it is against the interest of travelling public to encourage monopoly for thereby it does not take into consideration any policy extraneous to the Act. Case-law relied on. **ILR (1952) Trav-Co 923: 1952 Ker LT 652: AIR 1953 Trav-Co 102 (103, 104) (Pt A) (Prs 2, 3, 4, 5,) (DB).**

——Art. 226 — Transport Authority is quasi-judicial body — Violation of provisions under Motor Vehicles Act — Writ can be issued.

The Transport Authority is a body constituted under the Motor Vehicles Act. It is a quasi-judicial body when dealing with the application for the State Carriage permit. When such a body has violated the provisions of the Statute by which it is created the High Court has certainly the power to issue a writ of certionari. English and Indian Case-law relied on.

Where the Transport Authority violated the provisions of the Motor Vehicles Act and exceeded its jurisdiction in granting a Stage Carriage permit to the counter-petitioner for running a Stage Carriage on a route not included in its application and notified as R. O. C. No. 302 M. R. B./50 the order of the Transport Authority, and that of Government confirming that order, were quashed. **1952 Ker LT 515: ILR (1953) Trav-Co 234: AIR 1953 Trav-Co 74 (76) (Pt B) (Pr 8).**

——Art. 226 — Travancore Motor Vehicles Act (1 of 1117), S. 54 (4) — Application rejected by Transport Authority — On appeal Government ordering issue of writ — Decision of Government is not ultra vires. See Travancore Motor Vehicles Act (1 of 1117), S. 54 (4). **AIR 1952 Trav-Co 443.**

——Art. 226 — High Court, powers of — Stage carriage permit granted without following essential requirements of law — Discretion of Transport Authority — (Motor Vehicles Act (1939), Ss. 62 and 57).

In a certiorari proceeding the Court will not deal with the matter as a Court of appeal, and will not examine the order in detail, and will confine itself only to errors of law apparent on the face of the record.

Where the Transport Authority in granting stage carriage permit did not follow the mandatory requirements of law, the proceedings will be amenable to Certiorari. The High Court will not, however, give direction to issue permit to petitioner, since this is in the discretion of the transport authorities, but it will quash the illegal order of the Authority. **AIR 1959 Tripura 35 (37) (Pt C) (Pr 14).**

——Art. 226 — Motor Vehicles Act (1939), Sections 47, 48 — Transport authority refusing permit for bus service on grounds other than those mentioned in S. 47 — Validity of order. See Ibid, Art. 19 (1) (g). **AIR 1956 Vin Pra 25.**

——Arts. 226 and 227 — Motor Vehicles Act (1939), S. 64 — Appellate tribunal under.

The Appellate Tribunal under M. V. Act is a judicial authority subject to the High Court's judicial supervision, and amenable to its guidance and correction. **AIR 1953 VP 41 (42) (Pt C) (Pr 9).**

182. University, college and education authorities.

● ——Art. 226 — Order by quasi-judicial tribunal based on no evidence — High Court will interfere — Enquiry Committee of University cancelling examination result of student — Nature of evidence — Duty of High Court in writ petition — Education Institution. H. S. and I. E. Board v. Baglesh-war, **(1963) 1 SCWR 1: 1963 SCD 584: (1963) 2 SCJ 651: 1963 All LJ 676: ILR (1963) 2 All 499: (1963) 2 Andh LT 119: (1963) 3 SCR 767: AIR 1966 SC 875 (876, 878) (Prs 4, 12).**

● ——Art. 226 — Academic matters—Board of experts appointed by university for selection of candidates for post of Reader — Recommendation of Board — Interference by Court, propriety of.

Boards of Appointments to the posts of teachers are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before Courts, normally the Courts should be slow to interfere with the opinions expressed by the experts. If there is no allegation about mala fides against the experts who constituted the Board, it would normally be wise and safe for the Courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. The Board is not in the position of an executive authority, issuing an executive fiat, nor does it act like a quasi-judicial tribunal, deciding disputes referred to it for its decision. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. Tests which would legitimately be applied in the case of writs of certiorari cannot be applied. The question of manifest error is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should consider is whether the appointment made by the Chancellor on the recommendation of the Board had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should show due regard to the opinion expressed by the

Board and its recommendations on which the Chancellor has acted. University of Mysore v. Govinda Rao, (1964) 1 SCWR 44: AIR 1965 SC 491 (496, 497) (Pt D) (Pr 13).

●——Art. 226—Quasi-judicial act — What constitutes — Administrative body — Statutory education authority — Examinations Committee under U. P. Intermediate Education Act — Action in cases of examinees using unfair means — Committee acts quasi-judicially — Principle of audi alteram partem applies — U. P. Intermediate Education Act (II of 1921), Ss. 13 and 15.

If a statutory authority has power to do any act which will prejudicially affect the subject, then, although the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the Statute to act judicially: AIR 1950 SC 222 (260) and AIR 1958 SC 398 and AIR 1959 SC 107 and AIR 1959 SC 308 and AIR 1960 SC 606, Foll. The statute is not likely to provide in so many words that the authority is required to act judicially; that can only be inferred from the express provisions of the statute. The inference whether the authority has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected. A duty to act judicially may arise in widely different circumstances. Observations of Parker, J. in (1952) 2 QB 413, Rel. on.

The Examinations Committee of the Board of High School and Intermediate Education, U. P., appointed under S. 13 of the U. P. Intermediate Education Act (II of 1921), when it exercises its powers under R. 1 (1) of Chap. VI of the Regulations framed under S. 15, in dealing with cases of examinees using unfair means in examination halls, is acting quasi-judicially and the principles of natural justice will apply to the proceedings before the Committee. AIR 1952 Cal 594 and AIR 1953 Cal 212, Approved.

Where no opportunity whatever was given to the examinees to give an explanation and present their case before the Committee, the resolution of the Committee cancelling their results and debarring them from appearing at the next examination is vitiated. Decision in AIR 1956 All 539, sustained, though its view that the Committee was acting merely administratively when proceeding under R. 1 (1) held not correct. Board of High School and Intermediate Education, U. P. v. Ghanshayam Das Gupta, **ILR (1962) 2 All 661: (1963) 2 SCJ 599: (1962) Supp 3 SCR 36: 64 Pun LR 575: 1962 All LJ 776: AIR 1962 SC 1110 (1113, 1114, 1115, 1116) (Prs 7, 8, 11, 12).**

——Art. 226 — Quasi-judicial act — Statutory educational authority — Board of High School and Intermediate Education under U. P. Intermediate Education Act — Examinee securing undue admission to examination — Action against — Board acts quasi-judicially — Order cancelling his examination or refusing to declare result is penal — Denial of opportunity to candidate — Natural justice violated.

The Board of High School and Intermediate Education, U. P. constituted under the U. P. Intermediate Education Act and the Chairman of the Board while performing Board's functions act quasi-judicially in considering the cases either of using unfair means at or securing undue admission to examination. Before passing an order either cancelling the examination or refusing to declare the result of a student admitted to the examination though short of prescribed attendance, the Board or the Chairman has to give an opportunity to the student concerned for an explanation. Denial of such an opportunity contravenes principle of natural justice.

The Board or the Chairman in considering the cases of either using unfair means at the examinations or of securing undue admission has to form an objective opinion on some questions of fact or law and such an order amounts to imposition of penalty since it would adversely affect the career of the student and would deprive him or her of the labour put in. In cases where the question relates only to a breach of the rules and regulations for securing undue admission to an examination no stigma may be involved but on that account the order withholding the result or cancelling the examination does not cease to be penal. AIR 1962 SC 1110, Foll. AIR 1950 SC 222 and AIR 1959 SC 107, Dist. **AIR 1963 All 41 (42, 43, 44) (Prs 11, 13, 14) (DB).**

——Art. 226 — Regulations under Chap. VI, Para. 1 (1) — Examinations committee considering cases under Para. 1 (1) — Committee not required to act judicially or quasi-judicially. See U. P. Intermediate Education Act (2 of 1921), S. 15. **AIR 1956 All 539.**

——Art. 226 — Certiorari — Interference in University matter.

The High Court is always reluctant to interfere in matters relating to the management of educational bodies. The Court's discretion must however be exercised on judicial principles, and if there is nothing in the conduct of the petitioner which disentitles him from the relief which he seeks, certiorari cannot be refused on the ground that the matter is essentially a University matter and the order was made in good faith and that the harmonious working of the University requires the unquestioning acceptance of the decision of the Chancellor. **1955 All LJ 244: ILR (1955) 1 All 698: AIR 1955 All 131 (137) (Pt F) (Pr 16).**

——Art. 226 — Administrative body — Opportunity to be heard.

Though the Board of Examiners is an administrative body the functions exercised by the Examination Board when it investigates into cases of misconduct are quasi-judicial and the candidate concerned should have a reasonable opportunity to offer an explanation. If such an opportunity has been afforded and the explanation of the candidate concerned has been considered, the principles of natural justice are complied with and thereafter the procedure to be followed and the penalty to be imposed are matters which are solely within the jurisdiction of the Examination Board. AIR 1952 Cal 594, Rel. on. **1955 Andhra WR 439: AIR 1955 NUC (Andh Pra) 5823.**

——Art. 226 — Certiorari — Issue of writ — Direction by University regarding constitution of governing body of College as condition for recognition.

A direction issued by a University regarding the constitution of a governing body of a College as a condition for recognition of the college by the University, emanates from an executive authority, and is not quasi-judicial in character. A writ of certiorari does not, therefore, lie in such a case. **ILR (1951) 3 Assam 348: AIR 1951 Assam 163 (165) (Pt C) (Pr 18) (DB).**

——Art. 226 — Writ against college authority for refusal to admit student. See Ibid, Art. 20 (2). **AIR 1954 Hyd 25 (DB).**

——Art. 226 — Writ against University in Disciplinary matter — Rustication of delinquent student

by University authorities — Rustication order affects civil rights of student — Order is not purely administrative act but quasi-judicial act — Writ against order is maintainable. AIR 1950 SC 222, Foll.; AIR 1954 Pepsu 151, Rel. on. **1965 Kash LJ 23: AIR 1965 J and K 23 (26) (Pt A) (Prs 20, 22, 23, 24).**

——Art. 226 — Power to interfere with quantum of punishment decided by educational authority against delinquent student — Educational authority is exclusive judge. AIR 1954 Pepsu 151, Dissented. AIR 1956 All 46 and AIR 1960 All 579, Rel. on. **1965 Kash LJ 23: AIR 1965 J and K 23 (28) (Pt C) (Pr 37).**

——Art. 226 — Administrative order — Order to manager of School to appoint new headmaster — Issue of writ.

No certiorari can issue to quash an administrative order. The real test as to whether an order is administrative or judicial is to see whether there is a duty to act judicially. A memorandum, passed by the Director of Upper and Lower Primary Schools, Trivandrum, calling upon the manager of an Upper Primary School to appoint a new headmaster is nothing but an executive or administrative order. This administrative order is not subject to such defect or infirmity, as would warrant the exercise of the extraordinary jurisdiction under Art. 226. **1959 Ker LT 1130: 1959 Ker LJ 1285: (1960) 1 Lab LJ 73: AIR 1960 Ker 145 (145, 146) (Prs 3, 5, 7).**

——Art. 226 — Quasi-judicial tribunal — Statutory bodies under University Act — The Syndicate and the Results Committee while condemning a student alleged to have used unfair means at examination act quasi-judicially — It is their duty to decide whether student has in fact used unfair means, objectively and to act quasi-judicially — They must give opportunity to the student to be heard. See Vikram University Act (XVIII of 1955), S. 19. **1965 Jab LJ 912: AIR 1966 Madh Pra 136 (DB).**

——Art. 226 — Powers of High Court — University — Punishment inflicted on candidate at examination for mal-practice — Administrative act— If subject to writ jurisdiction — Powers of Court — Natural justice — Procedure and practice — Duty of University Authority in taking decision — Principles.

It is not the law that where an academic body, such as a University, imposes on its pupil (a candidate appearing for an examination) a punishment for a malpractice at the examination, it is doing a mere administrative act, the propriety of which cannot be called in question in proceedings under Art. 226 of the Constitution. The absence of rules or regulations prescribing the procedure to be followed in such cases for taking disciplinary action cannot vest in the University an absolute power to do what it likes. At the same time, it has to be borne in mind that it is not every act of the statutory authority that can be called in question under the extraordinary powers vested in the High Court under the Constitution.

Where the University entrusted with the authority to determine whether there has been a breach of discipline and to punish for such breach, the imposition of punishment, in that case is a quasi-judicial act and is subject to the controlling jurisdiction of the High Court exercised under Article 226. The fact that the University is the judge and there are no two parties to the dispute is not material. It is therefore implicit that the University Authority should come to its own conclusions on the subject-matter left to its decision and in so doing it should conform to the principles of natural justice. When the student has been given sufficient opportunity of which he has availed himself to show that the charge against him was not true, there can be no grievance so far as that matter is concerned.

In considering whether the authority has itself considered the matter and come to its own conclusions, the circumstance that the minutes books of the meeting held for the purpose makes no reference to any discussion having taken place does not lead to the conclusion that the authority has not properly discharged its duty. A minutes book is generally not intended to contain and does not usually contain all that took place at the meeting. In this respect a distinction should be made between the report of a meeting and the minutes thereof, as the purpose of the latter is only to record the decision arrived at.

When it is found that the practice of the University is only to record its resolutions and there is nothing in the constitution, regulations or statute to oblige it to record even a summary of the discussion on the resolutions, it is not obligatory on the authority to write a judgment giving reasons. The burden is on the applicant to show that the authority did not actually decide the matter or acted in excess of its powers. **ILR (1964) 1 Mad 582: (1964) 2 MLJ 251: 77 Mad LW 591: AIR 1965 Mad 107 (108), 109) (Pt A) (Prs 2, 3, 4) (DB).**

——Art. 226—Educational institution—Misconduct by student — Disciplinary action — Power of head of institution — Duty to maintain moral standard among students — Institution giving vocational training — Student writing love letter to innocent girl, stranger to him and entering her house to deliver it — Expulsion of student for misconduct justified — Educational Institution — Penal Code (1860), Sections 441, 442.

The power to take disciplinary action against misbehaviour of a student is inherent in the head of an educational institution. The maintenance of moral and intellectual standards among the students is inherent in the very idea of an educational institution and does not depend upon the fact whether the institution is ad hoc or permanent. The responsibility of the head of the institution is not confined to the pupil who errs. He has a greater responsibility of protecting the morale of other students of the institution. He further owes a duty to maintain the reputation of the institution and while taking disciplinary action against a student who has misbehaved should take into account not only the interests of the particular pupil concerned but also those of the other students. 176 ER 734 (756); AIR 1952 Mad 151; AIR 1947 Bom 93, Rel. on.

Although the conditions under which students are admitted to the Training Centre do not expressly reserve a power to its head to take disciplinary action against a misbehaving student, such a power is inherent in the head of the institution.

The writing of love letters by a student to an innocent girl, who is a perfect stranger to him, must necessarily annoy her. Where therefore a student of a Government Footwear Training Centre, is found guilty of aforesaid misconduct, the head of the institution has power to expel him from the institution after he has been given full opportunity to explain his conduct and full inquiry is made in the matter. The offences committed by the student are such that it cannot be said that the termination of his training is unreasonable or even an excessive punishment. If the authorities thought that the maintenance of moral standard of

the institution required a particular punishment, it will not be for the Court to advise or suggest a lesser punishment, as to do so would tantamount to require them to lower their standards. **75 Mad LW 602: (1962) 2 Mad LJ 435: ILR (1963) Mad 63: 1963 (2) Cri LJ 200: AIR 1963 Mad 68 (70, 71) (Pt A) (Prs 8, 9, 12, 13, 14, 15) (DB).**

——Arts. 226, 19 (1) (g), 245 — Notification by Director of Public Instruction prescribing certain copy books for use in schools — Order arbitrary and creating monopoly — Notification quashed.

By a petition under Art. 226, two Notifications, dated 20th and 30th March 1954, respectively, and a Circular, dated 11th May 1954, issued by the Director of Public Instruction in Mysore were attacked as being unwarranted and unconstitutional. The notification prescribed the text books and copy books to be used in all the Primary and Middle Schools of the State. Objection was taken only to the prescription of the Kannada Copy Books described as "Adarsha Lipi Pusthaka" printed by the second Respondent. Special emphasis was laid on the use of the Copy books by means of a "N. B." in the notifications and the Educational Officers were enjoined in the Circular to enforce the same. The petitioner was a dealer in Kannada copy books, who was materially affected by his books being excluded from use in schools during the year. It was alleged by him that the orders were arbitrary and designed to benefit a particular businessman by creating a monopoly of trades in his favour.

Held, that on reading the provisions in the Mysore Education Manual and Notifications as a whole, the Director could not be deemed to be competent to prescribe the books of his choice suo motu.

(2) That the agency for determining the text books was the Secondary Education Board and the determination had to be given effect to by a formal notification. In any event, the consideration of the books by the Board was a pre-requisite for an order prescribing them.

(3) That the principle that if there are no rules for guiding and controlling the exercise of discretion by the person or body of persons then the power must be held to be arbitrary and unreasonable applied to the acts of the Director. AIR 1951 Cal 90 and AIR 1952 Mad 565; (1952) 1 MLJ 514, Ref.

(4) That under Art. 19 (1) (g) of the Constitution the citizen had the right to carry on any occupation, trade or business, subject to such restrictions as the State may impose in the interests of the public and such qualifications as are necessary for carrying on any occupation, trade or business.

(5) That the persons who made a living by sale of books or to whom it was a calling and those who had to provide the books necessary for education of pupils who depend on them were entitled to expect and demand the observance of rules and adherence to methods settled by practice so that there was no room for doubt-fancied or real-about play of personal predilections in the choice of books.

(6) That the orders in question were found to be without or in excess of jurisdiction and not in conformity with practice. Restrictions were placed on the use of books published by the petitioner and several others by granting monopoly of supply to the 2nd respondent. The burden of paying more for the 2nd respondent's books than for books of others was imposed on the pupils. Orders suffered from the infirmity of the absence of reasons for all this. The petitioners were therefore justified in challenging them, and the notifications and the circular so far as the copy books of 2nd respondent were concerned were quashed. **ILR (1955) Mys 203: AIR 1955 Mys 81 (83, 84, 85, 86) (Pt A) (Prs 4, 6, 9, 10) (DB).**

——Art. 226 — Jurisdiction of High Court.

The Principal of a College is subject to the jurisdiction of the High Court under Art. 226 of the Constitution in respect of any disciplinary action taken by him against a student of the College, when the College of which he is the Principal is a public institution and the Principal is a public or quasi-public official. **(1959) 1 OJD 195: ILR (1959) Cut 311: AIR 1959 Orissa 196 (200) (Pt B) (Pr 11).**

——Art. 226 — Jurisdiction of High Court — Public or quasi-public office — Office of College Principal.

Held on facts (1) that the fact that the principal donor was the Rajah Bahadur of Khallikote and the College was named after him would not make it a purely private institution;

(2) that the Khallikote College was a public institution and the Principal of the College held an office which might be called a public or quasi-public office. AIR 1952 Mad 151, Rel. on.; AIR 1954 Trav-Co 199, Disting. **(1959) 1 OJD 195: ILR (1959) Cut 311: AIR 1959 Orissa 196 (200) (Pt C) (Pr 11) (DB).**

——Art. 226 — Writ of certiorari and Mandamus — Issue of against principal of college — Patna University Act (III of 1962), S. 34 — Regulations under — Patna University Regulations 4, 5 and 7 — Interpretation of — Shortage in attendance at lectures, tutorials and practicals — Calculation of minimum prescribed percentage — Mode of — Principal by notice, debarring student from appearing at University examination on ground of shortage on basis of miscalculation — Condonation of shortage not considered by Vice-Chancellor who was the proper authority under Regulation 5 — Notice held bad. 1965 BLJR 513.

——Art. 226 — Order of rustication of ex-students by Inspector of Schools — Legality — Writ in nature of certiorari to quash order. See Bihar and Orissa Education Code, Art. 211. AIR 1954 Pat 405 (DB).

——Art. 226 — Quasi-judicial authorities.

Where the petitioner had a right to continue as a scholar in the college and he could only be expelled on reasonable grounds, once that right of his under the law is affected by a decision of the Principal about his misconduct there is a presumption that the authority vested in the Principal to affect such right of the petitioner must be exercised quasi-judicially. AIR 1952 Cal 594, Ref. **ILR (1954) Patiala 414: AIR 1954 Pepsu 151 (154, 155) (Pt B) (Pr 9).**

——Art. 226 — University passing order in writing disqualifying petitioner from examinership — Petitioner not given opportunity to defend his case — Held that action of University involved exercise of quasi-judicial functions and opportunity of being heard should have been given to petitioner. See Punjab University Act (1961), Regulation VII Cl. 1. **ILR (1965) 1 Punj 704: 1965 Cur LJ 197.**

——Art. 226 — Power to interfere — Quasi-judicial order by Standing Committee of University — Use of unfair means in examination by student — Student disqualified without any supporting material on record — High Court can interfere in writ

jurisdiction: AIR 1964 Punj 327, Foll. Educational Authority — Enquiry Proceedings. **1964 Cur LJ 348: 66 Punj LR 852.**

——**Art. 226 — Quasi-judicial tribunal.**

The Board of Secondary Education, Rajasthan which is a statutory body under the Rajasthan Secondary Education Act, 1957, does not act as a quasi-judicial body in cancelling the registration of a publisher of educational books. Such order of cancellation is merely an executive act and no writ of certiorari can be issued to quash the order of the Board. **ILR (1960) 10 Raj 760: 1960 Raj LW 209: AIR 1960 Raj 185 (187, 188) (Pt B) (Prs 6, 7) (DB).**

——**Art. 226 — Managing committee or ad hoc committee of school — Issue of certiorari.**

A school is a public institution, and its Managing Committee or Ad hoc Committee is a public or quasi-public body, and there is nothing in Article 226 which debars the Courts from issuing a certiorari to such bodies or person in suitable cases. AIR 1954 Pat 297, Dissented from. **AIR 1959 Tripura 27 (33) (Pt H) (Pr 37).**

183. What is.

(a) **Origin, nature and object.**

(b) Pre-Constitution powers of High Court.

(c) **Prohibition and certiorari.**

(d) **Mandamus and certiorari.**

See also Note 229.

(e) **Certiorari and revision.**

183. What is.

●——Art. 226 — **Writ of certiorari — Jurisdiction of High Court to issue — Nature and limits of — Finding of fact — Writ in respect of — When can be issued.**

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarily, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court. AIR 1955 SC 233 and AIR 1958 SC 398 and AIR 1960 SC 1168, Rel. on.

Thus where in dealing with the rival claims of A and B for stage carriage permits on certain route, the Transport Authority and Transport Appellate Tribunal were mainly influenced by the fact that A had a workshop at one terminus of the route in question, whereas B had a workshop and a place of business only at an intermediate station of the route and did not possess a workshop at either of the termini of the route, and hence issued the permit to A.

Held, (by Majority — Subba Rao J., dissenting) that the question whether B had workshop at a terminus of the route was a pure question of fact and the High Court had no jurisdiction to interfere with the finding recorded by the Appellate Tribunal and seek to correct it by issuing a writ of certiorari. (2) That, though it would have been better if the Tribunal had given reasons for its finding, the failure of the Appellate Tribunal to give a reason in that behalf or to refer specifically to the evidence adduced by B would not, by itself, constitute such an error in its decision as to justify the issue of a writ of certiorari under Art. 226. (3) That the argument that some evidence was not duly considered by the Tribunal, would normally pertain to the realm of the appreciation of evidence and would, as such be outside the purview of an enquiry in proceedings for a writ of certiorari under Art. 226. Decision of Madras H. C. in Writ Appeal No. 157 of 1961, dated 19-12-1962, **Reversed.**

Per Subba Rao, J. — If a Tribunal ignores or fails to investigate a material circumstance put forward by a claimant and gives a finding against him, the said finding can certainly be said to be vitiated by an error of law apparent on the face of the record. Syed Yakoob v. K. S. Radhakrishnan, **(1965) 5 SCR 64: AIR 1964 SC 477 (479, 480, 481, 484) (Pt B) (Prs 7, 9, 10, 23).**

●——**Art. 226 — Certiorari — Essential feature.**

Broadly speaking, an essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. Sewpujanrai Indrasanrai, Ltd. v. Collector of Customs, **1959 SCR 821: 1958 Cri LJ 1355: (1958) MLJ (Cr) 929: (1958) SCJ 1199: 1959 SCR 821: AIR 1958 SC 845 (855) (Pt G) (Pr 20).**

●——**Art. 226 — Conditions under which certiorari can lie.**

With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject matter has jurisdiction to decide wrong as well as right and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings in certiorari. AIR 1952 SC 179, AIR 1952 SC 192, AIR 1952 SC 319 and AIR 1954 SC 440, Rel. on. Hari Vishnu v. Ahmad Ishaque, **1955 Mad WN 449: (1955) 1 MLJ (SC) 157: 1955 SCJ 267: (1955) Andhra WR (SC) 157: 1955 All WR 339: 1955 SCR 1104: 1955 Nag LJ 1: 1955 SCA 105: AIR 1955 SC 233 (243) (Pt T) (Pr 21).**

●——**Art. 226 — Certiorari — Applicability of principles under English law.**

As is well known, the issue of the prerogative writs, within which certiorari is included, had their origin in England in the King's prerogative power of superintendence over the due observance of law by his officials and tribunals. The writ of certio-

rari is so named because in its original form it required that the King should be 'certified of' the proceedings to be investigated and the object was to secure by the authority of a Superior Court, that the jurisdiction of the inferior tribunal should be properly exercised. These principles were transplanted to other parts of the King's dominions. In India, during the British days the three chartered High Courts of Calcutta, Bombay and Madras were alone competent to issue writs and that too within specified limits and the power was not exercisable by the other High Courts at all. The language used in Arts. 32 and 226 of the Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution the Court need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. It can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as it keeps to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law. AIR 1953 SC 210, Ref. to. Basappa v. T. Nagappa, **1955 SCR 250: 1954 SCJ 695: ILR (1954) Mys 235: 1954 SCA 620: 67 Mad LW 613: AIR 1954 SC 440 (443) (Pt A) (Prs 5, 6).**

● ——**Art. 226 — Certiorari — Nature of writ — Principle governing the issue of.**

What certiorari does is to require the record of proceedings in some cause or manner pending before an inferior Court, judicial tribunal or quasi-judicial tribunal to be brought before it so that it may deal with it and ensure speedy justice. This can only be used with respect to judicial as distinguished from administrative acts.

The Court should refuse to entertain applications for writs of certiorari or prohibition where the ordinary remedy of approaching the Court by an application in revision is available to the party. The power of prohibition or certiorari should in no case be used to interfere with interlocutory orders where it is possible for an applicant to question its correctness or legality when the final order comes to be passed by way of revision. Asiatic Engineering Co. v. Achhuram, **1951 R. D. (HC) 241: 1951 ALJ 576: ILR (1952) 2 All 838: AIR 1951 All 746 (768, 769) (Prs 59, 62) (FB).**

● ——**Art. 226 — Conditions for grant of writs.**

The exact conditions necessary to be satisfied for granting a writ are not defined in the Constitution but are laid down to be a body of persons: (1) having legal authority; (2) to determine questions effecting legal rights of subjects and (3) having the duty to act judicially; (4) act in excess of their legal authority. AIR 1950 SC 222, Rel. on. Sampu Gowda v. State of Mysore, **ILR (1953) Mys 440: 32 Mys LJ 12: AIR 1953 Mys 156 (160) (Pt F) (Pr 18) (FB).**

183 (a). Origin, nature and object.

——**Art. 226 — Certiorari — Nature of writ in England.**

Certiorari is a high prerogative which had its origin on historical grounds in England. But the purpose it serves in England now is that it enables a superior Court, a Court of record, to correct the orders and decisions of inferior Courts and inferior Tribunals discharging judicial functions. If an order is made without jurisdiction or if a Court or Tribunal refused to exercise jurisdiction vested in it by law, or if there is an error of law patent on the record, the High Court in England by means of the writ of certiorari corrects the errors in jurisdiction or in law of inferior Courts and Tribunals. The superior Court does not act as a Court of appeal. **57 Bom LR 1148: (1956) 1 Lab LJ 246: ILR (1956) Bom 37: AIR 1957 Bom 46 (47, 48, 49) (Pt A) (Prs 2, 4, 5) (DB).**

● ——**Art. 226 — Certiorari — Nature of the writ.**

Certiorari is the prerogative writ which requires that the records of the proceedings in some case or matter pending before an inferior court or tribunal or other judicial or quasi-judicial body shall be transmitted to the Supreme Court to be there dealt with. In a completed case certiorari lies merely to quash. The High Court acting under the process of certiorari and mandamus cannot either decide a case itself or compel the inferior legal tribunal to come to a particular decision. By the term 'writs' it is not the intention to empower the High Court to issue antiquated and obsolete writs numbering hundreds issued by English Courts. The word 'writ' has been used in the sense of a document under the seal of the Court issued to a person or authority including Government in appropriate cases commanding them or any of them to do or forbear from doing some act. The word 'direction' in this context may mean that the person to whom it is issued is not commanded peremptorily to do a particular act or forbear from doing it, but is merely guided in the matter of doing of that deed or forbearance from it. Bhailal Jagadish v. Additional Deputy Commr., **ILR (1953) Nag 839: 1952 NLJ 613: AIR 1953 Nag 89 (98) (Pr 49) (FB).**

——**Art. 226 — Writ — Certiorari — Nature explained — Record must be sent for on admission of petition.**

A writ of certiorari (whatever may be the position of other writs) is issued to bring up the proceedings of an inferior Court so that the proceedings and the order may be examined and if found to be without jurisdiction or wrong in law on their face they may be quashed. The necessary concomitant of an issue of the writ is the bringing up of the record. It is wrongly apprehended that the writ is issued at the end. In fact the writ goes out when the case is admitted for hearing. It is only when the record is in that the writ is made absolute if the proceedings are quashed or in the alternative the record is returned and the writ withdrawn. The record has to be sent for when writ is issued. **1952 Nag LJ (Notes) 57 (DB).**

183 (b). Pre-Constitution powers of High Court.

——**Art. 226 — Writ of certiorari — Order impugned passed before Constitution — Jurisdiction of T. C. High Court.**

The erstwhile High Court of Travancore was exercising jurisdiction in certiorari on the ground that the said jurisdiction was inherent in the High Court as a Court of record. The Travancore-Cochin High Court also has held in favour of and exercised jurisdiction in certiorari even before the coming into force of the Constitution of India. It cannot therefore be contended that jurisdiction in the matter of writs was conferred upon the High Court only by the Constitution and that the order impugned in the case having been passed before the coming into force of the Constitution, certiorari does not lie. **AIR 1956 Trav-Co. 35 (42) (Pt H) (Pr 28).**

183 (c). Prohibition and certiorari.

●——**Art. 226 — Difference between writs of prohibition and certiorari.**

There is one fundamental distinction between the two writs, namely, a writ of prohibition and a writ of certiorari. They are issued at different stages of the proceedings. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior Court for a writ of prohibition, and on that, an order will issue forbidding the inferior Court from continuing the proceedings. On the other hand, if the Court hears that cause or matter and gives a decision, the party aggrieved would have to move the superior Court for a writ of certiorari, and on that, an order will be made quashing the decision on the ground of want of jurisdiction. Broadly speaking a writ of prohibition will lie when the proceedings are to any extent pending and a writ of certiorari for quashing after they have terminated in a final decision. Hari Vishnu v. Ahmad Ishaque, **1955 Mad WN 449: (1955) 1 MLJ (SC) 157: 1955 SCJ 267: 1955 All WR 339: 1955 SCR 1104: 1955 Nag LJ 1: 1955 SCA 105: 1955 An WR (SC) 157: AIR 1955 SC 233 (241) (Pt F) (Pr 15).**

——**Art. 226 — Certiorari and prohibition — Distinction.**

Writ in the nature of certiorari cannot be issued in respect of pending proceedings, but a writ of prohibition can be issued forbidding a Court from continuing the proceedings. AIR 1955 SC 233, Foll. **AIR 1956 Ajmer 73 (75) (Pt B) (Pr 14).**

——**Art. 226 — Prohibition and certiorari — Writs of — When can be issued.**

The question whether an order is an interlocutory order or final order arises when it is sought to be quashed by a certiorari; a High Court may refuse to quash an interlocutory order by a certiorari. No such question arises in respect of a writ of prohibition. A prohibition is always issued while a matter is pending before a tribunal; if the tribunal has passed a final order there would arise no question of issuing a prohibition though there may arise a question of issuing a certiorari to quash its final order. (1953) 1 A. E. L. R. 862, relied on; AIR 1958 SC 845, Foll. **1960 All LJ 865: ILR (1960) 2 All 878.**

——**Art. 226 — Writ of — Nature and object of — Prohibition — Distinction.**

A writ of prohibition and a writ of certiorari are two complementary writs. A writ of certiorari is issued requiring that the record of the proceedings in some cases or matter pending before an inferior Court be transmitted to the superior Court to be dealt with, for rectifying an order or proceeding. That writ is issued when an order has been passed by a tribunal having judicial or quasi-judicial authority but the tribunal has no jurisdiction to pass the order or to hold the proceeding complained of. A writ of prohibition is issued for preventing a tribunal from continuing a proceeding pending before it on the ground that it has no jurisdiction to hold the proceeding. A writ of certiorari is remedial, whereas a writ of prohibition is preventive. **53 Bom LR 381: (1951-52) 3 FJR 81: AIR 1951 Bom 158 (158, 159, 160) (Prs 5, 6, 11, 12).**

——**Art. 226 — Certiorari and prohibition — Distinction.**

A writ of certiorari lies where the decision be vitiated by absence of jurisdiction, failure to observe principles of natural justice or legal error apparent on the face of the record, while prohibition is issued to prevent, still incomplete proceedings of lower tribunals, where no jurisdiction exists, from being continued. **1960 Ker LT 1262: 1960 Ker LJ 1519: AIR 1961 Ker 183 (186) (Pt B) (Pr 7) (DB).**

——**Art. 226 — Certiorari — Writ of — Origin and nature of writ indicated — Madhya Bharat High Court has no jurisdiction to issue — Its jurisdiction is circumscribed by S. 32 (2), Madhya Bharat High Court Act (VIII (8) of 1949) to S. 115, Civil P. C. and S. 435, Criminal P. C.**

The ancient writ of certiorari in England is an original writ which may issue out of a superior Court requiring that the record of the proceedings in some cause or matter pending before an inferior Court should be transmitted to the superior Court to be there dealt with. The writ is so named because, in its original Latin form, it required that the King should "be certified" of the proceedings to be investigated and the object was to secure by the exercise of the authority of Superior Court, that the jurisdiction of the inferior tribunal should be properly exercised. The remedy, in point of principle, is derived from the superintending authority which the Sovereign's Superior Court and in particular, the Court of King's Bench, possess and exercise over inferior jurisdictions. This principle has been transplanted to other parts of the King's dominions, and operates, within certain limits in British India: AIR 1943 PC 164, Rel. on.

The power to issue writs of certiorari and mandamus has to be expressly conferred by Charter and there is no such thing as inherent jurisdiction with regard to the exercise of high prerogative writs. The Madhya Bharat High Court Act does not confer power on the High Court of Madhya Bharat to issue those writs. On the contrary S. 32, Cl. (2) of Madhya Bharat High Court Act, which is in similar terms as S. 224 (2), Government of India Act, clearly states that nothing in this section shall be construed as giving to the High Court any jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision. These words clearly take away the power of High Court to issue high prerogative writs of certiorari and mandamus. The wordings of S. 32, Cl. (2) limit the powers and jurisdiction of the High Court within the four corners of S. 435, Criminal P. C. and S. 115, Civil P. C. Such is the legal and constitutional position of Madhya Bharat High Court. It is not a Court of King's Bench and this High Court cannot issue writs of certiorari or mandamus: AIR 1940 Rang 84, Disting; AIR 1943 Pat 245 (SB); AIR 1941 Nag 282 and AIR 1919 PC 31, Rel. on.

Obiter (Per Mehta J.) — No other High Courts in India, except those of Bombay, Calcutta and Madras, which are Chartered High Courts, possess these powers.

(Per Sanghi J.) — Jurisdiction has to be conferred by the authority constituting the Court. If it is unlimited, there is no matter of which it cannot take cognizance. The jurisdiction conferred on this Court by S. 22 of the High Court Act is a limited jurisdiction and within the prescribed limits there is no enactment under which the application can be entertained. **51 Cri LJ 813: AIR 1950 Madh B 28 (28 to 31) (Prs 2, 5, 6, 7, 9, 10, 17) (DB).**

——**Art. 226 — Writs of certiorari and prohibition — Difference between issuing of.**

A writ of certiorari is for a discretionary relief and normally a writ of certiorari will not be viewed by the High Court as a parallel remedy

which a petitioner can seek simultaneously with the other statutory remedies open to him. However, it is not so in the case where the issue of a writ of prohibition is asked. If the order itself is without jurisdiction and if any portion of that order is still operative, the issue of a writ of prohibition will not be a matter of discretion, and in that respect it differs from the discretionary relief of a writ of certiorari.

Further, while a writ of prohibition will lie when the proceedings are to any extent pending, a writ of certiorari will lie for quashing the proceedings after they have terminated in a final decision. (1961) 42 ITR 715: (1961) 2 Mad LJ 564.

——Art. 226 — Certiorari and prohibition — Issue of writs — Conditions — Assessment Officer of Municipality acting without jurisdiction.

A writ of certiorari may issue wherever any body of persons (1) having legal authority, (2) to determine questions affecting rights of subjects, and (3) having the duty to act judicially, (4) act in excess of their legal authority. The conditions for the issue of a writ of prohibition are almost the same as those of certiorari. But the issue of writ of prohibition is contemplated where the act, against which the prayer for the issue of writ is made, is threatened. While a writ of certiorari will not issue in a case where an equally efficacious remedy is available to the petitioner, a writ of prohibition may issue even where a party has got an equally efficacious remedy by way of a regular suit.

An Assessment Officer of a Municipality is supposed to act judicially in the matter of hearing and disposing of the objections of the owners and occupiers of the properties included in the assessment list, and where he acts without jurisdiction or in excess of it, a writ of certiorari or prohibition, as the case may be, would lie against him. Where the petitioner is forced to pay a tax without the authority of law, he has certainly a good case for coming to the High Court for the issue of a writ of prohibition under Art. 226 of the Constitution, for he has the right under Art. 265 of the Constitution not to be subject to any tax without the authority of law. **AIR 1951 Raj 139 (144) (Pt D) (Prs 11, 12) (DB).**

——Art. 226 — Prohibition and certiorari — Writs of, distinction.

Before a writ of prohibition can be issued, it is necessary that the authority against which such a writ is issued should be a judicial or quasi-judicial authority and the proceedings should be judicial or quasi-judicial. In this respect there is no difference between the writ of prohibition and the writ of certiorari. The former is issued at an earlier stage and the latter at a later stage. The officers of the Government in the matter of recovery of arrears of rent of a lease of the Government mines from the lessee, do not act judicially or quasi judicially and no writ of prohibition or certiorari can therefore be issued against them. AIR 1950 SC 222, Foll. **1951 Raj LW 426: ILR (1951) 1 Raj 496 (DB).**

183 (d). Mandamus and Certiorari.

See also Note 229.

——Art. 226 — Mandamus and certiorari — When issued — Other remedy — Sea Customs Act (VIII of 1878), Ss. 188 and 191.

It is now absolutely settled that a writ of certiorari could only issue to remove a judicial or quasi-judicial order and such a writ will not be available to quash administrative orders. Incontrovertibly, assessments made by Customs Authorities under the Sea Customs Act cannot have the attribute of judicial or quasi-judicial proceeding, they being only administrative in character. That being the case, certiorari will not be granted to quash the order directing the appellants to pay additional duty as per the finalisation of the assessments.

A writ of mandamus is issued to a public officer to enforce the performance of a duty. It is employed when a public officer refuses to exert a ministerial duty. In order that a mandamus to compel a public officer to perform a particular duty should be issued, the duty must be plainly prescribed. If these conditions exist, its performance will be compelled by the issue of a writ of mandamus, unless there is a specific provision to the contrary. If on the other hand a statute is susceptible of two constructions, a writ of mandamus will not issue. If the act done is plainly and palpably wrong, as a matter of law, then only the mandamus jurisdiction will be exercised. Questions of law, the solution of which require the construction of an Act, cannot form a ground for the issue of a writ of mandamus; that is to say, mere error of law or wrong interpretation of a statute cannot entitle a party to invoke mandamus jurisdiction. The determination of the export duty according to clause (a) or (b) of S. 30 of the Sea Customs Act is incidental to the effective exercise of the undisputed jurisdiction of the Customs Officer. Consequently, the proceedings culminating in the finalisation of the assessment under the Act are not amenable to mandamus jurisdiction. The existence of an adequate remedy will exclude mandamus. The Sea Customs Act has conferred on the assessee the right of appeal to the Chief Customs Authority against orders of the subordinate authority and a right of revision to the Central Government. Ss. 188 and 191 of the Act afford efficacious and specific remedies to an aggrieved person, and therefore the appellants could obtain their remedy from those Tribunals. When a Legislature prescribes a condition for filing an appeal, such a right could not be regarded as inadequate or ineffective. There is nothing illegal or unauthorised or burdensome in requiring the appellants to make the deposit pending an appeal. AIR 1954 SC 403, Distinguished; AIR 1960 SC 424, Relied on. **(1960) 2 An WR 545: AIR 1961 Andh Pra 170 (172) (Pt A) (Prs 15, 16).**

183 (e). Certiorari and revision.

——Art. 226 — (Civil P. Code (1908), S. 115).

Considerations applicable to the remedy by way of revision under the Civil Procedure Code and those applicable to the remedy by way of the issue of a writ of certiorari are altogether different. **(1956) 2 Lab LJ 328: 60 Cal WN 602: AIR 1957 Cal 560 (569) (Pt F) (Pr 33) (DB).**

——Art. 226 — Certiorari — Refusal to exercise jurisdiction — Case dismissed on ground of wrong view of limitation — Scope of powers under Art. 226 and S. 115 of Civil Procedure Code.

The powers of granting writ of certiorari under Art. 226 are much wider than the revisional powers under S. 115 of the Civil Procedure Code: ILR 7 Bom 341, AIR 1955 SC 233, Rel. on.

Where the Revenue Board by wrongly applying the law of limitation dismisses the suit as barred by time, without entering into the merits of the case, the Board fails to exercise a jurisdiction vested in it by law. It is true that the Board of Revenue has the jurisdiction to decide the point of limitation rightly or wrongly but the erroneous decision has the effect of wrongly refusing to exercise jurisdiction vested in it. **1958 Raj LW 590.**

184. Who can apply.
See Note 6.

185. Writ of right.
See also Note 39.

——Art. 226 — Writ of certiorari is discretionary — It may be refused unless the justice of the case requires it. AIR 1957 SC 227, Foll. **ILR (1962) Madh Pra 788: 1962 MPLJ 281: 1962 Jab LJ 523: AIR 1962 Madh Pra 280 (287) (Pt E) (Pr 17).**

——Arts. 226 and 227 — Proceedings by way of certiorari are not of course and the High Court should not interfere when the justice of the case does not require it. AIR 1957 SC 227, Ref. **1965 Jab LJ 1087: 1965 MPLJ 990.**

PART C

HABEAS CORPUS.

(Notes 186 to 223)

186. Against whom can be issued.
See Note 219.

187. Appeal.
See also Note 10.

——Arts. 226, 132, 134(1)(c) — Order of release on application for writ of habeas corpus — Appealability under Constitution — Principles — (Criminal P. C. (1898), S. 491).

Under the Constitution which contains fuller and wider provisions as to appeal than those of the Government of India Act, 1935, which contained only Section 205 corresponding to Article 132, there is no such immunity from appealability in the case of an order of release on an application for a writ of habeas corpus as obtains in England. The question of appealability of such an order must be judged with reference to the provisions of the Constitution and appealability must be recognised and given effect to within the limits defined by Article 134 thereof. The intention of the framers of the Constitution seems to be that if on the one hand the absolute immunity from appeal against an order of release obtaining in England is not to be imported into India, appealability in India ought not to be treated as a matter of course on the other hand. The Constitution accordingly provides for a certificate of fitness from the High Court or for special leave from the Supreme Court as a 'sine qua non' for imperilling the liberty of a released subject, which is a matter of vital moment. Even so the High Court ought to be extremely chary of exercising its power under clause (c) of the Article against the person released.

In all other criminal matters other than those which fall under sub-clauses (a) and (b) of Article 134(1), the Constitution of India undoubtedly intends that the High Courts in the respective States in the territory of India should ordinarily be the final Courts of Appeal. This is a fact which must not be lost sight of by the Court when considering the question as to whether a certificate of fitness should or should not issue in any given case.

If the matter of an application for the writ of habeas corpus is not criminal in nature the provision of the Constitution governing appealability will be Article 132 under which, except where a substantial question of law as to the interpretation of the Constitution arises, there can be no question of an appeal to the Supreme Court. **65 Mad LW 892: (1952) 2 Mad LJ 725: 1953 Cri LJ 256: AIR 1953 Mad 66 (70) (Pt F) (Prs 9, 10, 11) (DB).**

188. Application for.
See also Note 98.
(a) Affidavit.
(b) Stranger, by
(c) Minor, by
(d) Person on bail, by.

188. Application for.
See also Note 98.

——Art. 226 — Habeas corpus — Falsity of facts which are not material — Writ petition will not be thrown out. **1960 All Cr R 374: 1960 All WR (HC) 591: 1960 All LJ 776.**

●——Art. 226 — Application challenging proceedings under Abducted Persons (Recovery and Restoration) Act, S. 4 — Allegations in application vague — Effect on maintainability of application. See Abducted Persons (Recovery and Restoration) Act, S. 4. **1955 Cr LJ 50: AIR 1955 Pepsu 1 (FB)**

188(a). Affidavit.

——Art. 226 — Pleadings — Affidavits — By whom to be sworn — Application for habeas corpus — Counter affidavit by subordinate official — If can be acted upon. See High Court Rules and Orders — Allahabad High Court Rules, Ch. 4, R. 12. **1958 All LJ 267.**

——Art. 226 — Writ of habeas corpus — Application for — Procedure for making — Form and contents of — Application by person other than detenu or prisoner — When permitted — Affidavit of person detained — Necessity for — When may be dispensed with.

In the case of an application for a writ of habeas corpus an affidavit of the prisoner or detenu should ordinarily be filed in support. Generally the person who is alleged to be illegally imprisoned or detained is entitled to apply for a writ; but it is not always necessary that the application should proceed from him. The detenue or any other person on his behalf may institute the proceedings. A mere stranger or a volunteer who has no authority to represent the detenu is not allowed to apply for habeas corpus, such a stranger not being in a position to make a detailed affidavit as to the circumstances of the detention which is alleged to be illegal. But in cases where access is denied to the person unjustifiably or illegally detained, and hence instructions from him cannot be obtained an application for a writ may be made by a relation or a friend on an affidavit setting forth the reasons for its being so made. At any rate the court will not grant a writ of habeas corpus to bring up a prisoner for the purpose of being discharged on the ground that he is illegally in custody unless there be an affidavit from himself or it is shown that he is so coerced as to be unable to make one.

Where in the affidavit filed by a relation of the prisoner, there is absolutely no indication as to why an affidavit from the prisoner could not be filed, the absence of the prisoner's affidavit is a material defect in the case. **52 Cr LJ 641: 1950 TCLR 701: 1950 KLT 481: AIR 1951 TC 123 (124, 125) (Pts A, B) (Prs 4, 6).**

188 (b). Stranger, by.

——Art. 226 — Habeas Corpus — Petition by stranger on behalf of detenu is maintainable — But it is open to Court to examine bona fides of such petition. See Criminal P. C. (1898), S. 491 (2). 1965 (1) Cri LJ 583: AIR 1965 Pat 209 (DB).

●——Art. 226 — Criminal P. C. (1898), S. 491— Petition for writ of habeas corpus — Who can

move — Petition by a stranger — When can be considered.

Petition for writ of habeas corpus is ordinarily moved by the person detained or in custody and can also be moved by a friend or relation, but not by an utter stranger. In the rarest of cases, where the Court has been apprised of material which immediately and obviously establishes the illegality of the detention or custody, of course the Court will for the ends of justice, proceed to issue the necessary writ, direction or order and in such rare cases a stranger may come in, but such a contingency should appear to be so rare as to be almost non-existent. AIR 1961 SC 41 and AIR 1962 SC 1044, Rel. on. Ram Kumar Pearaylal v. District Magistrate, Delhi, ILR (1965) 2 Punj 853: **1966 Cr LJ 153: AIR 1966 Punj 51 (58, 59) (Pt E) (Pr 10) (FB).**

——**Art. 226** — Writ of habeas corpus — Application by third party — When lies. See Criminal P. C. (1898), S. 491. **1955 Cri LJ 740: AIR 1955 Trav-Co 74 (DB).**

188 (c). Minor, by.

——**Art. 226 — Application in case where minor is incarcerated.**

Where a girl incarcerated is a minor, the only person competent to move the High Court in habeas corpus under Art. 226 is one who is entitled either to the custody of the child or to represent her legally. Where, however, such a person is shown to be incapable of making the application, or where no such person exists, the question of the right of a friend to make such an application may properly arise. But in that case, it must be shown by an affidavit, firstly, that no one who is legally entitled to the custody of the child or to represent her exists, or that such a person, if any, is unable, for reasons to be set out in the affidavit, to make such an application and, secondly, that the applicant himself is interested in the welfare of the child. **ILR (1955) 1 Cal 76: 1953 Cr LJ 1187: 57 CWN 507: AIR 1953 Cal 522 (523) (Pt A) (Pr 3) (DB).**

188 (d). Person on bail, by.

——**Art. 226 — Criminal P. C. (1898), S. 491 — Writ of habeas corpus — Person arrested and released on bail — Petition for writ of habeas corpus filed by such person — Such petition lies.**

The fact that a person has been granted bail does not amount to his being set at liberty. Taking into consideration the provisions contained in Ss. 499, 500, 502, 514 and 367 (4) of the Criminal P. C., it is clear that whereas a person released on bail is not in physical confinement, he still remains under the control of the Court and notionally in the custody of the Court, and that persons, who are his sureties, are only the agents of the Court. For those reasons, even a person who has been temporarily let out on bail but still on trial, can present an application for a writ of habeas corpus, under Art. 226 of the Constitution. AIR 1934 All 148, Foll.; AIR 1950 Madh Bha 17, Rel. on. ILR 30 Cal 872 (PC) and AIR 1950 All 4 and (1884) 114 US 564 and (1919) 253 US 339, Disting. AIR 1948 All 281, held not good law.

Held, that in view of the circumstances operating in this case the petitioner was not being illegally detained and that no ground for issue of a writ of habeas corpus was made by him. **1962 All LJ 654: 1962 All Cri R 295: 1962 All WR (HC) 543: ILR (1962) 2 All 496: 1963 (1) Cri LJ 20: AIR 1963 All 4 (5, 6, 9, 11, 12) (Pt A) (Prs 4, 19, 25, 29, 30) (DB).**

——**Art. 226 — Writ of habeas corpus — Petitioner released on bail — High Court can issue writ of habeas corpus.**

Even if a person is released on bail, he must be considered to be detained in the constructive custody of the Court through the surety, as his liberty is subject to restraint and he has to be produced before the Court by the surety. Hence the fact that the petitioner is released on bail and on his personal recognisance bond will not prevent the High Court from exercising its power to issue a writ of habeas corpus. AIR 1950 Madh Bha 17 and AIR 1934 All 148, Foll. **Madh BLJ 1955 HCR 1560: AIR 1955 MB 200 (201) (Pt A) (Pr 17) (DB).**

——**Art. 226** — Criminal P. C. (1898), S. 491 — Writ of habeas corpus — Application for, by person released on bail — Person released on bail remains in constructive custody of Court through surety and his liberty remains subject to restraint — Application is maintainable and does not become infructuous on ground that applicant is on bail: AIR 1934 All 148 (DB), Foll—Criminal P. C. (1898), S. 496 — Effect of grant of bail. **1965 BLJR 35.**

189. Bail and habeas corpus.

——**Art. 226** — Application under S. 491, Criminal P. C. — Considerations involved — Refusal of bail application by trial Court — Effect. See Criminal P. C. (1898), S. 491. **1955 Cri LJ 740: AIR 1955 Trav-Co 74 (DB).**

190. Contempt, detention for.

● ——**Arts. 226, 194 (3)** — Contempt of Legislative Assembly — Committal of citizen for contempt of Legislative Assembly on general warrant — Petition to High Court by citizen's Advocate to issue writ of habeas corpus — Citizen released on bail by High Court — Assembly holding Judges of High Court, Advocate and citizen responsible for having committed its contempt — Reference of case to Supreme Court by President — Opinion of Supreme Court — **Held,** contempt was not committed. See Ibid, Art. 194 (3). **AIR 1965 SC 745.**

——**Art. 226** — Member of U. P. Legislative Assembly convicted by the Assembly for its contempt — Petition for writ of habeas corpus under Art. 226 — Conviction cannot be challenged on ground of violation of Art. 21 or of principles of natural justice. See Ibid, Art. 21. (1965) 2 Cri LJ 170: **AIR 1965 All 349 (DB).**

191. Conviction by criminal Court, power to question.

● ——**Art. 32 (2)—Conviction and sentence by trial Court — Confirmation by Appellate Court — Finality of appellate order — Want of jurisdiction of trial Court — Writ of habeas corpus — Cri. P. C. 1898, S. 430.**

If it should appear on the face of the return that a person is in detention in execution of a sentence on indictment on a criminal charge, that would be a sufficient answer to an application for a writ of habeas corpus. Assuming, however, that it is open even in such cases to investigate the question of jurisdiction, where the conviction and sentence had been upheld on appeal by a Court of competent jurisdiction the mere fact that the trial Court had acted without jurisdiction would not justify interference, treating the appellate order also as a nullity. Evidently, the appellate Court in a case which properly comes before it on appeal, is fully competent to decide whether the trial was with or without jurisdiction and it has jurisdiction to de-

cide the matter rightly as well as wrongly. If it affirms the conviction and thereby decides wrongly that the trial Court, had the jurisdiction to try and convict, it cannot be said to have acted without jurisdiction and its order cannot be treated as a nullity.

It is well settled that if a Court acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e., an appeal would lie to the Court to which it would lie if its order was with jurisdiction. Janardhan Reddy v. State of Hyderabad, **1951 SCJ 320: 52 Cri LJ 736: 1951 SCR 344: 1951 All LJ (SC) 94: 1951 Mad WN 613 (2): 1951 Mad WN (Cri) 189 (2): 64 MLW 406: AIR 1951 SC 217 (225) (Pt F) (Prs 25, 26).**

——Art. 226 — Writ of — Basis of jurisdiction and nature of writ — Judgment of conviction in criminal case — Enhancement of sentence without following procedure under S. 362, Tr. Cr. P. C. — Remedy — Application for writ of Habeas Corpus — Maintainability.

An application for a writ of habeas corpus is not maintainable and cannot lie for the purpose of circumventing a judgment of conviction of a criminal Court, merely by praying for release of the party convicted on the ground of an alleged illegality. A judgment of a Court cannot be attacked by a collateral means and for that purpose a petition of the nature cannot be allowed. The writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. Illegal detention of a subject, i.e., detention or imprisonment, which is incapable of legal justification, is the basis of jurisdiction in habeas corpus.

There is ordinarily a presumption in favour of a judgment under which a person has been convicted and of the regularity of the proceedings. On habeas corpus the Court may only look at the record to see whether a judgment did exist, and if it finds that there is a judgment, the Court in such proceedings has no power to determine whether it is right or wrong, because the judgment is conclusively presumed to be right until brought up for revision in the regular way of appeal or revision.

The fact that the sentence on a convicted person was enhanced without conforming to the provisions of S. 36, Travancore Cr. P. Code, and that the sentence was enhanced without hearing him or giving an opportunity to show cause, as required by the Code, would only entitle him to move for rehearing of the case in question and would not entitle him to file a petition for habeas corpus to attack the judgment in the case. Such a petition would be an abuse of the process of the Court. **52 Cr LJ 641: 1950 TCLR 701: 1950 KLT 481: AIR 1951 TC 123 (125) (Pt B) (Pr 5).**

192. Costs in proceedings for.

See also Note 31.

——Art. 226 — M. P. High Court Rules, R. 11 — Rules regulating Habeas Corpus applications — Release of person arrested by Government after rule is issued by High Court — No reasons for release supplied — Costs to arrested person awarded — (Criminal P. C. (1898), S. 491).

Where a person arrested by Government is released after a rule is issued by the High Court but before the date on which the rule is returned and comes for hearing, though the Government can release the person arrested after the issue of rule nisi, yet if they think that the arrest and detention of the petitioner was always legal and that he was released as a matter of grace, some material should be produced before the High Court to indicate that prima facie the arrest and detention was legal and that the High Court should not exercise its discretion in making an order for costs against the Government. Where this is not done, a suppliant moving for a writ of Habeas Corpus cannot be deprived of costs merely because the detaining authority released him on its own initiative before the hearing of the application. AIR 1953 SC 277, Considered. **1959 MPC 471.**

193. Criminal P. C., S. 491, powers under.

——Art. 226 — Other remedy — Cr. P. Code (1898), S. 491 — 'Habeas Corpus' to obtain custody of children — Propriety — (Guardians and Wards Act (1890), S. 25).

The powers conferred by Art. 226 in regard to the issue of writs of the nature of habeas corpus are exercised for the purposes enumerated in Section 491, Cr. P. Code. Normally, the remedy indicated in S. 491, Cr. P. Code, is for a person deprived of his liberty. Ordinarily, this jurisdiction should not be invoked to decide disputes as to who should be the guardian of a child. They are properly adjudicated upon in an application under the Guardians and Wards Act as that is the ordinary remedy. 1956 Andhra WR 939: **AIR 1957 AP 704 (705) (Pt A) (Pr 4) (DB).**

——Art. 226 — High Court's power under — Cr. P. Code, S. 491 — Distinction — Habeas corpus — Common law writ — Issue of.

The High Courts before the enactment of the Constitution had not the power to issue the common law writ of habeas corpus. The only power which they had was to pass orders under S. 491, Cr. P. Code. But the power of the High Court under Art. 226 of the Constitution is no longer confined to issuing writs in the nature of habeas corpus. It has been given the power to issue any direction, any order or any writ for the purpose of enforcing fundamental rights, though that power is outside, and may be wider than the power conferred under S. 491, Cr. P. Code. 66 IA 222 (PC); AIR 1939 Mad 120 (FB), Ref. Prahlad Krishna Kurne, In re, **ILR (1951) Bom 181: 5 AI Cr D 79: 53 Bom LR 61: 52 Cr LJ 305: AIR 1951 Bom 25 (25) (Pt A) (Pr 2) (FB).**

——Art. 226 — Criminal P. C. (1898), S. 491 — "Illegally or improperly detained" — (Public Safety — Jammu and Kashmir Defence Rules (1996 S), R. 24 (1) and (2)). See Criminal P. C. (1898), S. 491. **AIR 1953 J and K 18.**

——Art. 226 — Criminal P. C. (1898), S. 491 — Habeas corpus, Writ of — Application under Section 491 can be treated as one under Art. 226 — Successive applications to seek same relief either under S. 491 or under Art. 226 not maintainable.

The power to issue a writ in the nature of habeas corpus, is vested only in the High Court. It is therefore permissible to treat an application under S. 491, Criminal P. C. as being a compendious one under the two relevant provisions of law. Under S. 491, Criminal P. C., a detenue cannot make successive application for a writ of habeas corpus and it is not open to him to ask for a review of an order already made under that provision. AIR 1948 Bom 326 (FB), Rel. on.

Even under Art. 226, it is only the High Court that can issue a writ for the enforcement of a fundamental right. The jurisdiction is conferred

upon the High Court as such and not upon any Judge or Judges of that Court. An order of dismissal of a writ of habeas corpus by a Division Bench which is thus only an order of dismissal by the High Court cannot be revived either under the provisions of the Criminal P. C. or under any other provisions of law. AIR 1951 Bom 25 (FB) and AIR 1953 SC 52 and AIR 1951 Mad 611, Rel. on; AIR 1949 EP 67 (FB), Dissented from. **1962 Mad WN 190: 1964 Mad LJ (Cri) 442: 75 Mad LW 260: ILR (1962) Mad 674: 1962 (2) Cr LJ 381: AIR 1962 Mad 354 (356, 357, 358, 359, 360) (Prs 6, 8, 9, 15, 17, 18) (DB).**

——Art. 226 — Criminal P. C. (1898), S. 491 — Issue of writ of Habeas Corpus — Powers under these provisions — Difference.

The power under Art. 226 of the Constitution is a much wider power than that under S. 491 of the Code of Criminal Procedure and these provisions overlap; where, however, a habeas corpus petition is made under Art. 226 of the Constitution, reference to S. 491 of the Code of Criminal Procedure is, for practical purposes, a superfluity and is probably made merely as a matter of caution. Ram Kumar Pearay Lal v. District Magistrate, Delhi, **ILR (1965) 2 Punj 853: 1966 Cr LJ 153: AIR 1966 Punj 51 (54) (Pt A) (Pr 7) (FB).**

194. Delay in applying.

See Note 35.

195. Discretion of High Court.

See Note 39.

196-197. Disobedience of order.

——Art. 226 — Writ of habeas corpus when to be issued — Disobedience of order — Punishment — Powers of High Court. See Cr. P. Code (1898), S. 491. **1964 (2) Cr LJ 590: AIR 1964 SC 1625.**

——Art. 226 — Habeas Corpus — Father taking the girl in his custody upon undertaking to produce her in Court — In answer to writ of Habeas Corpus, he pleaded his inability to produce her on the plea that she had disappeared — Held, that father could not escape liability as the circumstances of disapperance were such which created grave doubts and suspicion and was deliberate for purposes of avoiding her production before the Court. **1960 All Cr R 374 : 1960 All WR (HC) 591: 1960 All LJ 776.**

198. Enquiry, scope of.

See also Note 208.

——Art. 226 — Question of fact — Habeas Corpus — Investigation of disputed facts.

Where the application alleged that the order made under S. 112, Criminal P. Code, was not read out or explained to the petitioners, that there was no compliance of the provisions of S. 113, Criminal P. Code, and therefore their detention was illegal but the affidavit filed on behalf of the State categorically stated that the Magistrate had actually read out and explained the notice to them, and, further, that after it had been so read out and explained the petitioners were asked to put their thumb marks and signature on the back in token thereof.

Held, that the Court would not in the proceedings under Art. 226 enter into an investigation of disputed facts. In view of the affidavit by the State and also the order recorded on the order sheet of the case under S. 107, Criminal Procedure Code, wherein also it was stated that the order under S. 112, Criminal Procedure Code was read out and explained to the persons proceeded against it should be assumed for the purposes of the petition that it was read out and explained to them. **1958 All LJ 46: 1958 All WR (HC) 101: 1958 Cri LJ 988: 1958 All Cr R 83: AIR 1958 All 578 (581) (Pt A) (Pr 8) (DB).**

——Art. 226 — Habeas Corpus proceedings — Allegations in — No decision as to truth or falsehood.

In proceedings for a writ of habeas corpus the High Court will not decide the question whether the allegations made against the petitioner are true or false. That point will have to be decided, by the trial Court if the case goes for trial. For the purposes of the petition they have to assume that the allegations made in the police report may be true. **1956 Cr LJ 13: ILR (1956) 2 All 527: AIR 1956 All 56 (58) (Pt F)(Pr 9) (DB).**

——Art. 226 — Criminal P. C. (1898), S. 491 — Scope — High Court can decide legality of civil matter put forward in answer to writ of habeas corpus — Habeas corpus jurisdiction comes under Art. 226 of the Constitution. See Criminal P. C. (1898), S. 491. **AIR 1963 Cal 261.**

——Art. 226 — Grounds of detention — Truth of — Powers of High Court. The High Court has no power to investigate the truth or otherwise of the grounds of detention. See Public Safety — Preventive Detention Act (1950), S. 3. **1962 (1) Cr LJ 311: AIR 1962 Cal 162 (DB).**

——Art. 226 — Scope of enquiry — Habeas Corpus — Validity of law authorising detention, if can be challenged. **52 Cri LJ 710 (2): ILR (1951) Hyd 168: AIR 1951 Hyd 83 (84) (Pt C) (Pr 4) (DB).**

——Art. 226 — Habeas Corpus — Illegal detention — Enquiry into — Scope of. See Cr. P. C. (1898), S. 491. **1962 (2) Cr LJ 72: AIR 1962 Ker 215 (DB).**

——Art. 226 — Habeas Corpus — Proceedings for — Scope — Detention as a result of conviction and sentence — High Court required only to enquire into the legality of detention — Irregularities or illegalities of trial cannot be looked into — These matters should be agitated by convicted person through normal channel of appeal and revision under Criminal P. C. **(1963) 2 Cri LJ 322: AIR 1963 Tri 31 (33, 35) (Pt B) (Prs 8, 18).**

199. Foundation of Court's jurisdiction.

——Art. 226 — Habeas Corpus — Basis of jurisdiction under.

Application for a writ of habeas corpus is not maintainable and cannot lie for the purpose of circumventing a judgment of conviction of a criminal Court, merely by praying for release of the party convicted on the ground of an alleged illegality. A judgment of a Court cannot be attacked by a collateral means and for that purpose a petition of the nature cannot be allowed. The writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention whether in prison or in private custody. Illegal detention of a subject, i.e., detention or imprisonment, which is incapable of legal justification, is the basis of jurisdiction in habeas corpus. **1950 KLT 481: 1950 TCLR 701: AIR 1951 TC 123 (125) (Pt D) (Pr 6).**

200. Illegal detention.

(a) Material date.

(b) Power to enquire into legality.

(c) Valid order passed, pending writ petition.

200. Illegal detention.

●——Art. 226 — Release of convict on ground of illness — Re-arrest and detention in jail — Lawful authority under which re-arrest made not disclosed — Detention is illegal. State of Bihar v. Kameshwar Prasad, 1963 Mad LJ (Cri) 315: (1962) 2 Ker LR 192: 1965 (1) Cri LJ 494: 1963 All WR (HC) 534: (1963) 2 SCR 183: 1962 BLJR 798: 1963 All Cri R 262: 1962 SCD 851: (1963) 2 SCJ 89: AIR 1965 SC 575 (577) (Pr 8).

——Art. 226 — Habeas corpus — Detention for offences under Ss. 143, 145 and 188 — Legality — (Criminal P. C. (1898), S. 144) — (Penal Code (1860), Ss. 143, 145 and 188).

The District Magistrate of Manipur had promulgated an order on the analogy of S. 144, Criminal P. C., prohibiting assemblage of five or more persons within certain area. The petitioners, seven in number, were arrested under Ss. 143, 145 and 188, I. P. Code, for holding a meeting regarding the satyagraha movement for Legislative Assembly in Manipur which had been abolished by the Manipur Administration order. The meeting was attended only by the petitioners and they were exercising their right of speech and assemblage without arms in a peaceful manner in order to vindicate their rights for enforcement of public rights adumbrated in the Manipur State Constitution Act, 1947 which was still in force. The petitioners applied for a writ of habeas corpus under Art. 226 of the Constitution.

Held, that in the circumstances of the case the order under S. 144, Criminal P. C., was not a legal and valid order and, therefore, no prosecution under S. 188, I. P. C., could ensue for disobedience of this order. Moreover the assembly of 7 persons could not be deemed to be an unlawful assembly within the meaning of S. 141, I. P. Code, and the petitioners could not legally be deemed to be members of that assembly. Hence, the detention of the petitioner was illegal and the order of commitment under Ss. 143, 145 and 188 must be quashed. **1955 Cr LJ 1603: AIR 1955 Manipur 41 (49) (Pt G) (Prs 37, 38, 39).**

——Art. 226 — Habeas Corpus — Improper detention — What is — (Criminal Procedure Code (1898), S. 491).

Per Prasad, J.:—Every person in India has a right to his personal liberty, which cannot be taken away except by procedure established by law. Where there is any complaint by any person that he is being detained illegally or improperly, the law has provided the means to set him free. One of them is by writ of habeas corpus. The use of the word 'improper' obviously means that although the forms of law have been observed in a particular case of detention, but if there has been fraud upon an Act or an abuse of powers given by the Legislature, it will be a fit case for interference by the High Court by a writ of habeas corpus. AIR 1946 Bom 333 (336), Rel. on. **1958 BLJR 531: 1959 Cr LJ 501: AIR 1959 Pat 146 (149) (Pt B) (Pr 15) (DB).**

——Art. 226 — Right to relief — Illegal detention — Investigation by Police — Third degree treatment — Protection from — (Criminal Procedure Code (1898), S. 491).

The practice, still prevailing with some police officers of putting a suspect through 'third degree' treatment, or subjecting him to what is called a 'sweating' process, in the hope of discovering clues or obtaining confession, by torturing his body or by tormenting his mind is most dangerous and more often hampers than helps in the discovery of the truth. In criminal jurisprudence there is no room for such procedure. It is the duty of police to locate the violator of law but not by employing violence. Volition and violence cannot coexist. **1960 Cr LJ 390: ILR (1960) Punj 162: AIR 1960 Punj 122 (125) (Pt B) (Prs 14, 15).**

——Art. 226 — Habeas corpus — Illegal detention.

Where, although life imprisonment was equivalent to 20 years rigorous imprisonment according to the law of the former Jaipur State, the Sessions Judge of Jaipur sentenced the accused to life imprisonment for an offence under S. 290, Jaipur Penal Code, which was described by the Sessions Judge as equivalent to 25 years rigorous imprisonment and the judgment of the Sessions Judge was confirmed by the then High Court of Jaipur, the sentence of 25 years rigorous imprisonment is obviously illegal and should be treated as a sentence of 20 years rigorous imprisonment only. When the legal portion of the sentence has been undergone by the accused, he should be ordered to be released; 1954 RLW 212 (FB), Rel. on. **1956 Raj LW 26: ILR (1955) 5 Raj 372: 1955 Cr LJ 1390: AIR 1955 Raj 161 (162) (Pt B) (Pr 9) (DB).**

200 (a). Material date.

●——Arts. 32 and 226 — Habeas corpus petition — Legality of detention — Material date.

It is well settled that in dealing with a petition for habeas corpus, the Court has to see whether the detention on the date on which the application is made to the Court is legal if nothing more has intervened between the date of the application and the date of hearing. Gopalan v. Government of India, **1965 Ker LT 1229: 1966 Ker LJ 45: (1966) 1 SCWR 449: 1966 Cr LJ 602: AIR 1966 SC 816 (818) (Pt A) (Pr 5).**

●——Art. 32 — Crucial date of detention.

In habeas corpus proceedings, the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. Ram Narayan Singh v. State of Delhi, **1953 Mad WN 647: (1953) SCJ 326: 1953 Cr LJ 1113: 1953 All WR (Sup) 68: 1953 SCR 652: 1953 SCA 399: AIR 1953 SC 277 (278) (Pt B) (Pr 4).**

——Arts. 226 and 22 (1) — Petition for writ of habeas corpus — Legality of detention — Material time — Subsequent information — Effect.

In habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. AIR 1953 SC 277, Rel. on. If the petitioners detention is illegal on date of return and on subsequent days for non-compliance of Art. 22 (1) the fact that the necessary information somehow reached him on a subsequent date would not render the detention legal.

Per Desai, J. :—Since the law is that detention is unlawful so long as grounds for arrest are not communicated, once the detention becomes unlawful, it cannot later become lawful on the grounds being communicated. **1956 Cr LJ 13: ILR (1956) 2 All 527: AIR 1956 All 56 (59) (Pt E) (Prs 22, 23) (DB).**

——Art. 226 — Habeas Corpus — Illegal detention — Enquiry into — Scope of — Cause of detention — Legality at the stage of hearing of petition to be considered. See Criminal P. C. (1898), S. 491. **1962 (2) Cr LJ 72: AIR 1962 Ker 215 (DB).**

——**Art. 226 — Habeas Corpus proceeding — Legality of detention — Court is to have regard to legality at time of return. AIR 1955 NUC (MB) 3872.**

——**Art. 226** — Habeas corpus — Legality of detention is to be considered at time of return of rule issued by High Court — (Criminal P. C. (1898), S. 491). **1959 MPC 471.**

——Art. 226 — Jurisdiction of High Court — Exclusion under S. 6 of Abducted Persons (Recovery and Restoration) Act — Initial custody and detention must be legal to oust jurisdiction of High Court. 1955 Cri LJ 702: AIR 1955 Pepsu 48 (51) (Pr 9).

——**Art. 226 — Habeas corpus — Illegal detention — Time of arrest and not of hearing of petition is material.**

In Habeas Corpus proceedings the question has to be settled whether at the time of arrest of the detenu, the detention was legal or not. The contention that at the time of hearing of the writ petition, the challan for offences had been put in Court and therefore the detenu was in proper legal custody is wholly untenable. **ILR (1959) Punj 1111: 61 Pun LR 413: 1959 Cr LJ 1209: AIR 1959 Punj 506 (508) (Pt C) (Pr 11).**

——**Art. 226 — Petition for writ of habeas corpus — Material date of detention** — (Criminal P. C. (1898), S. 491).

In a petition for writ of habeas corpus the High Court is concerned with the validity of the detention at the time of the return. **ILR (1954) TC 121: 1954 Ker LT 710: 1955 Cr LJ 740: AIR 1955 Trav-Co 74 (75, 76) (Pt C) (Pr 3) (DB).**

200 (b). Power to enquire into legality.

——**Art. 226 — Habeas Corpus application — Validity of Act challenged — Competency of.**

The true position in regard to the scope and nature of a petition of habeas corpus excludes the possibility of a challenge in regard to the constitutionality of an enactment. **1954 All LJ 355: 1954 Cr LJ 1317: ILR (1955) 1 All 793: AIR 1954 All 601 (604) (Pt C) (Pr 23) (DB).**

——**Art. 226** — Habeas corpus — 'Person' arrested for disobedience of order under S. 144, Criminal Procedure Code — Fact that order is vague and widely worded is no ground for releasing person on habeas corpus — It may be ground for challenging it during his trial under S. 188, Indian Penal Code — (Penal Code (1860), S. 188). **1956 Cri LJ 1026: 1956 All LJ 671: AIR 1956 All 481 (483) (Pt B) (Pr 5) (DB).**

——**Art. 226** — Habeas corpus — Proceedings for — Scope — Detention as a result of conviction and sentence — High Court required only to enquire into the legality of detention — Irregularities or illegalities of trial cannot be looked into — These matters should be agitated by convicted person through normal channel of appeal and revision under Criminal P. C. (1963) **2 Cri LJ 322: AIR 1963 Tri 31 (33, 35) (Pt B) (Prs 8, 18).**

200 (c). Valid order passed, pending writ petition.

●——**Art. 226 — Habeas corpus, writ of—Detention valid on date of hearing — That there was no valid cause for detention at prior stage if ground for release.**

The analogy of civil proceedings where the rights of parties ordinarily have to be ascertained on the date of their institutions cannot be invoked in habeas corpus proceedings. If at any time before the Court hears the applications valid orders authorising custody are produced, the release cannot be ordered on the ground that at some prior stage there was no valid cause for the detention. The question is not whether the later orders validate the earlier detentions, but whether in the face of the later orders release can be directed. Abdur Rahim v. Joseph A. Pinto, **1952 Cri LJ 1333: ILR (1951) Hyd 1: AIR 1951 Hyd 11 (29) (Pt F) (Pr 85) (FB).**

——Art. 226 — **Constitution of India (1950), Art. 226 — Habeas Corpus — Nature of proceedings — Jurisdiction of Court to consider validity of orders passed subsequent to institution of proceedings** — (Criminal P. C. (1898), S. 491).

The analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the proceedings cannot be invoked in habeas corpus proceedings. It is open to the Court in such proceeding to consider if there was a valid order which came into existence later directing the detention and decline to release the person even if the earlier order was invalid. AIR 1949 Pat 247 and AIR 1945 FC 18, Rel. on. **65 Mad LW 876: 1952-2 Mad LJ 690: 1953 Cri LJ 224: AIR 1953 Mad 41 (48, 51) (Pt C) (Prs 11, 19) (DB).**

——**Art. 226 — Habeas corpus — Order of court declaring detention invalid — Effect on valid order of detention passed before pronouncement of judgment but not brought to notice of court — Criminal P. C. (1898), S. 491).**

Satyanarayana J. (Raghava Rao J. dubitante) — A writ of habeas corpus is concerned with the justification for detention. The justification may be based upon an order originally passed or an order which was subsequently made and brought to the notice of the Court. But the essence of the matter is that if an order came into existence before the judgment is pronounced, it is the duty of the Government to bring it to the notice of the Court. The effect of the omission to do so would be that the order of the court directing the release of the detenu would automatically discharge the fresh order passed before the pronouncement of the judgment and the Government thereafter would be precluded from putting forward the fresh order of detention in justification of the arrest and detention of the detenu. AIR 1949 Pat 247, Rel. on. **65 Mad LW 876: 1952-2 Mad LJ 690: 1953 Cri LJ 224: AIR 1953 Mad 41 (48, 53) (Pt D) (Prs 11, 26) (DB).**

201. Internment, order for.

——**Art. 226 — Scope — Habeas corpus — Writ in respect of order of internment under S. 2 (1) (b) of Orissa Maintenance of Public Order Act (X of 1950) — Power of High Court — Cr. P. Code, S. 491.**

Strictly speaking a writ of habeas corpus will not issue against an order of "internment" under S. 2 (1) (b) of Orissa Act (X of 1950), which is not detention as ordinarily understood. But though S. 491, Cr. P. Code, will not entitle the High Court to issue a writ or direction against such an order, Art. 226 of the Constitution empowers the High Court to issue necessary directions for the enforcement of any of the rights guaranteed by Part III of the Constitution, even though such directions may not strictly conform to one of the writs specifically mentioned in that Article; and the High Court has power to issue a direction prohibiting the State Government and any of their officers from taking any action to enforce the order of internment under S. 2 (1) (b) of Orissa Act (X of 1950). **5 A. I. Cr. D. 436: 16 Cut LT 209: AIR 1951 Orissa 86 (89) (Pt A) (Pr 7) (DB).**

202. Lunatic asylum, detention in.

——Art. 226 — Cr. P. C. S. 491 — Habeas Corpus lies against authorities of Mental Hospitals and clinics. See Criminal P. C. (1898), S. 491. **AIR 1963 Cal 261.**

203. Minor, application by.

See Note 188.

204. Object of the writ.

——Art. 226 — Habeas corpus — What is — Its nature, object and importance.

The writ of Habeas corpus is a prerogative writ of highest constitutional importance. It is designed to afford immediate relief from illegal confinement or restraint and issued for the vindication of the right to personal liberty by scrutinising the legality of the restrain. Apart from other uses of the writ as in cases of extraditing, or in matters involving validity of detention of the insane or rights to the custody of children it is a process devised in the main for obtaining deliverance from unlawful detention. The purpose of the writ cannot be utilised for any other collateral object. **1960 Cr LJ 390: ILR (1960) Punj 162: AIR 1960 Punj 122 (126) (Pt C) (Prs 17, 18, 20, 23, 24).**

205. Power of Court to go behind order of executive.

——Art. 226 — Satisfaction of Magistrate under S. 117 (3) Cr. P. C. — High Court cannot interfere. See Criminal P. C. (1898), S. 117 (3). **1960 All LJ 227.**

——Art. 226 — Question of fact — (Criminal Procedure Code (1898), S. 491).

The detenus challenged the validity of the initial action taken by the police in arresting them on the ground that the arrest was mala fide. It appeared from the report submitted by the police to the Sub-Divisional Magistrate according to the police the acts which had been committed by the detenus were such that there was imminent danger of breach of the peace taking place.

Held, that such question of fact could not be investigated in a petition under Art. 226 of the Constitution or S. 491 of the Code of Criminal Procedure. **1957 AWR (HC) 14: 1957 All LJ 152: 1957 Cr LJ 427: AIR 1957 All 189 (191, 192) (Pt A) (Pr 4) (DB).**

——Art. 226 — Habeas Corpus — Mala fide detention alleged — Duty of Court — (Public Safety — Preventive Detention Act (1950), S. 3).

It is accepted on all hands that in dealing with applications for the issue of a writ of Habeas Corpus, the court can in a proper case consider and determine the question whether there has been an abuse of the power vested in it under the law. No hard and fast rule can be laid down by which this question can be decided. The petitioner has to satisfy the court that there has been in fact a misuse of the powers vested in the executive. The legislature has given the power of detention of a person to the executive and that power can be exercised by the executive subject to the restrictions imposed and under the conditions laid down in the Act. If the authority comes to a particular conclusion on the material placed before it and passes an order of detention, the court will presume that the action was validly and properly taken; and it would be upon the applicant who alleges fraud or malice (malice in law) to establish as a fact such fraud or malice. Sweeping assertions in the affidavit without materials or sources of information with regard to the allegations made in the affidavit cannot be taken into consideration. **AIR 1944 FC** 1, 1942 AC 284, Ref. **ILR (1952) Hyd 122: 1952 Cri LJ 1076: AIR 1952 Hyd 112 (119) (Pt K) (Pr 19) (DB).**

——Art. 226 — Order under — Mala fides — See Pepsu Civil Services (Safeguarding of National Security) Rules (1954), R. 3. **AIR 1956 Pepsu 19.**

206. Pre-Constitution order of detention.

● **——Art. 226 — Writ of Habeas Corpus — Sentence becoming final before Constitution — Power of High Court to examine legality — Court cannot make elaborate enquiry into jurisdiction of Court passing sentence — Legality of sentence which is ex facie excessive can be examined by High Court although sentence had become final before the Constitution — High Court should order release if legal portion of sentence has been served and dismiss the application if such portion has not expired still — (Criminal P. C., (1898), S. 491). Chhotia v. State, AIR 1955 NUC (Raj) 4353 (FB).**

207. Prerogative process for securing liberty.

See also Note 204.

——Art. 226 — Habeas Corpus, writ of — Scope — The right of a petition for Habeas Corpus is a high prerogative right and is a constitutional remedy for all manner of illegal confinement — This is one of the most fundamental rights known to the Constitution but it does yield to another matter namely the safety of the State and its people. ILR (1952) Hyd 122: 1952 Cri LJ 1076: AIR 1952 Hyd 112 (118) (Pt H) (Pr 14) (DB).

——Arts. 226 and 32 — Writ of habeas corpus — Nature of — Powers of High Court — (Criminal P. C. (1898), S. 491).

The writ of habeas corpus is a prerogative process for securing liberty of the subject by affording an effective means of immediate release from unlawful detention whether in prison or in private custody. The full name of writ is 'habeas corpus ad subjiciendum' which means that you have the body to submit or answer.

Under both the Arts. 226 and 32 powers have been conferred to issue writs in the nature of habeas corpus untrammelled by any statutory provision and a writ in the nature of common law writ of habeas corpus may be issued now by the High Courts. In view of the wider powers of the High Courts under Art. 226, the provisions of S. 491, Criminal P. C., can be treated as practically superseded by Art. 226 of the Constitution of India. Chitaley's Constitution of India, Vol. II, p. 1659, Ref. to. **1955 Cr LJ 1603: AIR 1955 Manipur 41 (48) (Pt D) (Pr 29).**

208. Preventive detention.

● **——Art. 226 — Habeas corpus — Detention of petitioners under R. 30 (1) (b) of D. I. Rules (1962) by orders of Governor of Kerala passed on 29-12-1964 — President's rule in Kerala under his proclamation of 10-9-1964 — Cancellation of detention orders by President on 4-3-1965 — Fresh detention orders by Central Government on same date — Legality of orders — General election in Kerala was to be held in beginning of March, 1965 — Orders if mala fide.** See Ibid, Art. 32. **1966 Cr LJ 602: AIR 1966 SC 816.**

● **——Art. 226 — Habeas Corpus — Issue of — Advisory Board under S. 10, Preventive Detention Act not making report within 10 weeks — Detention becomes illegal. See Public Safety —**

Preventive Detention Act (1950), S. 10. 1958 Cr LJ 282: AIR 1958 SC 152.

●——**Art. 226 — Preventive detention — Mala fides of detaining authority — Public Safety —** Where an order of detention is challenged on the grounds of mala fides what has got to be made out is not want of bona fides on the part of the police but want of bona fides as well as the non-application of mind on the part of the detaining authority viz. Government. Lawrence D' Souza v. State of Bombay, 1956 SCA 766: 1956 Cri LJ 935: 1956 SCJ 559: 1956 All WR (Sup) 121: 58 Bom LR 989: 1956 SCR 382: AIR 1956 SC 531 (533, 534) (Pt A) (Pr 3).

●——**Art. 32 — Habeas Corpus — Detention under Preventive Detention Act — Validity — (Public Safety — Preventive Detention Act (1950), S. 3 (1)).**

Where the detenus were alleged to have published and distributed pamphlets which were couched in the most filthy and abusive language and amounted to a vitriolic attack upon the character and integrity of the present Chief Justice of Pepsu who was accused inter alia of gross partiality and communal bias in the matter of recruiting officers for judicial posts and also in deciding cases between the litigants.

Held, that the orders of detention should be held to be illegal and must be set aside as the publication or distribution of these pamphlets could not have any rational connection with the maintenance of law and order in the State or prevention of acts leading to disorder or disturbance of public tranquillity. Whatever other remedies that might be open to the aggrieved party or to the Government to prevent such scurrilous attack upon the head of the judiciary in the State, the provisions of the Preventive Detention Act could not be made use of for that purpose. The utmost that could be said was that the allegations in the pamphlets were calculated to undermine the confidence of the people in the proper administration of justice in the State. But it was too remote a thing to say, therefore, that the security of the State or the maintenance of law and order in it would be endangered thereby. Sodhi Shamsher Singh v. State of Pepsu, **1954 Cr LJ 735 : AIR 1954 SC 276 (277, 278) (Pt B) (Pr 5).**

——**Art. 226 — Habeas corpus — Preventive detention — Mala fides — Proof — Serious lapses and irregularities on part of executive not enough — Burden of proof lies on petitioner to establish charge beyond doubt or suspicion.**

Serious lapses and irregularities committed by authorities in detaining the petitioner does not necessarily prove that the authorities that were responsible for them were acting in a mala fide manner. In order, however, to find a charge of mala fides a Court of law would require something more than the bare existence of such defects.

The burden of proving that the detention order is mala fides lies heavily on the petitioner. In order to entitle the petitioner to succeed on this aspect of the case, clear and definite facts have got to be alleged so as to enable the Court to hold that the charge which has been sought to be levelled has been established to the hilt. **ILR (1961) 1 All 427.**

——**Art. 226 — Procedure — Detention under S. 3 (1) (a) (ii) of Preventive Detention Act and also under ordinary law — Habeas corpus Petition — Proper order to be passed. See Public Safety — Preventive Detention Act (1950), S. 3 (1) (a) (ii). 1957 Cr LJ 1361: AIR 1957 All 782 (DB).**

——**Arts. 226, 21 and 22 — Habeas Corpus — Detention under Preventive Detention Act — Allegation as to non-existence of grounds — Remedy — (Public Safety — Preventive Detention Act (1950), Ss. 7 and 10) — (Natural justice.)**

The complaint that a detenu under the Preventive Detention Act is deprived of the opportunity of proving before the Court that the statements contained in the grounds for detention were incorrect is untenable since it is open to him to prove the allegation before the Advisory Board constituted under the Act, which consists of three persons who are, or have been, or are qualified to be, appointed as Judges of a High Court. Non-existence of any of the grounds upon which the detention order is based would be a basis for the Board to hold that there was no sufficient cause for detention. A petition for a writ of habeas corpus is not the only judicial proceeding where finality is given to a finding of fact before it reaches the High Court.

Article 21 of the Constitution empowers the Legislature to provide for preventive detention, and the Act in question is a product of that power. Should it be considered that under the Act or the Constitution there ought to be a provision for a reagitation of the matter in the High Court, the remedy lies in the public opinion asserting itself through the Legislature. **1956 Cr LJ 1152: AIR 1956 All 589 (592) (Pt A) (Pr 5) (DB).**

——**Arts. 226, 19, 21 and 22 — Habeas Corpus — Deprivation of personal liberty under Statute by preventive or punitive detention — Person can challenge constitutionality of Act on ground that it infringes Art. 19 — (U. P. Special Powers Act (XIV of 1932), S. 3).**

It is not correct to say that the scope and nature of a petition of habeas corpus excludes the possibility of a challenge in regard to the constitutionality of an Act.

A person who is arrested for purposes of prosecution under S. 3, U. P. Special Powers Act, can undoubtedly challenge the constitutionality of the Act on the ground that the Act directly infringes the freedom of speech and expression: there is no reason and no authority, for saying that the bare fact that an action taken under a certain enactment results in a person's being deprived of his personal liberty, prevents him from challenging the constitutionality of the provision on the ground of its being inconsistent with Art. 19. Observations in AIR 1954 All 601, held obiter. AIR 1950 SC 27; AIR 1951 SC 270, Disting.

Art. 21 guarantees that a person shall not be deprived of his personal liberty except according to procedure established by law. This guarantee is broken the moment he is arrested for doing an act that is made penal by a Statute which is unconstitutional, and the High Court has, not only the power, but also the duty to issue a writ of habeas corpus to enforce his right to personal liberty. The function of a writ of habeas corpus does not extend beyond an enquiry into the jurisdiction of the Court by which the warrant of arrest was issued and the validity of the warrant upon its face. Jurisdiction is the power to hear and determine the subject-matter in controversy between the parties to a suit. But proceedings under an unconstitutional Act are absolutely void and the Act, being void, has no effect to confer jurisdiction. An unconstitutional law is no law and an offence created by it is not crime. If a Court tries a person for an act which is made penal by a void Act, it transcends its jurisdiction and he is entitled to a discharge just the same as

if the non-jurisdiction of the Court were apparent in any other manner.

The validity of an enactment is to be judged with respect to the provisions of Art. 19, if the legislation directly attempts to control a citizen's freedom of speech. But if the freedoms enumerated in Art. 19, are restricted indirectly as a result of the operation of a legislation, authorising punitive or preventive detention, then the validity of the legislation is not to be judged with reference to Art. 19 but with reference to the Articles dealing with the subject of detention. If the legislation, permitting detention, is in conformity with Arts. 20 to 22, the mere fact, that it indirectly affects the freedoms under Art. 19, will not make it a void legislation. So that the crucial point to be determined is what is the exact action which the impugned legislation hits at. If it is the curtailment of any of the freedoms guaranteed under Art. 19, then it has to be judged with reference to the provisions of that Article, but on the other hand if those freedoms are affected as an indirect result of a legislation authorising punitive or preventive detention, then the provisions of Art. 19 are not to be taken into consideration. So that it is not every legislation, which permits punitive or preventive detention, which is immune from a consideration as to its validity by reference to the freedoms guaranteed under Art. 19. What has to be seen in every case is the actual action which the statute prohibits. The law, as laid down in Gopalan's case. AIR 1950 SC 27: is not that if a legislation directly interferes with freedom of speech and is not saved by the provisions of Cl. (2) of Art. 19, then it should be held to be invalid, if it merely provides for the imposition of a fine by way of punishment: but that it would be valid if it provides for imprisonment instead of fine.

Where an Act directly curtails the right of freedom of speech and as a result of the violation of the provisions of which a person is punitively detained then in such a case he can rely upon the rights to the freedoms guaranteed to him by Art. 19. While Art. 19 (1) is not contravened when curtailment of the freedom mentioned therein is brought about as a result of detention preventive or punitive under laws otherwise valid, (and it may be further said that while in the case of preventive detention. Art. 19 (1) is not contravened at all), Art. 19 (1) is contravened when punitive detention is effected as a result of the exercise of those freedoms. **1955 Cr LJ 623: ILR (1955) 1 All 355: AIR 1955 All 193 (199 to 201, 206, 207, 209, 210, 218) (Pt B) (Prs 7, 8, 18, 31, 69) (DB).**

——Art. 226 — Power of High Court to grant writ of habeas corpus — Preventive Detention Act 1950, S. 8 — Neither S. 8 nor Art. 22 (4) (a) constitutes Advisory Board a Court of law or imposes on it the duty of determining whether previous detention is legal — If opinion does not oust the jurisdiction of High Court to determine whether grounds upon which the petitioner was detained satisfied requirements of law — High Court is not concerned with proceedings of the Advisory Board — Right of High Court to grant writ of habeas corpus where initial arrests in the opinion of the High Court was illegal or improper is not taken away. **1954 Cri LJ 685: 1954 All LJ 6: AIR 1954 All 315 (315 to 317) (Pt A) (Prs 5, 10) (DB).**

——Art. 226 — Preventive detention — Satisfaction of detaining authority — Powers of High Court. See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1957 Andhra Pra 143 (DB).**

——Art. 226 — Public Safety — Preventive Detention Act (1950), Ss. 3 (1) (a) (ii) and 4 — Validity of order of detention — Detention order against person already in custody — Question that would arise is whether detaining authority was satisfied that order was necessary — This depends on circumstances — It may be argued that the order was not bona fide — It may be challenged on ground of mala fide without imputing improper motive — Order is mala fide when there is malice in law though no malice in fact — Malice in law may be deemed to exist when the order is made contrary to the objects and purposes of the Act or on considerations which are outside the scope of the Act. See Public Safety — Preventive Detention Act (1950), S. 3 (1) (a) (ii). **AIR 1953 Assam 97.**

——Art. 226 — Art. 14 is suspended by notification under Art. 359 (1) — Attack on ground of discrimination, in R. 30 (4) D. I. Rules 1962 under Art. 14 cannot stand. See Defence of India Act (1962), S. 3 (1). **('65) 69 Cal WN 913.**

——Art. 226 — Criminal P. C. (1898), S. 491 — Order of detention under Preventive Detention Act (1950) — Powers of High Court to interfere — High Court cannot investigate truth or falsity of particulars. It can only consider whether detenu could make effective representation or mala fide on point of detaining authority. See Criminal P. C. (1898), S. 491. **AIR 1964 Cal 231.**

——Art. 226 — Satisfaction of detaining authority — Sufficiency of materials — Powers of High Court to examine. See Public Safety — Preventive Detention Act (1950), S. 3. **1962 (1) Cr LJ 311: AIR 1962 Cal 162 (DB).**

——Art. 226 — Members of State Legislature — Immunity from arrest for Preventive Detention — Representation of the People Act, (1951), Ss. 5 to 8. See Ibid, Art. 105. **1952 Cri LJ 1454: AIR 1952 Cal 632 (SB).**

——Art. 226 — Application challenging order of detention — Detenu's case not considered by Advisory Board — Preventive Detention Act, Ss. 8 to 11. See Cr. P. C., S. 491. **1952 Cr. LJ 204: AIR 1952 Cal 26 (DB).**

——Art. 226 — Habeas Corpus — (Cr. P. C. Code (1898), S. 491).

The mere fact that the ban on the communist party to which the detenu belonged has been removed will not entitle the detenu to obtain an order of release from the High Court. The justification for imposing a ban or laying restrictions on the activities of an association may cease to exist but the right of the Government to exercise its powers under the Preventive Detention Act with regard to a particular individual in the interest of maintenance of public order and for the sake of public security will continue as long as the Government is responsible for the security of the State and for the maintenance of law and order. It is one thing to remove a ban on an association and it is quite a different thing to release a member of that organisation to whom violent and subversive activities are attributed. **ILR (1953) Hyd 459: 1953 Cr LJ 1845: AIR 1953 Hyd 277 (280) (Pt F) (Pr 9) (DB).**

——Art. 226 — Writ of habeas corpus — Order of detention under Preventive Detention Act — Grounds furnished vague — Acts attributed relating to security of State — Order of detention for maintenance of public order — Offence of dacoity recited — Discharge upon charge for dacoity — Sufficiency of grounds for detention.

In an application for a writ of habeas corpus the points raised were (1) that the grounds were vague; (2) that the detaining authority has failed to take note that he was discharged on the charge against him for the offence of dacoity which formed one of the acts relied on; (3) that the acts relied on were all relevant only if at all to the security of State and not for the maintenance of public order for which purpose the order purports to have been made.

Held: The grounds can be said to be vague only when the detenu could not understand them so as to enable him to make representations. AIR 1951 SC 157 and AIR 1951 SC 270, Rel. The detenu has made representations to the Advisory Board and so they could not be held to be vague.

Under S. 3 (1) of the Act it is open to the detaining authority to detain for reasons of security of State or for maintenance of public order. It is only when the reasons given for the detention is not within the scope and ambit of the Act the detenu can question the validity. The fact that the grounds relate to their being prejudicial to the security of State and the order is for the maintenance of the public order does not make any difference as the detaining authority has power to detain in either circumstances. (AIR 1950 All 709, Ref.).

The detaining authority is competent to continue the detention if he finds that the detention is still necessary in view of the other activities mentioned in the grounds in spite of his discharge from the charge on the offence of dacoity.

It is only where the grounds furnished do not relate to matters within the scope of the Act and did not fall within S. 3 (1) of the Act it is open to the detenu to say that the authority had no jurisdiction to pass the order of detention. The sufficiency of the grounds for the passing of the order is beyond that scope of inquiry in the proceeding under Art. 226. AIR 1951 SC 481, Foll. **1952 Cr LJ 1756: ILR (1952) Hyd 770: AIR 1952 Hyd 186 (187) (Pt D) (Pr 5) (DB).**

——Art. 226 — Scope of inquiry — Application for writ of habeas corpus — Validity of law authorising detention — If can be challenged or gone into.

In an application for a writ of habeas corpus under Art. 226 of the Constitution or under S. 529, Hyderabad Cr. P. Code, the validity of the law under which an order of detention has been passed can be challenged; and it is open to the High Court to ascertain if that law (Preventive Detention Act) under which the order of detention complained of has been passed is ultra vires and beyond the competence of the authority by which it was passed. AIR 1945 PC 48, Rel. **ILR (1951) Hyd 168: 52 Cr LJ 710 (2): AIR 1951 Hyd 83 (84) (Pt C) (Pr 4) (DB).**

——Art. 226 — Public Safety—J and K Preventive Detention Act (4 of 2011 sm.) S. 3 (1) (a) — Detention under, challenged in writ petition for habeas corpus on grounds of mala fide — Mere allegation of mala fide in affidavit without details is not enough. **1963 (1) Cri LJ 765: AIR 1963 J and K 23 (27) (Pt D) (Pr 8).**

——Art. 226 — Preventive Detention — Preventive Detention Act (1950), S. 19 — Effect of, on High Court's powers. See Public Safety — Preventive Detention Act (1950), S. 19. **AIR 1954 J. and K. 59 (FB).**

——Art. 226 — Order of detention directing that detenu be detained at place beyond jurisdiction of detaining authority — Order is illegal. See Public Safety — Jammu and Kashmir Public Security Act (XV of 2003 Sm.) S. 3. **AIR 1954 J. and K. 7 (DB).**

——Art. 226 — Preventive Detention Act (1950), S. 3 — Detention under — Grounds — Sufficiency of — If and when can be challenged in court of law — Court not to inquire into truth of otherwise of facts stated therein. See Public Safety — Preventive Detention Act (1950), S. 3. **1956 MBLJ 1270.**

——Art. 226 — Habeas Corpus — Preventive detention — Justiciability of grounds in the order. **1956 MB LJ (HCR) 1276.**

——Art. 226 — Grounds — Sufficiency — Power of High Court to examine material — See Public Safety — Preventive Detention Act 1950, S. 3. **AIR 1955 NUC (MB) 3864.**

——Art. 226 — Habeas corpus — Preventive detention — Detention found to be not in accordance with procedure established by law — Detenu is entitled to be released. **AIR 1955 NUC (MB) 3100.**

——**Art. 226** — Person arrested by police under S. 151 Cr. P. C. — Order of detention under S. 3 of Act 4 of 1950 can be made against him. See Public Safety — Preventive Detention Act (1950), S. 3. **Madh BLJ 1954 HCR 289.**

——Art. 226 — Habeas Corpus — **Detention under Preventive Detention Act — Factual correctness of ground for detention verified by Advisory Board after hearing petitioner — Matter cannot be investigated by High Court under Art. 226 — (Public Safety — Preventive Detention Act (1950), Ss. 9, 10 and 11).**

It is not open to the petitioner to challenge in Habeas corpus proceedings before the High Court the factual correctness of a ground as set out in the grounds of detention, when the petitioner had an opportunity to challenge the correctness of that allegation in the proceedings before the Advisory Board in which he fully participated. If the Court has no jurisdiction to investigate the factual position by taking evidence at this stage, the purpose to be served by such an investigation would appear to be immaterial. Such an investigation is barred even for the purpose of establishing mala fides of the Government in confirming the order of detention. **71 Mad LW 328: 1958 Mad WN 369: 1958 Mad LJ (Cri) 607: 1958 Cri LJ 1047: (1958) 2 Mad LJ 169: ILR (1958) Mad 692: AIR 1958 Mad 425 (427) (Pt A) (Prs 5, 6) (DB).**

——Arts. 226, 22 — Preventive Detention Act (4 of 1950), Ss. 3, 7, 11 — Bona fides of detention — Relevant factors — Petition held not mala fide —See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1958 Mad 425.**

——Arts. 226, 22 — Public Safety — Preventive Detention Act (1950), Ss. 3, 7, 11 — Detenu charge-sheeted in Criminal prosecution against him — Ground of detention not same as offence set out in charge — No question of mala fide arises — See Public Safety — Preventive Detention Act (1950), S. 3. **AIR 1958 Mad 425.**

——Art. 226 — Public Safety — Preventive Detention Act (1950), Ss. 3 and 12 — Right of detenu to challenge order on ground of mala fide — Burden of Proof — Duty of Government — Malice and mala fide explained — Validity of prior order in question — Fresh order for detention passed before pronouncement of judgment — Omission by Government to inform court's order reflects on their bona fide — Criminal P. C. (1898), S. 491. **65 Mad LW 876: 1952-2 Mad LJ 690: 1953 Cri**

LJ 224: AIR 1953 Mad 41 (45, 46, 47, 49, 50, 51) (Pt A) (Prs 7, 9, 14, 17, 18) (DB).

——Art. 226 — Detention under Preventive Detention Act — Application for writ of habeas corpus — Scope of proceedings in High Court. See Public Safety — Preventive Detention Act 1950, S. 1 (3). **AIR 1952 Pat 298 (DB).**

——**Art. 226** — Preventive Detention Act (1950), S. 7 — Grounds — Even one vague ground affects the legality of detention — All the grounds supplied must be precise, definite clear and specific — AIR 1953 SC 318 and Cri. Misc. No. 66 of 1953, D/ 10-8-1953 (Pepsu), Foll. See Public Safety — Preventive Detention Act (1950), S. 7. **AIR 1955 NUC (Pepsu) 2157.**

——Art. 226 — Vague grounds of detention, effect. See Ibid, Art. 22 (5). **1953 Cr LJ 1838: AIR 1953 Pepsu 207.**

——Art. 226 — Preventive Detention Act (1950), S. 7 — Criminal P. C. (1898), S. 491 — Detenu's petition for release — Scope of — It is not within scope of such petition to inquire into the truth or falsehood of the grounds supplied — See Criminal P. C. (1898), S. 491. **AIR 1953 Pepsu 190.**

——Art. 226 — Preventive Detention Act (1950), S. 7 — Grounds not true — Interference by High Court — See Public Safety — Preventive Detention Act (1950), S. 7. **AIR 1953 Pepsu 145.**

——Art. 226 — Preventive Detention Act (1950), S. 3 — Validity of detention — Petitioner all along detained in jail for about six months as under-trial prisoner in three cases — In one of them he was acquitted and in other discharged — Immediately after acquittal, when third case was pending, he was served with order of preventive detention under S. 3, mentioning the last activities prior to detention extending for period of two years as grounds of detention — Detention order held was made for collateral purposes as there was likelihood that the object was either to punish him for his past acts or to prejudice his defence in case pending against him. **ILR (1952) Patiala 620: 1953 Cri LJ 1210: AIR 1953 Pepsu 111 (112) (Pt B) (Pr 5).**

——Art. 226 — Habeas Corpus — Detention for preventing a person from acting in a manner prejudicial to defence of India — Grounds of detention must have rational connection with objects in S. 30 — Satisfaction of Government — Sufficiency of material on which satisfaction based not justiciable—Order cannot be challenged alleging vagueness of grounds—Interference not permissible unless order shown to be mala fide. See Defence of India Act (1962), S. 3 (2). **1963 (2) Cri LJ 320: AIR 1963 Punj 408.**

——Art. 226 — Habeas corpus — Detention under Preventive Detention Act, 1950 — Advisory Board examining case of detenu and deciding not to order release — Petition by detenu under Art. 226 not barred. **62 Punj LR 339: 1960 Cri LJ 981: AIR 1960 Punj 332 (335) (Pt B) (Pr 6).**

——Art. 226 — Preventive Detention — Grounds of detention — Rational relation between the two necessary — Legality of detention. See Ibid, Art. 22. **1957 Cri LJ 100: AIR 1957 Raj 5 (DB).**

——Art. 226 — Habeas corpus — District Magistrate passing order of preventive detention — Grounds of detention drawn more than three weeks thereafter — Legality. See Ibid, Art. 22. **1957 Cri LJ 100: AIR 1957 Raj 5 (DB).**

——Art. 226 — Public Safety — Preventive Detention Act (1950), Ss. 10 (1) and 11 (1) — Report of Advisory Board received within ten weeks — Order of confirmation passed beyond ten weeks, but within three months of order of detention — Further detention is valid. See Public Safety — Preventive Detention Act (1950), S. 10 (1). **AIR 1953 Sau 138.**

——Art. 226 — Illegal detention — Order of detention under Preventive Detention Act, 1950 — Order not served on detenu nor copy granted after request — Grounds alone communicated three days after arrest and detention — Legality of detention — Issue of writ of habeas corpus. See Ibid, Art. 22 (5). **52 Cr LJ 845: AIR 1951 TC 130 (DB).**

——Art. 226 — Habeas Corpus — Detention under Preventive Detention Act — Case examined by Advisory Board and report submitted — Petition under Art. 226 is not maintainable — (Public Safety — Preventive Detention Act (1950), Ss. 3 and 10).

Where a person has been detained under S. 3, Preventive Detention Act (1950), and his case has already been examined by the Advisory Board and report under S. 10 has duly been submitted, a habeas corpus petition under Art. 226, Constitution of India, is legally not maintainable. **1957 Cr LJ 480: AIR 1957 Tripura 25 (26) (Pr 8).**

——Art. 226 — Habeas corpus — Preventive detention — Legality — (Public Safety — Preventive Detention Act (1950), S. 3 (1) (a) (i) and (ii)).

No doubt the writ of habeas corpus is intended for the protection of personal liberty which is a Fundamental Right under the Constitution, and, considering the object for which the power has been conferred, it is conceived that whenever the case of unlawful deprivation of personal liberty is brought to the notice of the Court, the Court will not hesitate to issue the writ; but as the writ of habeas corpus ad subjeciendum is a writ of right and as it is not a writ of course, it can be issued only on probable cause and so the writ may be refused where there is an alternative remedy available.

Where, the petition was not supported by any affidavit, it was presented after considerable delay, the petitioner was detained under the Preventive Detention Act and the procedure laid down under that Act was duly followed. **1956 Cr LJ 118: AIR 1956 Tripura 1 (1, 2) (Prs 3, 7).**

209. Private custody, detention in.

——Art. 226 — Habeas corpus — Petition for production of girl — Father in counter-affidavit alleging that she has disappeared from the house — Writ will not be discharged unless respondent-father satisfies the Court that he is really unable to produce the girl — His mere statement that she has run away is not enough — Circumstances showing that father is not innocent as he claimed to be — Court entertaining doubt and suspicion about the manner in which the girl was removed — Respondent-father cannot escape liability. **1960 All Cr R 374: 1960 All WR (HC) 591: 1960 All LJ 776.**

210. Production of prisoner in Court.

——Art. 226 — Habeas corpus — Rule nisi for production of detenu in Court — Criminal P. C. (1898), S. 491.

The High Court has a discretion in the matter of directing the attendance of the detenu in Court. Generally the allegations made in a petition for

habeas corpus are not conclusive by themselves and the practice is to issue an order to the respondent to show cause why the petition should not be granted. A Rule nisi for production of the detenu in Court would be made only where a prima facie case of unlawful detention has been made out on behalf of the person invoking the aid of the Court. Where the order of detention produced by the Government appear to be on the face of it a proper order and there is no defect or irregularity about the same it cannot be said that the detenu has made out prima facie case for the issue of an order directing the production of the detenu in Court. 1952 Cri LJ 710 (2): ILR (1951) Hyd 168: AIR 1951 Hyd 83 (85, 86) (Pt A) (Prs 7, 8) (DB).

211. Protective custody.

——Art. 226 — Habeas Corpus — Suppression of Immoral Traffic in Women and Girls Act (1956), S. 17 (2) — Proceedings under, pending — Petition for Habeas Corpus does not lie.

The law is well established that if proceedings are being taken under some provisions of law, a petition for habeas corpus would not lie. Where proceedings under S. 17 (2) are pending against the girls arrested under S. 15 of the Suppression of Immoral Traffic in Women and Girls Act for being sent to protective custody, no question of habeas corpus being issued in the case arises. AIR 1951 SC 217, Foll. 1962 All LJ 725: 1962 All WR (HC) 577: 1962 All Cri R 326: (1963) 1 Cri LJ 505 (507) (Pt B) (Pr 8) (DB).

——Art. 226 — Illegality — Production of kidnapped girl in pursuance of search warrant — Magistrate remanding girl to jail custody on ground of apprehension of breach of peace — Order whether justified by Ss. 100, 107 or 552, Criminal Procedure Code — Legality of detention. See Criminal Procedure Code (1898), S. 100. 1957 Cr LJ 1445: AIR 1957 Pat 689 (DB).

212. Re-arrest after release.

■——Arts. 32, 226 and 356 — Habeas corpus — Detention of petitioners under R. 30 (1) (b) of D. I. Rules (1962) by orders of Governor of Kerala passed on 29-12-1964 — President's rule in Kerala under his proclamation of 10-9-1964 — Cancellation of detention orders by President on 4-3-1965 — Fresh detention orders by Central Government on same date — Legality of these orders — General election in Kerala was to be held in beginning of March 1965 — Orders if mala fide.

Held, on facts, (i) that the allegation that the detention orders of 4-3-1965 were mala fide as they were passed to circumvent the possibility of the petitioners being released in case a party Government came into power in the State after the elections must be rejected as, apart from the denial of the allegation, the Central Government had clearly stated that on the materials placed before it, it was satisfied as to the likely prejudicial activities of the petitioners before it passed the orders. The contention that the orders were illegal as there was no material before the Central Government before it passed the orders must also be rejected; (ii) that the orders of the Governor, dated 29-12-1964 were in the circumstances the orders of the President acting through the agency of the Governor and it was open to the President to cancel the orders passed by his agent. There was nothing illegal in the Central Government thereafter passing the detention orders of its own on the same date.

Further, as the Government of Kerala was functioning under the President by virtue of the proclamation the decision of the Central Government to detain the petitioners for itself could be given effect to by asking the President to cancel the orders of the Governor. Even where persons are detained by orders of the State Government, there is no illegality in the Central Government asking the State Government to withdraw its orders and to detain the persons thereafter by orders of the Central Government, provided the State Government is agreeable to withdraw its orders. It was not necessary to carry out the empty formality of release of the petitioners from jail under the orders of cancellation and to arrest them immediately they came out of jail and to serve on them the new orders of detention. AIR 1964 SC 1128, Rel. on. Gopalan v. Government of India. 1965 Ker LT 1229: 1966 Ker LJ 45: (1966) 1 SCWR 449: 1966 Cr LJ 602: AIR 1966 SC 816 (818, 819) (Pt B) (Prs 6, 7, 9).

■——Art. 226 — Habeas Corpus, Writ of — Return to writ — Failure to file — Convict undergoing sentence of imprisonment — Release on grounds of ill-health — Re-arrest and detention in jail — Lawful authority under which re-arrest made not disclosed — Detention is illegal.

No member of the executive can interfere with the liberty of a subject except on condition that he can support the legality of his action before a Court of justice: AIR 1931 PC 248, Rel. on.

A convict sentenced to imprisonment was released from custody on grounds of his ill-health but was subsequently re-arrested and detained in jail. On an application under Art. 226, for a writ of Habeas Corpus, the State did not file any return showing the provisions under which the convict was released or re-arrested.

Held, that as it had not been shown that there was lawful authority under which the convict was re-arrested, his detention could not be supported and was illegal. State of Bihar v. Kameshwar Prasad Verma, (1962) 2 Ker LR 192: (1963) 2 SCR 183: 1962 BLJR 798: 1962 SCD 851: (1963) 2 SCJ 89: 1963 Mad LJ (Cri) 315: 1963 All Cri R 262: 1963 All WR (HC) 534: 1963 (1) Cri LJ 494: AIR 1965 SC 575 (577) (Pr 8).

——Art. 226 — Habeas Corpus—Effect of release.

Where a person, arrested for having committed an offence punishable under an Act is released on a writ of habeas corpus, on the ground that there was a contravention of the provision contained in Art. 22 (2), Constitution of India, he can still be tried in respect of the same accusation. 1954 All LJ 355: 1954 Cr LJ 1317: ILR (1955) 1 All 793: AIR 1954 All 601 (605) (Pt H) (Pr 36) (DB).

——Art. 226 — Habeas corpus — Powers of High Court — Scope — High Court not to go into merits of arrest and detention after release of detenu. 1961 MPLJ 1199.

——Art. 226 — Subsequent order of detention not brought to the notice of Court at the time of delivery of judgment in a writ of habeas corpus questioning detention under an earlier order — Rearrest of detenu on such order — Mala fides of Government — Effect of the later order.

On 19th February, the Court reserved judgment in an application for writ of habeas corpus filed by the petitioner and on 22nd February, the Court delivered judgment making the rule nisi absolute. During this interval the Government and its legal advisers had a conference wherein they came to the conclusion that the petitioner would in all probability be released by the Court on account of a technical defect in the form of the order and that if it was so a subsequent order of detention

could be passed on account of the antecedents of the petitioner. The fact that such an order was in fact passed was not communicated to the learned Advocate-General or learned Public Prosecutor and so was not brought to the notice of the Court at the time of delivery of the judgment. Within a few minutes after the delivery of the judgment the petitioner was re-arrested by the Assistant Commissioner of Police who had orders to re-arrest. In fact, the subsequent order of re-arrest had not cured the technical defect on which the earlier judgment was based.

Held, in the circumstances (per Satyanarayana Rao and Raghava Rao, JJ.) that the subsequent order of the Government lacked bona fide and that therefore the rule nisi should be made absolute and petitioner set at liberty.

The subsequent order not having been brought to the notice of the Court when the judgment was delivered on the earlier order, the order directing the release of the petitioner on 22nd February, automatically discharged the first order of detention passed earlier on that date.

Assuming that it was the duty of the Government at the time of delivering judgment in the habeas corpus application of the detenu to bring to the notice of the Court all orders of detention which might justify the detention of the person whose application for release was under consideration then there is no principle on which the Government's dereliction of duty in this respect has the effect of nullifying the order for detention which had been made and not brought to the notice of the Court. It is not a question of constructive res judicata nor is it a matter of necessary implication of the judgment that all prior orders of detention should cease to operate thereafter. The judgment can only relate to the matters in fact brought to the notice of the Court. **65 LW 876: (1952) 2 MLJ 690: 1953 Cr LJ 224: AIR 1953 Mad 41 (48, 53) (Pt D) (Prs 11, 26) (DB).**

——Art. 226 — Habeas corpus — Release of prisoner on ground of illness — Subsequent arrest — Legality — (Bihar and Orissa Jail Manual, R. 549 (2)).

Where a prisoner was properly unconditionally released under R. 549 (2) of Bihar and Orissa Jail Manual, by the District Magistrate subsequent order of the District Magistrate ordering his re-arrest is illegal.

Per Prasad, J. :—In a case in which the release is conditional, the authority releasing the prisoner must necessarily have powers to recall the prisoner concerned, if the condition is not fulfilled. But in a case where the release has been unconditional, it shall be taken that as soon as the prisoner is released, the unexpired portion of the sentence on him shall be deemed to have been remitted, so that the prisoner is no longer under the liability of being recalled to undergo any further sentence.

Rule 549 of the Bihar and Orissa Jail Manual does not make all release under it conditional. The words of the rules are not open to this construction. That part of this rule which actually confers the power of release on the prescribed authorities under specified circumstances, does not contain anything to limit the powers of release so conferred.

It is reasonable, therefore, to interpret this rule as fettering the powers of the authorities including the State Government and limit them so that not even the Government can release the prisoner concerned unconditionally, under R. 549 of the Jail Manual. **1958 BLJR 531: 1959 Cr LJ 501: AIR 1959 Pat 146 (148, 149, 150) (Pt. A) (Prs 7, 8, 9, 10, 14, 19, 21) (DB).**

213. Res judicata in writ proceedings.

See also Notes 105, 114 and 216 and Civil P. C. (1908), S. 11.

●——Art. 32 — Habeas Corpus petition — Rejection on merits — Reconsideration on constitutional points — Case cannot be reopened for reason that grounds of detention are vague. AIR 1952 SC 324, Considered. Godavari Parulekar v. State of Bombay, **(1953) 1 MLJ 203: (1953) SCJ 28: 1953 SCR 210: (1953) Cr LJ 508: 1953 SCA 287: AIR 1953 SC 52 (53) (Pt C) (Pr 13).**

——Art. 226 (1) — Rejection of earlier petition under Article on preliminary issue — Subsequent petition cannot be treated as barred because of rejection of earlier petition — Per Deka, J. **AIR 1953 Assam 12 (15) (Pt D) (Pr 11) (DB).**

——Arts. 226 and 32 — Habeas Corpus — Prior application dismissed by High Court — Subsequent application to Supreme Court can be made directly without leave. **52 Cri LJ 1360: ILR (1951) 3 Assam 42: AIR 1951 Assam 143 (1) (143) (Pr 2).**

●——Art. 226 — Cr. P. Code (1898), S. 491 — **Second petition for writ of habeas corpus — When maintainable.**

No second petition for writ of habeas corpus lies to the High Court on a ground on which a similar petition has already been dismissed by the Court. However, a second such petition will lie when a fresh and a new ground of attack against the legality of detention or custody has arisen after the decision on the first petition, and also where for some exceptional reason a ground has been omitted in an earlier petition, in appropriate circumstances, the High Court will hear the second petition on such a ground for ends of justice. In the last case it is only a ground which existed at the time of the earlier petition, and was omitted from it, that will be considered. Second petition will not be competent on the same ground merely because an additional argument is available to urge with regard to the same.

Held, on facts, that second petition was not maintainable as in both the petitions the same matter was put in different words. Ram Kumar Pearay Lal v. District Magistrate, Delhi, **ILR (1965) 2 Punj 853: 1966 Cr LJ 153: AIR 1966 Punj 51 (54 to 58) (Pt D) (Prs 8, 9) (FB).**

214. Return to the writ.

●——Art. 226 — Habeas Corpus — **Return to writ — Affidavit by detaining authority — Need for — (Criminal Procedure Code (1898), S. 491 (2)).**

The incalculable value of habeas corpus is that it enables the immediate determination of the right to the appellant's freedom. As soon as there emerges a fact into which the Court feels it should enquire, the necessity for an affidavit arises. Ordinarily, an affidavit may not be necessary in making the return if the detention is under orders of the detaining authority in exercise of its plenary discretion or a person is detained under the Orders of a Court. But where the detention is in police lock-up it becomes necessary for the detaining authority to justify its action by disclosing facts which would show to the satisfaction of the Court that the custody is not improper. When issues of fact are raised and the actions of the police officers are expressly challenged and facts are set out which if unrebutted and unexplained would be sufficient for the writ to issue, an affidavit becomes necessary. Ranjit Singh v. State of Pepsu (now Punjab), **ILR (1959) Punj 1709: 26 Cut LT 576: (1960) 2 Ker LR 541: (1959) Supp (2) SCR 727: 1959 Mad WN (SC) 86: 37 Mys LJ 869: 1959**

SCJ 905: 1959 All WR (HC) 371: 1959 Cr LJ 1124: 1959 All Cr R 298: 1959 Mad LJ (Cr) 618: (1959) 2 MLJ (SC) 121: (1959) 2 SCA 552: (1959) 2 Andh WR (SC) 121: AIR 1959 SC 843 (845, 846) (Pt A) (Pr 4).

●——**Art. 32 — Returns.**

In a question of habeas corpus, when the lawfulness or otherwise of the Custody of the persons concerned is in question, the documents containing order of remand would be of vital importance and should be produced at time of filing return. Ram Narayan Singh v. State of Delhi, 1953 Mad WN 647: (1953) SCJ 326: 1953 Cr LJ 1113: 1953 All WR (Sup) 68: 1953 SCR 652: 1953 SCA 399: AIR 1953 SC 277 (278) (Pt C) (Pr 4).

——**Art. 226 — Habeas corpus, writ of — Detention of petitioner in pursuance of commitment by Legislative Assembly — Legality — Onus of proof — Duty of Court — Only one of respondents appearing to oppose petition can be allowed to do so.**

Where in a petition for the issue of a writ of habeas corpus it was alleged that the petitioner was detained in pursuance of a commitment by the Legislative Assembly, the detention cannot be treated as prima facie unlawful and it is for the petitioner to show that the commitment was illegal. Even if no one appears to oppose the petition, the High Court would still have to decide whether the commitment was legal or illegal. Therefore, if only one of the respondents, viz., the Jail Superintendent has appeared to oppose the petition, he should be allowed to urge that the commitment and the warrant on the basis of which he was detaining the petitioner was valid. **1965 (2) Cri LJ 170: ILR (1965) 2 All 281: 1965 All WR (HC) 286: 1965 All Cr R 213: AIR 1965 All 349 (352) (Pt A) (Pr 5) (DB).**

——**Art. 226 — Habeas Corpus — Writ of — Return to writ — Basis of detention prior order of District Magistrate — State cannot plead at stage of arguments that basis of detention was subsequent order of detention passed by State.**

When a detenu files an application of habeas corpus, the authority detaining the petitioner is bound to disclose the basis of his detention in the return made by it in the clearest possible terms. It should, at the stage of return, produce the order justifying the detention of the person concerned so as to enable him to meet the case set up against him.

If in the return by the State and the counter-affidavit filed on behalf of the State which constitutes a part of the return, the basis for the detention of the petitioner is the order passed by the District Magistrate under S. 3 (2), Preventive Detention Act, it would not be open to the State at the stage of arguments to abandon that stand and to base the detention of the petitioner on a subsequent order of detention passed by the State. AIR 1954 All 601, Rel. on. **ILR (1961) 1 All 427.**

——**Art. 226 — Habeas corpus — Counter-affidavit — Petition for production of girl — Father in counter-affidavit alleging that due to shock caused to the girl by the infamy of the whole affairs, the girl had disappeared from the house of her aunt where she was sent and that her whereabout were not known — Father not in contact with girl when she was alleged to have disappeared — Allegations verified on personal knowledge — Verification held to be false, since deponent could not verify upon personal knowledge to state of mind of another with whom he had no contact — Civil P. C. (1908), O. 6, R. 15. 1960 All Cr R 374: 1960 All WR (HC) 591: 1960 All LJ 776.**

——**Art. 226 — Habeas corpus — Return to — — Duty of respondent.**

The return to a writ of habeas corpus has to be an unambiguous return and it has got to set forth clearly, and with sufficient particularity the facts and the cause for the accused person's detention. There can be no scope for a presumption being pressed into service or a verbal assertion being pressed into service in order to justify a detention which on the materials placed before the Court appears unjustified. AIR 1954 All 601, Rel. on. **1959 All LJ 50: 1959 All WR (HC) 79: 1959 All Cr R 105: 1959 Cr LJ 685: AIR 1959 All 384 (388) (Pt E) (Pr 22) (DB).**

——**Art. 226 — Disclosure of facts in return to writ of habeas corpus — (Cr. P. Code (1898), S. 491).**

It is well established that a return to a writ of habeas corpus has to be unambiguous and it has got to set forth clearly and directly and with sufficient particularity the facts and the cause for the petitioner's detention. The return has to state all the facts and all the grounds which constitute valid and sufficient grounds for the detention of the persons alleged to be detained. There is no scope of any presumptions being pressed into service by a Court to make up deficiencies in the return which the opposite party was in law bound to make. **ILR (1955) All 793: 1954 All LJ 355: 1954 Cr LJ 1317: AIR 1954 All 601 (605) (Pt C) (Pr 35) (DB).**

——**Art. 226 — Writ of habeas corpus — Return has to state facts and grounds for detention.**

A return to a writ of habeas corpus has to be unambiguous and it has got to set forth clearly and directly and with sufficient particularity the facts and the causes for the petitioner's detention. The return has to state all the facts and all the grounds which constitute valid and sufficient grounds for the detention of the persons alleged to be detained. There is no scope of any presumptions being pressed into service by a Court to make up deficiencies in the return which the opposite party was in law bound to make. AIR 1954 All 601, Rel. on. **Madh BLJ 1955 HCR 1560: AIR 1955 MB 200 (202) (Pt B) (Pr 21) (DB).**

——**Art. 226** — No returns filed to the writ petition by person who was alone competent to give reply and who was made respondent to the petition — Reply by other respondent vague — Statement made by petitioner must be taken to be correct. **1964 Cur LJ 392.**

——**Art. 226 — Habeas corpus — Return to writ — Who should make — (Criminal Procedure Code (1898), S. 491).**

In a habeas corpus proceeding, the return to the writ is the principal pleading of the person against whom the writ is directed. It must be made in accordance with the rule issued. Further, it must be made by the person to whom the writ was issued and on whom it was served. A return on behalf of another officer, who is not a respondent in the case, and who is not named in the proceedings as a party thereto is not in accordance with any rule of pleadings. **1960 Cr LJ 390: ILR (1960) Punj 162: AIR 1960 Punj 122 (124, 125) (Pt A) (Pr 8).**

215. Review or rehearing.

●——**Art. 32 — Privilege of legislature — Power to punish citizen for contempt on general warrant — Review of case by Supreme Court.** See Ibid, Art. 194 (3). **AIR 1965 SC 745.**

216. Successive applications.

See also Notes 105, 114 and 213 and Civil P. C. (1908), S. 11.

——Arts. 32, 226 — Habeas Corpus — Prior application dismissed by High Court — Subsequent application to Supreme Court can be made directly without leave.

A petitioner whose petition for habeas corpus has been dismissed by the High Court need not ask for leave of the High Court to move another habeas corpus petition to the Supreme Court. He can move the Supreme Court directly under Art. 32. **ILR (1951) 3 Assam 42: 52 Cri LJ 1360: AIR 1951 Assam 143 (1) (143) (Pr 2).**

——Art. 226 — Application under, against detention under Preventive Detention Act — Grounds available but not taken in previous application against same detention or in the present application, will not be allowed to be raised.

Point available to the detenu against his detention under Preventive Detention Act in his previous applications under Art. 226 before the High Court an under Art. 32 before the Supreme Court, cannot be allowed to be taken in subsequent application under Article 226 against the same detention. Similarly grounds not stated in the application under Art. 226; against which the Government could not have an opportunity to file an affidavit cannot be allowed to be raised. **('52) 54 Bom LR 629 : 1953 Cri LJ 322: 22 Bom Cri C 1: ILR (1953) Bom 182: AIR 1953 Bom 59 (59, 60) (Pt A) (Prs 3, 4) (DB).**

——Art. 226 — Successive applications for writ of habeas corpus —Competency— Second application to different Judges of same High Court after rejection by a Bench — Power to entertain — Power of review.

When orders under S. 491, Cr. P. Code are passed by the High Court, the decision is that of the High Court and not that of the Judges though the High Court acts through a Judge and Judges composing the Bench nominated by the Chief Justice for the purpose. The judgment is not of the Bench but the judgment of the High Court. There is no provision either in the Letters Patent or in any of the rules framed by the High Court for a Judge or Judges of the High Court to exercise independent judgment. Nor is there any independent jurisdiction conferred upon any Judge of the High Court to issue writs contemplated by Art. 226. Even under Art. 226 it is only the High Court that can issue a writ for the enforcement of a fundamental right. The jurisdiction is conferred on the High Court as such and not upon any Judge or Judges of the High Court, and, therefore, when a Division Bench of the High Court hears an application under Art. 226, it is hearing that application as the High Court and its ultimate decision is not the decision of the bench but the decision of the High Court. When a Division Bench has rejected an application for a writ, it is not open to the applicant to approach any other Judge or Judges of the High Court for a similar purpose notwithstanding the decision of the High Court to the contrary. To make a second or successive applications would be to apply for a review by the High Court of its decision on an application for a writ for the enforcement of the fundamental rights under Art. 226. No Court has an inherent power of review. There is nothing in the Cr. P. Code or in Art. 226 which would warrant the view that any power is conferred upon the High Court to review decisions in matters falling under the article or under S. 491. The decision of the High Court is final qua the High Court, notwithstanding that the interest of individual liberty and the cause of fundamental rights guaranteed to the citizen are involved. The applicant has, however, an independent right to approach the Supreme Court, notwithstanding the refusal of the High Court, in its primary jurisdiction, and he has also a right of appeal to the Supreme Court. A second application after the rejection of a prior application is therefore incompetent. AIR 1948 Bom 326 (FB), Ref. Prahlad Krishna Kurne, In re, **ILR (1951) Bom 181 : 5 AI Cr D 79 : 52 Cr LJ 305 : 53 Bom LR 61 : AIR 1951 Bom 25 (26, 27) (Pt B) (Prs 5 to 7) (FB).**

——Art. 226 — Habeas Corpus — Writ of — Successive applications.

Quaere :— Whether successive applications for writs in the nature of habeas corpus on the same facts can be made ? **1953 Cri LJ 361 : AIR 1953 Cal 129 (135) (Pt E) (Pr 45) (DB).**

——Art. 226 — Habeas Corpus — Writ of — Applications under different circumstances.

Applications were made under Art. 226 after the Act of 1951 was passed amending the earlier Preventive Detention Act of 1950. In these applications it was contended that the later amending Act was ultra vires and further that if it was intra vires, certain new rights were granted to the detenus. **Held,** that a decision under the Preventive Detention Act of 1950 could never prevent an application made when that Act had been amended in the manner in which it was amended by the 1951 Act. The fact that an application had been dismissed under the 1950 Act might afford no answer whatsoever to the contentions of the detenu under the Act as amended in 1951. That being so the High Court was bound to hear these applications even if the law prohibited successive applications. **1953 Cri LJ 361 : AIR 1953 Cal 129 (135) (Pt F) (Pr 46) (DB).**

——Art. 226 and Criminal Procedure Code (V of 1898), S. 491 — Scope —Writ of habeas corpus— Maintainablity of successive applications.

The remedy provided for under Art. 226 of the Constitution of India, and the remedy provided for under S. 491, of the Criminal Procedure Code overlap and after the Constitution of India S. 491, of the Code has become redundant, if not obsolete. But so long as the provision stands unrepealed it can be availed of by a party. It is now well settled that under S. 491 of the Criminal Procedure Code a party cannot make successive applications for the issue of a writ of habeas corpus when once his earlier application for the same relief is dismissed. The position will be the same under Art. 226, of the Constitution and a second application seeking the same relief which was disallowed in an earlier application cannot be maintained. AIR 1951 Bom 25, Approved. AIR 1949 East Punjab 67, Diss. **1962 Mad WN 190 : (1964) MLJ (Cr) 442 : 75 Mad LW 260 : ILR (1962) Mad 674 : (1964) 2 Cr LJ 381 : AIR 1962 Mad 354 (356 to 360) (Prs 6, 8, 9, 15, 17, 18) (DB).**

——Art. 226 — Criminal P. C. (1898), Ss. 369 & 491 — Judgment — Order on writ application is not "judgment" — Successive writ applications (for habeas corpus) are not barred by S. 369. See Criminal P. C. (1898), S. 369. **AIR 1955 NUC (Pepsu) 2157.**

——Art. 226 — Petition under for habeas corpus — Power to issue writ resides in High Court and not in any Single or Division Bench — It might be that because of internal arrangement cause might be decided by Single Bench or larger Bench — But the decision is by High Court

and not by any Bench as separate. Ram Kumar Pearay Lal v. District Magistrate, Delhi, **ILR (1965) 2 Punj 853: 1966 Cr LJ 153: AIR 1966 Punj 51 (58) (Pt B) (Pr 9) (FB).**

217. Suspension of fundamental rights — Effect.
See also Notes 12 and 119 and Ibid, Arts. 358, 359.

——Arts. 226, 14, 359 (1) — Notification under under Art. 359 (1) suspending Art. 14 — Attack on ground of discrimination on R. 30 (4), D. I. Rules 1962, under Art. 14, cannot stand. See Defence of India Act (1962), S. 3 (1). **('65) 69 Cal WN 913.**

——Arts. 226, 352, 358 and 359 — Proclamation of emergency and suspension of fundamental rights —High Court's power to issue writs or direction under Art. 226 — How far affected — Order of detention under Defence of India Act — Interference by High Court — Defence of India Act (1962), S. 45 — Powers of High Court under Art. 226 not affected. **ILR (1964) 1 Mad 327: (1965) 1 Mad LJ 486: (1965) Mad LJ (Cri) 258: 1965 (1) Cri LJ 714: AIR 1965 Mad 225 (228, 229, 234, 246) (Pt B) (Prs 4, 7, 23, 24, 66) (DB).**

218. Territorial jurisdiction.
See Note 120.

219. To whom writ may be issued.

——Art. 226 — Habeas corpus — Petition for production of girl — Father in counter affidavit alleging that she has disappeared from the house — Writ will not be discharged unless respondent-father satisfied the Court that he is really unable to produce the girl — His mere statement that she has run away is not enough — Circumstances showing that father is not innocent as he claimed to be — Court entertaining doubt and suspicion about the manner in which the girl was removed — Respondent-father cannot escape liability. (1892) LR App. Cas 326 (333), 12 Ir. Com LR 233, 249 BD 283, Rel. on. **1960 All Cr R 374: 1960 All WR (HC) 591: 1960 All LJ 776.**

——Art. 226 — Criminal P. C. (1898), S. 491 — Scope — Habeas Corpus lies against authorities of Mental Hospitals and clinics. See Criminal P. C. (1898), S. 491. **AIR 1963 Cal 261.**

——Art. 226 —Writ of habeas corpus — Petitioner arrested and released on furnishing personal recognisance bond — Petition directed against police officer alone is misconceived.

Where the petitioner is arrested and released on furnishing surety and personal recognizance bond to appear before a Magistrate the constructive custody is that of a Court before whom he is to be produced by the surety whenever required. Under S. 167, Criminal P. C. a Police Officer conducting an investigation is bound to produce the accused before a Magistrate within 24 hours and further detention and custody is that of the nearest Magistrate or of the Magistrate having jurisdiction to try the case as the case may be. Consequently no effective order can be passed regarding illegal character of the detention of the petitioner in the absence of either of these Magistrates in whose custody the petitioner can legally be held to be.

Hence the petition for a writ of habeas corpus directed against the Police Officer alone is misconceived. **Madh BLJ 1955 HCR 1560: AIR 1955 MB 200 (202) (Pt D) (Prs 29, 30) (DB).**

220. Under-trial prisoner, detention of.
(a) Detention without order of remand.

220. Under-trial prisoner, detention of.

——Art. 226 — Habeas Corpus — Provisions of S. 491, Cr. P. Code, has to be kept in view — Order of preventive detention against under-trial prisoner is not invalid — But matter depends on facts — Under trial prisoner held "improperly detained" under S. 3 of Preventive Detention Act — (Criminal P. C. (1898), S. 491) — (Preventive Detention Act (1950), S. 3). **AIR 1955 NUC (Raj) 1480 (DB).**

220 (a). Detention without order of remand.

●**——Art. 32 — Detention without remand — (Criminal P. C. (1898), Ss.167 and 344).**

Detention of a person in custody after the expiry of remand order,without any fresh order of remand committing him to further custody while adjourning the case under S. 344, Cr. P. C. is illegal. Ram Narayan Singh v. State of Delhi, **(1953) SCJ 326: 1953 Mad WN 647: 1953 Cr LJ 1113: 1953 AWR (Sup) 68: 1953 SCR 652: 1953 SCA 399: AIR 1953 SC 277 (278) (Pt A) (Pr 4).**

——Art. 226 — Criminal P. C. (1898), S. 112 — Remand to jail custody — Failure to give substance of information under S. 112 —Effect — Habeas Corpus petition — Maintainability. See Criminal P. C. (1898), S. 112. **AIR 1959 All 346.**

——Art. 226 — Criminal P. C. (1898), S. 344 — Absence of order in writing remanding to custody — Legality of detention. See Criminal P. C. (1898), S. 344. **AIR 1958 All 578.**

221. Who can apply.
See Note 188.

222. Wife, to recover custody of.

——Art. 226 —Writ of habeas corpus can be issued where wife is wrongfully restrained by her husband against her will. AIR 1959 MP 356 and AIR 1933 Nag 374, Foll. **1963 MPLJ (Notes) 233.**

223. Writ of right.
See Note 39.

PART D

MANDAMUS

(Notes 224 to 275)

224. Administrative authorities, proceedings of.
(a) Administrative authority characteristic of.
(b) Burden of proof.
(c) Decision on merits.
(d) Duty to act within limits of power and according to law.
(e) Facts giving jurisdiction.
(f) Mala fide and arbitrary exercise of power.
(g) Matter involving decision by executive.

224. Administrative authorities, proceedings of.

——Art. 226 — Mandamus — Order of requisition — (Bombay Land Requisition Act (XXXIII of 1948), Ss. 8-B, 9) — (Contract Act (1872), S. 73).

An allottee under the Bombay Land Requisition Act is a licensee and he is a licensee on certain terms and conditions. Not only the Act itself makes him a licensee liable to have his licence

cancelled at any time without assigning any reason, but the licensee takes the licence on the terms and conditions set out in the allotment Order itself. Even if an allottee goes into possession that possession can be put an end to by the Government at any time and at any short notice under the Land Requisition Act. Even if the de-requisitioning is done mala fide for a collateral purpose, namely, letting into the premises a nominee of the tenant the order made of de-requisition is not bad.

Where the petitioner is served with an allotment order, if he is to have a cause of action at all against the State that cause of action would be for wrongful revocation of the licence issued to him. No fundamental right is involved or any statutory obligation on the part of the State broken in such a case. **AIR 1956 Bom 614 (615) (Prs 3, 4).**

——**Art. 226** — When a writ of mandamus is asked for, the first question that the Court has to determine is whether there is any statutory obligation upon the officer concerned, and the next question is whether the officer has failed to discharge that obligation. It is not left to the officer to determine for himself what his obligation is and to act on that interpretation of the statute. The question is one of statutory obligation, and it is only for the Court to decide whether there is such an obligation and what that obligation is; and having decided that question it is for the Court to consider next whether the officer has acted consistently with his obligation or in opposition to or in violation of that obligation. See Administration of Evacuee Property Act (1950), S. 28. **AIR 1951 Bom 406 (DB).**

——**Art. 226 — Administrative orders — Panchayats — M. B. Panchayat Rules, R. 38 — Scope.**

(Obiter):— Rule 38 is sufficiently elastic and leaves to the discretion of the Director of Rural Uplift whether there should be a detailed inquiry while removing a panch from the office. Further, the order of removal of a panch is in the nature of an administrative order which cannot be easily assailed and quashed by a mandamus. **Madh BLR 1956 (Civ) 819: AIR 1957 Madh B 26 (31) (Pt C) (Pr 55) (DB).**

——**Art. 226 — Mandamus —Writ against executive orders — Inquiry not shown — Writ will not be issued.**

No doubt, under Art. 226 of the Constitution of India, the High Court has jurisdiction to issue an order against even an executive officer who has issued an administrative order in order to safeguard the fundamental rights of a citizen and to prevent injuries being caused to the rights of a citizen by the order.

An Order passed by the Jagir Commissioner in exercise of his powers of supervision and control over Jagirdars, and confirmed by the Government in appeal, directing a jagirdar to collect rent from his tenants at the rate fixed when the lands were originally leased out and not according to the enhanced rate agreed by them under renewed leases is an executive order and not a juridical order which determines the question of rent payable by the tenants to the jagirdars. The order has not the effect of ousting jurisdiction of Court in the suits filed by the jagirdar against the tenants for enhanced rent under the renewed leases and it is open to the jagirdar to contend in those suits that the order is not valid and binding on the Court if the tenants plead it in defence. If the Government assumes superintendence of the jagir on the ground of the jagirdar's disobedience to its order the latter can always approach the Court and challenge the validity of that order. But a mere apprehension that the Government may assume superintendence is not a ground for issuing the writ of mandamus. Thus against the order which neither infringes nor is likely to infringe any right of the jagirdar, the jagirdar will not be entitled to any relief by way of mandamus or an order in the nature of it either against the Commissioner or the Government. **ILR (1953) MB 24: AIR 1953 Madh B 54 (55) (Pt B) (Pr 4) (DB).**

——**Art. 226 — Auction sale of motor vehicles parking dues — Writ of mandamus — Prayer for, as the highest bidder in auction sale—Whether the Mayor was really clothed with a discretion to intervene and demand additional security from the petitioner during the progress of an auction and to exclude the petitioner from further participation because the petitioner failed to furnish the additional security forthwith —Conditions of lease termed 'cashier des charges', Arts. 3 and 4 — Scope and effect.**

According to Art. 4 of the conditions of lease termed 'cashier des charges' it is clear that the highest bid has to be settled before the surety can be demanded by the party holding the auction. That is not what happened in the present case, according to the very averments on record. The petitioner has no doubt made a bid, but that was not settled as the highest bid, nor was the auction then closed. The auction was in progress, and further bids might well have been made, when the surety was demanded by the Mayor for the uncovered amount. This the Mayor had really no jurisdiction to do, under the terms governing the auction. Hence, it can be said that the principles of natural justice were contravened in the manner in which the petitioner was excluded from further participation in the auction, and that one of the terms of the auction was definitely infringed because the Mayor demanded the security, not after settling the highest bid, but while bids were still in progress. In the instant case if the petitioner had not been improperly excluded from the auction at that stage, the bids would have gone far higher and there has been a detriment to public revenues by the exclusion of the petitioner at a stage which was not a final stage of the auction but a transitional stage. Since petitioner was improperly excluded from the auction as the relevant article did not clothe the Mayor with the jurisdiction to exclude him at that stage and because, had he not been excluded, a much higher bid might actually have been realised the interference in writ jurisdiction is imperative and called for. AIR 1958 Mad 572 & AIR 1954 SC 592, Rel. on. **ILR (1964) 1 Mad 918: (1965) 1 MLJ 210: 78 Mad LW 211: 1965 Mad WN 134: AIR 1964 Mad 437 (438, 439) (Pt B) (Prs 5, 6) (DB).**

——**Art. 226 — Industrial Disputes Act (1947), S. 10 (1) — Order of reference under Act — It is an Administrative Act — No interference by High Court — Industrial Disputes Act (1947), S. 10 (1).**

The order of reference under Industrial Disputes Act is an Administrative Act and once the Government comes to the conclusion that an industrial dispute exists between the workmen and the Management of the Company, then the High Court would not interfere with the discretion exercised by the Government in this respect. AIR 1953 SC 53, Rel. on. **(63) 65 Pun LR 901: (1964) 1 Lab LJ 644 :(1964-65) 26 FJR 385.**

224 (a). Administrative authority, characteristic of.

——Art. 226 — Mandamus — Proceedings of administrative authorities — Functus officio — Principle does not apply.

The principle of functus officio does not apply to administrative actions and it is permissible for the same or higher authority to act for correction of what according to them is an error. It is on account of his consideration that a suitor while praying for a writ of mandamus is required to demand justice before coming to the High Court. **Madh BLJ 1955 HCR 1577: Madh BLR 1955 Civil 473: AIR 1955 MB 202 (205) (Pt B) (Pr 28) (DB).**

224 (b). Burden of proof.

——Art. 226 — Mandamus against Administrative authorities —Petitioner must satisfy Court that there was clear duty incumbent on the authority to act in accordance with law with certain specific provisions of law & that it has failed to discharge that duty and has acted in contravention of law. **61 Bom LR 1: ILR (1959) Bom 923: AIR 1959 Bom 372 (380) (Pt G) (Pr 18) (DB).**

224 (c). Decision on merits.

——Art. 226 — Jurisdiction — Power of High Court to go into merits.

It is not open to the Court to act as a Court of appeal against the order of the Settlement Commissioner passed in revision in a case under the Displaced Persons (Supplementary Claims) Act and go into the merits of the case when it is exercising jurisdiction under Art. 226 of the Constitution. **ILR (1957) Punj 348: 59 Punj LR 27: AIR 1957 Punj 186 (189) (Pt D) (Pr 11).**

224 (d). Duty to act within limits of power and according to law.

●**——Art. 226** — Mandamus — Issue of — Transport tribunal— Delay in disposing of application for renewal of permit— Writ of mandamus. See Motor Vehicles Act (1939), S. 58 (2). **AIR 1961 SC 93.**

●**——Art. 226 — Industrial Disputes Act (1947), Ss. 10, 12 — Discretion of Government to refer dispute under S. 12 (5) — Section 12 (5) does not confer power on Government to make reference independently of section 10 (1) — Under S. 12 (5) Government can consider other relevant facts besides the report of Conciliation Officer — Government in considering question of reference taking into consideration extraneous matters — Writ of mandamus can issue requiring Government to reconsider its decision.**

Even if the appropriate Government may be acting under S. 12 (5) the reference must ultimately be made under S. 10 (1). Section 12 (5) by itself and independently of S. 10 (1) does not confer power on the appropriate Government to make a reference. While deciding whether a reference should be made under S. 12 (5) it would be open to the appropriate Government to consider, besides the report of the Conciliation Officer, other relevant facts which may come to its knowledge or which may be brought to its notice. Just as discretion conferred on the Government under S. 10 (1), can be exercised by it in dealing with industrial disputes in regard to non-public utility services even when Government is acting under S. 12 (5), so too the provisions of the second proviso to S. 10 (1) can be pressed into service by the Government when it deals with an industrial dispute in regard to a public utility service under S. 12 (5).

Whether S. 12(5) is construed as making it obligatory on the Government to make a reference when it is satisfied that there is a case for reference or as only conferring a discretion, if in refusing to make a reference Government is influenced by reasons which are wholly extraneous or irrelevant or which are not germane, then its decision may be open to challenge in a Court of Law. Though considerations of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference it would not be open to the Government to introduce and rely upon wholly irrelevant or extraneous considerations under the guise of expediency. Even in dealing with the question as to whether it would be expedient or not to make the reference Government must not act in a punitive spirit but must consider the question fairly and reasonably and take into account only relevant facts and circumstances. If the work done by the employees prima facie justified their claim for classification and if the claim was in consonance with the practice prevailing in other comparable concerns the misconduct of the employees cannot be used as a relevant circumstance in refusing to refer the dispute about classification to industrial adjudication. Any consideration of discipline cannot be legitimately allowed to impose such a punishment on the employees. Similarly, even in regard to the claim for bonus, if the employees are able to show that the profits earned by the employer during the relevant year compared to the profits earned during the preceding years justified their demands for additional bonus it would plainly be a punitive action to refuse to refer such a dispute solely on the ground of their misconduct. If the Court is satisfied that the reasons given by the Government for refusing to make a reference under S. 12 (5) are extraneous and not germane then the Court can issue, and would be justified in issuing a writ of mandamus even in respect of such an administrative order. Hence, in such a case issue of writ of mandamus against the Government to reconsider the question of making or refusing to make a reference under S. 12 (5) ignoring the fact of misconduct of the employees and considering only such reasons as mere germane to the question of determining whether a reference should or should not be made is justified. State of Bombay v. K. P. Krishnan. **(1960) 1 FLR 392: (1960) 2 Lab LJ 592: (1960-61) 19 FJR 61: (1960) 2 SCA 527: 63 Bom LR 127: 1961 Nag LJ 205: (1961) 1 SCR 227: (1961) 2 SCJ 360: AIR 1960 SC 1223 (1225 to 1228, 1230 to 1232) (Prs 5, 8 to 12, 16 to 18).**

●**——Art. 32** — Ss. 38, 39 and proviso to S. 46 of Orissa Hindu Religious Endowments Act held invalid —Application under Art. 32 allowed and writ in the nature of mandamus issued restraining Commissioner and State Government enforcing against petitioners provisions of the above sections. See Orissa Hindu Religious Endowments Act (IV of 1939), S. 38. **AIR 1954 SC 400.**

●**——Arts. 226, 14, 13 (1)** — Scope of Bihar Act 34 of 1950 is invalid — (Writ of mandamus was issued directing the State Government not to take any steps in pursuance of the Act) — (Bihar Sathi Lands (Restoration) Act (34 of 1950), S. 1), AIR 1952 Pat 194, **Reversed.** See Ibid, Art. 14. **AIR 1953 SC 215.**

●**——Art. 226 — Application for writs against Regional Transport Authority and the Government of the Uttar Pradesh in regard to temporary permits issued to motor bus-owners — Writs, if and when could issue.**

Certain bus-owners had been granted permits by the Regional Transport Authority under the provisions of Motor Vehicles Act to use stage carriages and ply them for hire on various routes in the State of Uttar Pradesh. For some time these permits were renewed. But later on only temporary permits were issued valid for three months which were periodically renewed. Before the expiry of the period of the last issued temporary permit, the Regional Transport Officer issued notification requiring the permit holders not to ply their buses on those routes as a State-operated bus service would commence to run on those routes. On an application by the various permit-holders under Art. 226 for the issue of a writ of mandamus to the Regional Transport Authorities to decide the applications for renewal of the permits and for directions to the Government of Uttar Pradesh not to introduce the State Transport service.

Held, in cases where applications for permanent permits had been made, it was the duty of the Authority under the Motor Vehicles Act concerned to dispose of them according to law and where he has not done so, a writ of mandamus could be issued. But where such applications have neither been made nor kept pending, no writ can issue.

Directions could not be issued to Government of the State of Uttar Pradesh asking them not to ply the buses for hire. Moti Lal v. State of Uttar Pradesh, **ILR (1951) 1 All 269: AIR 1951 All 257 (274, 284 (Pt B) (Prs 82, 129) (FB).**

——**Art. 226** — Income-tax Act (1922), S. 45 — Exercise of discretion — Income Tax Officer declining to hear and consider application of assessee under S. 45 for an order of stay of collection of tax pending appeal from assessment order — There is failure to perform duty cast on him by the section and is enforceable by mandamus. See Income-tax Act (1922), S. 45. **AIR 1957 Andhra Pradesh 114.**

——**Art. 226** —Administrative orders — Interference under Art. 226 —Settlement of fisheries in Assam — Mandamus against State Government directing them to hear appeal according to law — Cannot be issued — Petitioner entitled to Mandamus if there is breach of statutory provision — If there is violation of any contractual obligation, the remedy is to bring a suit—Fishery Rules (Assam). **AIR 1964 Assam 56 (57, 58) (Prs 6, 7) (DB).**

——**Art. 226 — Mandamus.**

Relief against illegal taxation — Customs duty — Demand notice issued in the absence of statutory provisions authorising it — Party can come to Court under Art. 226 and ask for issue of writ of mandamus directing Government authorities not to enforce the notice. **ILR (1958) 10 Assam 311: AIR 1959 Assam 136 (138, 139) (Pt A) (Pr 9) (DB).**

——**Art. 226** — Mandamus — Want of notice — Of order of requisition under S. 3 (2) of Assam Act (XXV of 1948) — Order sought to be given effect to — Issue of mandamus. See Assam Land (Requisition and Acquisition) Act (XXV of 1948), S. 3 (2). **AIR 1958 Assam 140 (DB).**

——**Art. 226 — Mandamus against Administrative authorities.**

Where an order of assessment is an administrative order there can be no doubt that by a writ of mandamus the High Court could compel the assessing authorities to act according to law. But before such a writ could be issued, it must be clear on the language of the statute itself that the action of the authorities was in contravention of the law. The petitioners must satisfy the Court that there was a clear duty incumbent upon the assessing authorities to act in accordance with certain specific provisions of the law and that they had failed to discharge that duty and have acted in contravention of the law. **61 Bom LR 1: ILR (1959) Bom 923: AIR 1959 Bom 372 (380) (Pt G) (Pr 18) (DB).**

——**Art. 226 — Mandamus— Authority discharging administrative functions — Mandamus against illegal assessment — Sea Customs Act (VIII of 1878), S. 87.**

An assessing authority discharging an administrative function is not above the law. The assessing authority is bound to assess the duty according to law and if the very basis of the assessment is illegal, a writ of mandamus may well issue commanding the authority to forbear from enforcing the illegal order: AIR 1959 Bom 372, Relied on. **65 Cal WN 153: ILR (1961) 2 Cal 265: AIR 1961 Cal 636 (639) (Pt B) (Pr 12) (DB).**

——**Art. 226** — Assessor acting ultra vires — Writ of mandamus against order of assessment can issue. See Municipalities — Bengal Municipal Act (XV of 1932), S. 128 (1). **('64) 68 Cal WN 949.**

——**Art. 226 — Administrative orders of Auditor-General of India — Jurisdiction to interfere — Art. 148 (5).**

Power has been given to the President and/or Government to frame rules which will regulate the conditions of service of certain class of Government employees. If an employee is appointed and no rules are made which will govern his conditions of service, then the matter must be dealt with administratively. If there are rules, and such rules are violated, recourse could at once be had to the High Court. But the Court is not concerned with administrative orders or violations of merely administrative practices.

So far as the petitioners, who were employed in the Subordinate Accounts Service in the Indian Audit and Accounts Department were concerned, no statutory rules have been framed governing their conditions of service. So far as promotions were concerned there are some statutory rules stating that the Comptroller and Auditor General of India would have the right administratively to promote such an employee or not to promote him. As long as he did not violate the constitutional safeguards there is no limit to his powers and as long as he exercises his powers administratively in a bona fide manner, no Court can interfere. **Held,** further that the High Court had no jurisdiction to interfere because the Comptroller and Auditor General was beyond its jurisdiction. The Accountant General of West Bengal and the Deputy Accountant General (Administration), West Bengal are bound to give effect to the directions given by the Comptroller and Auditor General of India, and consequently a Writ of Mandamus could not and should not be issued upon them. **1959 Cal LJ 30.**

——**Art. 226 — Mandamus against executive officer.**

The High Court has jurisdiction to issue a writ of mandamus against a responsible officer within the jurisdiction of that Court who is alleged to be executing the illegal order or making the illegal requisition. A. No. 109 of 1956 in Misc. App. No. 289 of 1956 (Bom), Disting. **(1959) 1 Lab LJ 249: ILR (1959) 2 Cal 162: (1958-59) 15 FJR 219: AIR 1958 Cal 570 (574, 575) (Pt G) (Pr 24).**

——Art. 226 — Mandamus — Administrative orders.

Even in the case of administrative orders, public officers must be kept within the four corners of the law. **59 Cal WN 373 : AIR 1956 Cal 96 (99) (Pt C) (Pr 10).**

——Art. 226 — Mandamus — Order of District Magistrate under S. 18, Arms Act, cancelling licence without recording reasons — Interference — (Arms Act (1878), S. 18).

The District Magistrate acting under S. 18, Arms Act, cancelled the licence of the petitioner without recording reasons and simply basing his order on Police Report. The petitioner applied for a writ of mandamus directing the District Magistrate to cancel or withdraw the order of cancellation of the fire-arms licence. At the time of the application the holder of the licence had sold his gun and the licence itself had expired and the Police Report indicated that a riot might break out at any time and the petitioner has been found shooting off his gun on his roof.

Held, that though the order of the District Magistrate was not in accordance with law, on the facts and circumstances of the case, the High Court should not interfere and make the order praved for. **59 Cal WN 373 : AIR 1956 Cal 96 (99) (Pt D) (Pr 10).**

——Art. 226 (1) — Mandamus — Application by Railway servant — Powers of High Court — (Government of India Act (1935), S. 241 (2)).

Where a Railway servant applies under Art. 226 for issue of a writ of mandamus against the General Manager of the Railway directing him to forbear from giving effect to his order requiring the petitioner to undergo a test for passing efficiency bar when he has already undergone such test, the High Court can only investigate as to whether the law has been observed. It can see that the rules promulgated under S. 241 (2) of the Government of India Act have not been violated. If however any 'administrative error' has been committed, it cannot remedy that. **AIR 1954 Cal 187 (188) (Pt A)(Pr 6).**

——Arts. 226 and 265 — Sales tax — Assessing officer acting outside his jurisdiction in imposing tax — Authority seeking to collect such tax — Citizen has right to call in aid Art. 265 & seek assistance of High Court — (Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 3).

The finality of an assessment under the terms of taxing statute is not always or necessarily conclusive of the legality of the assessment. An assessment made without jurisdiction, or in pursuance of a provision which is found to be ultra vires, continues to be unlawful.

Where an assessing officer acts outside the boundaries of his jurisdiction, his acts would to that extent be null and void. If any authority seeks to collect a tax so imposed, the citizen can call in aid Art. 265 and seek the assistance of the High Court.

Held, that a writ of mandamus should issue directing the sales-tax authorities to forbear from collecting the amounts of tax as it was imposed without jurisdiction. **(1959) 10 STC 345 : 1959 Mad WN 325 : ILR (1959) Mad 750 : 72 Mad LW 446: (1959) 2 Mad LJ 97: AIR 1959 Mad 382 (383, 386) (Pt B) (Prs 9, 31, 33) (DB).**

——Art. 226 — Mandamus — Failure to exercise jurisdiction — Error apparent on face of record.

The assessee company which was assessed to income-tax for the assessment years 1949-50 and 1950-51, claimed that it was entitled to deduct a certain percentage of the net profits which was paid to the managing director as his commission as per the Articles of Association and the resolution of the company. The Income-tax Officer disallowed the claim on ground that it was practically sharing the profits between the Managing Director and the Company and as such it was not a permissible deduction. The order was confirmed in appeal by the Appellate Assistant Commissioner and subsequently by the Appellate Tribunal. In a revision filed under S. 33-A, Income-tax Act before the Commissioner of Income-tax, the assessee claimed exemption under Notification No. 878-F, Income-tax, dated 21st March, 1922. The Commissioner declined to interfere with the order but there was no indication in his order whether he had considered that the case was within the exemption laid down in this notification or not. The assessee thereupon applied under Art. 226 for the issue of a writ of mandamus or other appropriate writ.

Held, that the orders of Income-tax Authorities left no room for doubt that the disallowance of the claim made on behalf of the company to deduct the commission paid to the Managing Director was only on the ground that it was a division of the profits and therefore, the assessee was undoubtedly within the purview of the Notification granting exemption, and the Commissioner of Income-tax had misdirected himself & failed to exercise the jurisdiction vested in him by law. Further, there was an error apparent on the face of the record, as, on the facts found, the rejection by the Commissioner of the petition was not justified in law.

(Income-tax Commissioner directed to restore the petition to his file and dispose it of according to law.) **(1954) 26 ITR 367: AIR 1954 Mad 1118 (1120) (Pt B) (Prs 6, 7) (DB).**

——Arts. 226, 19 (1) (f), 31 — Settlement of certain tribe in a village under private agreement — Order of S. D. O. asking them to move away under threat of prosecution — Legality — Order held not covered by Ss. 60 to 64 of Hill Peoples Regulation and infringing rights under Arts. 19 (1) (f), and 31 — State cannot shelter under the cloak that it was purely on administrative order — Jurisdiction of High Court — Abolition of right of appeal by virtue of certain changes in the administrative set up — Effect — Writ of mandamus issued compelling the authority to act in accordance with law. **AIR 1961 Manipur 21, (23, 24) (Prs. 9, 10, 11, 12, 13).**

——Art. 226 — Excess in exercise of statutory power — Houses & Rents — C. P. and Berar Accommodation (Requisition) Act (63 of 1948), S. 3.

The Court can undoubtedly check any excess in the exercise of a statutory power. To exercise a statutory power for achieving a collateral object, i.e., for any purpose other than the one for which the power is given by the statute is to abuse such a power. The power conferred by S. 3 (1) of Central Provinces and Berar Act 63 of 1948 on the Government is very wide. The statute does leave the determination of the necessity for requisition to the discretion of the authority empowered by or under the statute. But the authority exercising the power of requisition must act bona fide and can only use the power for fulfilling ends permitted by the statute. Where the order of requisition was not dictated by the necessity of providing accommodation to an officer of the State but was devised as a means to eject the petitioner because of the religious susceptibilities of the landlord, the order is a misuse of the power given by the statute and cannot be sustained. AIR 1950 SC 222, Disting. Case Law

Ref., ILR (1951) Nag 959: AIR 1951 Nag 138 (140, 141, 142) (Pt A) (Prs 18, 21, 22, 30, 32) (DB).

——Art. 226 — Mandamus.

Interferences with the liberties and properties of citizens have to be supported by some law, and the State must support the legality of its actions before the High Court. AIR 1931 PC 248, Foll.

Where, therefore, the petitioner was in possession of the property in dispute under a right and the officers of the State in dispossessing him acted unreasonably, arbitrarily and in a manner not contemplated by law:

Held, that the petitioner was entitled to the issue of a writ quashing the order of dispossession and to an order for his possession being restored.

Held further, that if there was no lawful authority or legal order by which the petitioner could be dispossessed, the mere fact that possession had been given to somebody else could not be a ground for not setting aside an illegal order and to direct the undoing of an act which had been done through a manifest illegality. **ILR (1954) Punj 211: AIR 1954 Punj 151 (154) (Prs 11, 12, 13) (DB).**

——**Art. 226 — Mandamus, writ of — Mandamus ordering municipality to deliver back property— (Municipalities — Tripura Municipal Act, II of 1349, T. E.)**

Petitioner occupied a market site belonging to the municipality with the permission of the municipality and built on it with their permission or at least with their knowledge, and they had been accepting rent for the same, and his possession was about 5 years old when he was ejected by force.

Held, that there was nothing in the Tripura Municipal Act (II of 1349 T. E.), which authorised the Municipality to eject the holder of a site like the petitioner, in the manner the petitioner was ejected. Therefore the action of the Municipality was without the authority of law and therefore illegal and without jurisdiction. If the petitioner had no right to continue in possession the only course open was to eject him by having recourse to a civil suit, in which alone the question of the rights involved could be decided. AIR 1955 Pepsu 60, Rel. on. Thus there was a clear breach of the legal rights of the petitioner and he would be entitled to a writ of mandamus. **AIR 1959 Tripura 47 (48, 49) (Prs 9, 14, 15, 16, 17).**

224 (e). Facts giving jurisdiction.

——**Art. 226** — Appeal against order under S. 76 of U. P. Municipalities Act (1916) by Municipal Executive Officer dismissing Municipal employee filed 10 days after date of order — No period of limitation for appeal provided by S. 76, or any bye-law — Period of limitation prescribed by S. 61 (2) does not apply — Dismissal of appeal by President by applying S. 61 (2) held wrong— President held to have refused to exercise jurisdiction vested in him — Mandamus to hear appeal on merits issued. See Municipalities — U. P. Municipalities Act (II of 1916), Section 61 (2). **1963 All LJ 992.**

——**Art. 226— Mandamus — Orders without jurisdiction.**

An order was passed by the District Magistrate directing Sub-Divisional Officer to eject refugees living in certain villages from all the lands by certain date as the said lands were to be allotted to the retired servants of the old Rampur State. In view of this order, the Sub-Divisional Officer issued an order to the Tahsildar to eject those persons from the lands in dispute occupied by them and in case of objection to dispossess them from the land through the help of the police.

Held, that those orders were without justification. They certainly tended to affect the rights of the petitioners in their possessing the land which they had occupied in certain circumstances. Therefore, these orders were beyond the jurisdiction of the District Magistrate and the Sub-Divisional Officer and therefore, a writ of mandamus could be issued to the District Magistrate and the Sub-Divisional Officer to withdraw their orders, and not to dispossess the petitioners in pursuance of those orders. **AIR 1955 All 165 (166, 167) (Pt B) (Pr 4) (DB).**

——**Art. 226** — Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (1947), S. 2 — Duly appointed officer — Order of allotments by officer not duly authorised to act under the Act — Order cannot be given effect to — Petition for writ of mandamus by landlord allowed. See Houses and Rents— U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 2. **AIR 1954 All 457.**

——**Art. 226** — Mandamus — License for private stockyard —Power of Municipality to grant — Power must be found within the jurisdiction of the Bengal Municipal Act or Rule made thereunder —Issue of Mandamus restraining Commissioner from giving effect to order passed in excess of power. See Municipalities — Bengal Municipal Act (15 of 1932), S. 402. **AIR 1957 Cal 460.**

——**Art. 226** — Jurisdiction — Order cancelling Arms licence without recording reasons — Validity — Interference by High Court — Mandamus. See Arms Act, S. 18. **AIR 1955 Cal 599.**

——**Art. 226** — Industrial dispute — Party to dispute has no absolute right to insist upon tribunal deciding in first instance a mixed question of law and fact, although the question relates to its own jurisdiction —No writ of mandamus will issue. See C. P. Code (1908), O. 14, R. 2. **AIR 1962 Mys 108 (DB).**

——**Art. 226** — Co-operative Society — Finding of Registrar that dispute does not concern business of society —Petition for writ of mandamus — Maintainability. See Punjab Co-operative Societies Act (XIV of 1955), S. 50 (3). **AIR 1957 Punj 61.**

224 (f). Mala fide and arbitrary exercise of power.

——**Art. 226** — Mandamus — U.P. Sales Tax Act (15 of 1948), S. 7-E — Composition fee — Government Notification No. ST-349/X D/- 28-1-1958 fixing the time limit and authorising Sales Tax Commissioner to extend it—Power held not arbitrary or infringing Art. 14 of the Constitution — Petitioner not giving reasons for applying late— Extension of time refused — Question of mandamus did not arise. See Sales Tax —U.P. Sales Tax Act (15 of 1948), S. 7-E. **ILR (1963) 1 All 892.**

——**Art. 226** —Mala fides — Examination Board —Result of enquiry — Delay in communicating — Punishment imposed on candidate for malpractices in examination — No want of bona fides. **AIR 1955 NUC (Andhra) 5823.**

——**Art. 226** — Mandamus — Issue of writ — United Khasi Jaintia Hills District — Lyngdoh— Issue of licences —Orders under colour of authority — Mandamus. See Ibid, Sch. VI, Para 8. **AIR 1958 Assam 33 (DB).**

——**Art. 226** — Scope —Administrative order — Liability to challenge — Officer vested with discretion to issue licences — Dishonest exercise of discretion and issue of licences in discriminatory manner — Application for mandamus or direc-

tion — Competency. See Ibid, Art. 14. **53 Bom LR 393: AIR 1951 Bom 132 (DB).**

——Art. 226—Mandamus—Powers of High Court — Wrong order.

So long as the Assessor Inspector has acted within the four corners of the Bengal Foodgrains (Disposal and Acquisition) Order, 1947 and it is not shown that he has acted mala fide, the High Court has no jurisdiction to interfere with his order merely because he may have made a wrong measurement of stock and may have made a wrong estimate as to the quantity of paddy to be exempted from acquisition. **56 Cal WN 137: AIR 1952 Cal 100 (102) (Pt D) (Pr 34).**

224 (g). Matter involving decision by executive.

——Art. 226 —Mandamus, writ of —Administrative act — Disregard of mandatory provisions of law —U. P. Police Regulations —High Court can interfere.

Even an administrative action taken by the executive officers will fall within the ambit of writ jurisdiction if such action is found to be in complete disregard of the mandatory provisions of law and is mala fide. The provisions contained in Police Regulations are not mere administrative directions but are to be treated as if they were a part of statutory law. The action of the police officers in opening a history sheet of the petitioner in defiance of the provisions of the Police Regulations is without jurisdiction, mala fide and improper and the High Court can direct a writ of mandamus to be issued to the officers directing them to forthwith close the history-sheet of the petitioner. AIR 1961 SC 751 and ILR (1959) 2 All 115, Rel. on. **1962 (1) Cr LJ 547: 1962 All WR (HC) 317: 1962 All Cr R. 192: AIR 1962 All 216 (218, 219) (Prs 15, 16, 17).**

——Art. 226 — Mandamus — Executive routine orders — Defect in — Court ought not to take too technical and narrow view of the orders — Dist. Magistrate of K. authorising his successor to take up House Rent Control work — Successor Dist. Magistrate allotting house in dispute to M. — Former Dist. Magistrate's order found defective—**Held,** that order of allotment was valid and operative. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (III of 1947), S. 7. **AIR 1955 NUC (All) 2703 (DB).**

——Arts. 226 and 19 — Mandamus — Police opening history sheets and watching movement of petitioner — Action in accordance with Police Regulation —Not a violation of freedom guaranteed by Art. 19 — Court will refuse to interfere with the action of Police as such interference would be putting in jeopardy the safety of the community at large in the locality. AIR 1962 All 216, Disting. **1962 All LJ 1152: 1963 All WR (HC) 17: (1963) 2 Cr LJ 201 (All).**

——Art. 226 — Nationalisation of motor transport —Transport Authority refusing to issue permits to private owners under direction of Executive — Legality — Law of nationalisation by Legislature — Validity — Grant of mandamus. See Ibid, Art. 19 (1) (g). **AIR 1954 Assam 212 (DB).**

——Art. 226 — Indian Railway Establishment Code, R. 157 — Scope — General Manager of Railways can make rules in exercise of powers under R. 157 — Order dated 14th May, 1953 passed by General Manager of Central Railway—**Held,** order had the effect of Rule made under R. 157 — Order was binding on both parties — General Manager failing to discharge his duty — Writ of mandamus should issue. **66 Bom LR 773: AIR 1965 Bom 267 (270, 271, 272) (Pr 9).**

——Art. 226 — Mandamus — Posts and Telegraphs Manual, Rules 32-A to 32-C in Vol. IV & Sch. 3 in Vol. III are executive instructions not statutory rules — Writ of mandamus is issued only when statutory rules are violated.

The Post and Telegraphs Manuals mainly contain rules intended for the guidance and instructions to officers of the department in the performance of their administrative and executive duties. Excepting in few cases, where they are expressly so indicated, the Manuals do not contain, statutory rules. Rules 32-A to 32-C in Vol. IV and Schedule 3 in Vol. III are merely executive instructions or administrative rules and have not the sanctity of statutory rules. Therefore, strict compliance of these rules may be difficult of enforcement by issue of mandate: AIR 1955 Cal 166 and Civil Rule No. 3015 of 1959 dated 14-6-1961 (Cal), Foll. **(1964) 9 Fac LR 71: AIR 1965 Cal 298 (300, 301) (Pt A) (Pr 7).**

——Arts. 226 and 311 —Remarks by superior officer in service book of subordinate officer — Expunging of — Writ for, does not lie — Bengal Subordinate Services (Discipline and Appeals) Rules (1936).

A superior officer must be free to express his sincere opinion about his subordinate and his work which he has to examine and, supervise. Such remarks by superior officer are not even censures. There is, therefore, no statutory or legal right of the subordinate on which he can found his claim under Art. 226 for a writ to expunge remarks made by the superior officer in the service book of the subordinate. Even an order of censure would be excluded under Rule 10 of the Bengal Subordinate Services (Discipline and Appeal) Rules 1936. **64 Cal WN 857: (1960) 2 Lab LJ 502: AIR 1961 Cal 164 (164, 165) (Pt A) (Prs 4, 5).**

——Art. 226 — Mandamus — Writ of mandamus against Railway authorities.

In an application under Art. 226 for a writ of mandamus against the Railway Authorities, High Court has no jurisdiction to interfere with the internal administration of a Railway and the only question that can be investigated is whether the authorities concerned have acted in excess of the powers conferred on them by statutes or statutory rules. **59 Cal WN 812: AIR 1955 Cal 385 (387) (Pt A) (Pr 3) (DB).**

——Art. 226 (1) — Mandamus — Issue of writ respecting Government's illegal order under S. 10 (3), Industrial Disputes Act — Industrial Disputes Act (1947), S. 10 (3).

A writ of mandamus does lie to control administrative acts where such acts interfere with the private rights of citizens and where the exercise of such executive acts is arbitrary and illegal. Thus, where the order of the Government under S. 10 (3) of the Industrial Disputes Act is not warranted under the law and infringes the fundamental rights of the petitioner relief under Art. 226 can be granted. AIR 1953 All 25, Diss. from. **1953 Raj LW 569: ILR (1953) 3 Raj 363: AIR 1953 Raj 188 (193) (Pt H) (Pr 26) (DB).**

[Impliedly **Overruled** on another point in AIR 1963 SC 1811.]

——Arts. 226, 19 (1) (f) — Mandamus — Petitioner wrongfully deprived of his property by executive authority — Mandamus against executive.

Where there is any encroachment on the petitioner's fundamental rights under Art. 19 (1) (f) regarding his property by wrongfully taking possession of the same by the executive authorities

and also by keeping the petitioner and his manager behind the bars, the latter is certainly entitled to get a writ of mandamus issued against the authorities. **AIR 1956 Tripura 9 (16) (Pt F) (Pr 35).**

225. Against whom can be issued.

(a) Educational authorities.
(b) Government.
(c) Individual officer.
(d) Private individual.
(e) Quasi-judicial authority.
See also Note 249.
(f) Statutory bodies of fluctuating nature.
(g) Universities.
(h) Body of persons holding office.
(i) Order merging in appellate order.

225. Against whom can be issued.

——Art. 226 —Mandamus — Against whom can issue — Mandamus directing to do what is beyond powers is futile.

Mandamus will issue only to a person, who is under an obligation by the statutes or rules having the force of a statute, to do a particular act. An officer cannot be directed by means of a writ of mandamus to do what he, under the statute, could not do and which is beyond his legal powers. A petition for directions to an officer to carry out anything which it is incompetent for him to do will be a futile one. **AIR 1960 Andh Pra 431 (435) (Pt B) (Pr 18) (DB).**

——Art. 226 — Mandamus — M. B. Police Regulations — No mandamus can be issued against public servants who are not before the Court. **AIR 1954 Assam 74 (75, 76) (Pt B) (Pr 6) (DB).**

——Art. 226 — Company — Writ against — — Mandamus and certiorari cannot be issued against company. **AIR 1956 Kutch 9 (10) (Pt A) (Pr 8).**

225 (a). Educational authorities.

——Art. 226 — Mandamus against public authority — Assam Aided College Employees Rules (1960) — Rules in nature of administrative instructions without any statutory force — Direction by Director of Public Instruction, relying upon Rules, to Governing Body of aided college — Governing Body carrying out terms of directions & passing order affecting rights of employees — Employees cannot seek enforcement or non-enforcement of Rules by maintaining writ petition against Director of Public Instruction as Rules confer no rights on them. AIR 1963 Assam 46, Reversed.

There is no law to prevent the State from prescribing the conditions for giving grants-in-aid to educational institutions by mere executive instructions which have not the force of statutory rules. The Assam Aided College Empolyees Rules (1960) regarding Conduct and Discipline of Employees of Aided Educational Institutions admittedly have no statutory force and are framed in order to give revised grants to private colleges to enable them to give higher scales of pay, etc., to their teachers in accordance with the recommendations of University Grants Commission. Where such conditions of grants-in-aid are laid down by mere executive instructions it is open to a private college to accept those conditions or not to accept them. It is only for the governing body of the College to decide whether to carry out any direction contained in mere administrative instructions laying down conditions for grant-in-aid. Further it is open to the Governing Body not to carry out any such instruction which is not based on rules having statutory force, and then it would naturally be open to the State to consider what grant to make. But if the Governing Body chooses to carry out the instruction, it can hardly be said that the instruction is being carried out under any threat. It is not open to a teacher to insist that the Governing Body should not carry out the instruction. The rules for the purpose of grant-in-aid being — as in this case—merely executive instructions confer no right of any kind on teachers and they cannot apply to the High Court for a mandamus against the State through the Director of Public Instruction for enforcement or non-enforcement of the rules, even if indirectly there may have been some effect on them because of the grant-in-aid being withheld by the State in whole or in part : AIR 1963 Assam 46, **Reversed.** AIR 1959 SC 694, Rel. on. State of Assam v. Ajit kumar, **(1965) 1 SCWR 984 : (1955) 2 SCA 376 : AIR 1965 SC 1196 (1200) (Prs 12, 13).**

——Art. 226 —Scope.

Director of Education held has no authority either to refuse to grant or to grant permission to teachers to appear at University examination—He cannot be compelled to grant permission, only because such permission is granted to some — He can only grant leave of absence but only at appropriate time and not in advance—Promise of leave in advance is not binding on him. **AIR 1953 Ajmer 26 (27) (Pt A) (Prs 6, 7).**

——Art. 226 — Mandamus — Object of —Power of High Court — (Intermediate Education Act (1921) as amended by U. P. Act (V of 1941), S. 15 — Regulations under Ch. VI, R. 1 (1)).

The object of a mandamus is to compel performance of a legal duty on the part of some person or body entrusted by law with that duty. The Court in a proceeding for mandamus will never sit as a Court of appeal. Where the U. P. Board of High School and Intermediate Education withheld the result of a candidate and upon his writ petition the High Court holding the Board guilty of extraordinary and unreasonable delay in holding the inquiry directed the Board to declare the result within two days of the date of order :

Held, that after having considered the totality of the circumstances of the case, and having particular regard to the fact that some of the delay in completing the investigation was also occasioned by the candidate, the mandamus should have directed the Board to perform its statutory duty, namely, to conclude its investigation within the shortest possible time. AIR 1954 SC 217, Rel. on. **1958 All LJ 879 : AIR 1959 All 226 (229) (Pt A) (Prs 16, 17, 19) (DB).**

——Art. 226 — Mandamus— Principal of College — Refusal to readmit student who had failed in University Examination — Application for writ — (Agra University (VIII of 1926) — Ordinances framed under, Ch. 20, R. 3; Ch. 29-B, R. 2 (2)).

Held, on facts (i) that the petitioner (M. Sc. student) could succeed only if two conditions were fulfilled: first that she had a legal right to be admitted to that class and second that there was a legal duty cast on the Principal to admit her; (ii) that neither the Agra University Act nor the Rules framed thereunder gave the petitioner any right to secure admission into the class she wants, nor was there any legal or statutory duty on the Principal of the College to admit her. Admissions of students are deemed to be domestic affairs of the institution concerned and are left to the discretion of the authorities. Such matters

are not amenable to a writ of mandamus. **1958 All LJ 899: AIR 1959 All 224 (225, 226) (Prs 3, 8, 10).**

——Art. 226 (1) — Mandamus — Publication of results in newspaper is not done in performance of statutory duty — High Court cannot prescribe manner in which Board should publish results — (U. P. Intermediate Education Act (II of 1921), S. 7 (7)).

The publication of the results in the newspaper is not done in performance of the statutory duty imposed on the Board by S. 7 (7). This statutory duty is performed by the Board when it publishes the results in the Government Gazette. Under the general law of the land also no newspaper has a right to have access to the results of the Board as soon as they are passed by the Results Committee. When the newspaper takes up the work of publishing the results, it does so in furtherance of its own trading activities and not as an agent employed by the Board in the course of the performance of its legal duties under Section 7 (7).

Therefore, it is not for the High Court to prescribe the manner in which the Board is to perform its duties in the exercise of its powers conferred by S. 7 (7). **ILR (1956) 2 All 12 : AIR 1955 All 595 (606, 607, 608) (Pt D) (Prs 44, 45, 49).**

——Art. 226 — Mandamus — Issue of — Circumstances justifying — Admission into College — Mandamus.

The scheme of selection and admission of students does not contemplate any enquiry as regards the correctness of the particulars given in the nativity certificate either by the Selection Committee or by the Government. That duty is entrusted only to the principal of the College before admitting the students.

Where neither the Government nor the Principal came to any definite conclusion on the correctness of the nativity certificate, but the Selection Committee withheld the publication of the name of the petitioner as one of the selected candidates;

Held, that the Committee did not discharge the duties enjoined on them under G. O. No. 1022, dated 30-5-1957 and mandamus could be issued. **1958 Andh LT 149 : (1958) 1 Andh WR 280 : ILR (1958) Andh Pra 496 : AIR 1958 Andh Pra 470 (471, 472) (Prs 3, 5, 6)(DB).**

——Arts. 226 and 309 — Quasi-public authority— Private institution — Government making grant to private school and laying down rules for grant — Rules cannot be said to be prescribed under Art. 309 — Violation of rules —Mandamus cannot be issued — AIR 1954 Trav-Co. 199, Rel. on; AIR 1953 Him Pra 103, Disting. **ILR (1962) 14 Assam 291 : AIR 1965 Assam 52 (53 to 55) (Pt A) (Prs 4, 9, 14) (DB).**

——Art. 226 —Mandamus against public authority —Assam Aided College Employees Rules (1960), R. 7 — Not statutory rules — Direction by Director of Public Instruction, relying upon R. 7, to Governing Body of Aided College — Governing Body carrying out terms of direction and passing order affecting rights of employee — Employee has right to apply for proper writ — High Court has jurisdiction to issue mandamus to Director of Public Instruction not to give effect to that direction — Gauhati University Act (1947) (as amended by Act II of 1961), S. 22 (g). **AIR 1963 Assam 46 (48, 49) (Prs 8 to 13).**

[**Reversed** in AIR 1965 SC 1196.]

——Art. 226 — Mandamus against Managing Committee (or member thereof) of private school in West Bengal for infringement of R. 33 of Revised School Code — Revised School Code (West Bengal) (1930), R. 33.

The Revised School Code, 1930, in West Bengal is not a body of statutory rules.

The Managing Committee, or the members thereof, of a private school in West Bengal cannot be held to be a 'public body' carrying out public duties. Therefore, a writ in the nature of mandamus cannot be issued against the said Managing Committee or the members thereof, for infringement of a rule (R. 33, in the instant case) incorporated in the Revised School Code.

In the case of a private school, the Court ought not to take too technical view of the administrative procedure. 62 CWN 384 and AIR 1953 Cal 114, Rel. on. **65 Cal WN 1132 : 1964 Cal LJ 244 : AIR 1962 Cal 20 (22, 23) (Prs 6, 7).**

——Art. 226 — Mandamus — Mandamus against educational authority.

When a public officer or a body is required under the law to do a certain act upon a given State of facts in a prescribed manner and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed, it is a ministerial act. Merely because the officer has to read and to construe a statute in order to ascertain the precise duty which he is required to perform, it does not cease to be a ministerial act.

Where a petitioner was refused permission to appear at the Intermediate Examination by the M. B. Board of Secondary Education which was a statutory body and required to act within the four corners of the Statute, because it was found that he did not fulfil certain condition and it is found by the High Court that the refusal was ultra vires as he had fulfilled the requisite condition and, therefore, entitled to appear at the examination, a writ of mandamus directing the Board to act according to law must be issued. **1960 MPLJ 581 : 1959 Jab LJ 256 : 1959 MPC 267: AIR 1959 Madh Pra 367 (374, 375) (Pt C) (Prs 44, 48, 51).**

——Art. 226 — Mandamus — Refusal to admit student to college — Mandamus to admit — Delay — Discretion of administrative authorities — Interference.

It was not disputed that the petitioner as well as the respondents 7 to 9 did not come under any of Rr. 8 to 11 for selection of candidates to the Medical College. The petitioner was not able to show any rule under which he was entitled to preference over the respondents.

Held, that the High Court cannot sit in judgment on the wisdom of the Selection Board who gave preference to the respondents. In the absence of any Rules as to how candidates are to be selected for the unfilled seats after exhausting Rr. 8 to 11, it is not for the High Court to lay down additional rules. The matter was entirely in the discretion of the authorities who were in charge of the admissoin of the candidates. The petitioner was not entitled to any relief. **Held,** also that the petitioner had disentitled himself to any relief on ground of delay in approaching the High Court. **1959 MPLJ 541 : 1959 Jab LJ 470 : 1959 MPC 473 : AIR 1959 Madh Pra 265 (267) (Prs 6, 7, 9) (DB).**

——Art. 226 — Writ of Mandamus when can be issued against college principal directing reinstatement of dismissed student.

Though the provisions of Art. 226 of the Constitution of India are apparently wide, directions

in the nature of a writ of mandamus should not issue except to a public or quasi public body or officer which is under an obligation, statutory or otherwise to do or refrain from doing anything and which is likely to interfere with the rights of persons. The writ can issue even if the petitioner has his remedy by way of a suit for declaration of his rights when such an alternative remedy cannot be adequate as when the relief granted would be infructuous when it is given by lapse of time. A student studying in a College has a personal right to continue to study therein till the course is completed or he has otherwise been removed or expelled in strict compliance with the rules governing the institution. The Principal of an institution maintained from the funds of a public trust contributed from public funds affiliated to the University and governed by the rules of the University ,and the scheme framed by the High Court is certainly a person holding a quasi public office; (Principal of the Pachiappa's College, Madras was held to be such a person). The maintenance of discipline, the upkeep of the necessary tone and standards of behaviours in a body of students in such a College is primarily entrusted to the Principal or other officers of the institution. The High Court will not interfere with the discretion of such an authority unless it is clearly established that the authority concerned has not honestly exercised the discretion, actuated by some motive extraneous to the purpose committed to its discretion. The principle of natural justice is an elastic conception especially when applied to educational institutions. It is wrong to import the conception of "lis" in the dealings of a Principal with his students. The Court will interfere, only if it be satisfied on a consideration of the entire material placed before it that the action of the authority concerned is arbitrary, is due to a mala fide exercise of discretion actuated by extraneous circumstances. Case law reviewed.

Held, in facts that the action of the Principal in dismissing the petitioner student from the College on disciplinary grounds was not arbitrary. If so he had disciplinary jurisdiction to ask the student to leave the college.

Though it was not within the province of the Court to dictate what the Principal should or should not do to meet a particular contingency, his Lordship observed that the object or discipline might have been better served if the Principal had accepted the unconditional apology agreed to be tendered by the student and the undertaking by the father guaranteeing the future good conduct of his son, and magnanimously pardoned him as a father would do his son rather than putting a seal of finality in the punishment inflicted by him. That would have enhanced the prestige of the Principal and of his college in the eyes of not only his students present and future but also the public. **1951-2 Mad LJ 568: 1951 Mad WN 875: AIR 1952 Mad 151 (154, 156, 157) (Prs 7, 16, 18, 19).**

——**Arts. 226, 14 — Admisisons to educational Institutions — Discretion with authoritles concerned — Powers of Selection Board — Delegation of, to Principals —Validity — No question of discrimination.**

The right to get admission in any College is a matter of discretion with the authorities concerned. The Gazette notification inviting applications has no statutory force. Similarly the Selection Board appointed by Government to make selections of candidates for admission to the Medical Colleges has no statutory function to perform. Nor is there any express prohibition in the instructions given to the Selection Board from further delegating their powers to the Principal when an extraordinary situation arises.

Once discretion was given to the respective Principals of the Medical Colleges to make spot selection, their exercise of such discretion could not be challenged by the High Court under Art. 226. Further, no mala fide was attributed to the Principal and he had not exceeded the authority conferred on him by the Selection Board. Thus there was not only no breach of instructions, but the Selection Board and the Principal had followed certain reasonable principles in making selections. Therefore, the High Court had no jurisdiction to exercise its powers under Art. 226. The question of discrimination under Art. 14 also did not arise. AIR 1962 Madh Pra 126, Rel. on. **ILR (1963) Cut 281 : (1963) 5 Orissa JD 203: AIR 1963 Orissa 173 (174) (Pt B) (Prs 5 to 9) (DB).**

——**Art. 226** — Mandamus — Reg. XVI (12), Rajasthan Secondary Education Regulations, 1957 — Powers of Board to cancel registration —Writ of mandamus cannot be issued. See Rajasthan Secondary Education Regulations, 1957, Chap. VI, Regn. 16 (12). **AIR 1960 Raj 185 (DB).**

225 (b). Government.

●——**Art. 226 — Industrial Disputes Act (1947), Ss. 10, 12 — Discretion of Government to refer dispute under S. 12 (5) — Section 12 (5) does not confer power on Government to make reference independently of section 10 (1) — Under S. 12 (5) Government can consider other relevant facts besides the report of Conciliation Officer — Government in considering question of reference taking into consideration extraneous matters — Writ of mandamus can issue requiring Government to reconsider its decision.**

Even if the appropriate Government may be acting under S. 12 (5) the reference must ultimately be made under S. 10 (1). Section 12 (5) by itself and independently of S. 10 (1) does not confer power on the appropriate Government to make a reference. While deciding whether a reference should be made under S. 12 (5) it would be open to the appropriate Government to consider, besides the report of the Conciliation Officer, other relevant facts which may come to its knowledge or which may be brought to its notice. Just as discretion conferred on the Government under S. 10 (1), can be exercised by it in dealing with industrial disputes in regard to non-public utility services even when Government is acting under S. 12 (5), so too the provisions of the second proviso to S. 10 (1) can be pressed into service by the Government when it deals with an industrial dispute in regard to public utility service under S. 12 (5).

Whether S. 12 (5) is construed as making it obligatory on the Government to make a reference when it is satisfied that there is a case for reference or as only conferring a discretion, if in refusing to make a reference Government is influenced by reasons which are wholly extraneous or irrelevant or which are not germane, then its decision may be open to challenge in a Court of law. Though considerations of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference it would not be open to the Government to introduce and rely upon wholly irrelevant or extraneous considerations under the guise of expediency. Even in dealing with the question as to whether it would be expedient or not to make the reference Government must not

not in a punitive spirit but must consider the question fairly and reasonably and take into account only relevant facts and circumstances. If the work done by the employees prima facie justified their claim for classification and if the claim was in consonance with the practice prevailing in other comparable concerns the misconduct of the employees cannot be used as a relevant circumstances in refusing to refer the dispute about classification to industrial adjudication. Any consideration of discipline cannot be legitimately allowed to impose such a punishment on the employees. Similarly, even in regard to the claim for house, if the employees are able to show that the profits earned by the employer during the relevant year compared to the profits earned during the preceding years justified their demand for additional bonus it would plainly be a punitive action to refuse to refer such a dispute solely on the ground of their misconduct. If the Court is satisfied that the reasons given by the Government for refusing to make a reference under S. 12 (5) are extraneous and not germane then the Court can issue, and would be justified in issuing a writ of mandamus even in respect of such an administrative order. Hence, in such a case issue of writ of mandamus against the Government to reconsider the question of making or refusing to make a reference under S. 12 (5) ignoring the fact of misconduct of the employees and considering only such reasons as mere germane to the question of determining whether a reference should or should not be made is justified. State of Bombay v. K. P. Krishnan, **(1960) 1 FLR 392 : (1960) 2 Lab LJ 592 : (1960-61) 19 FJR 61 : (1960) 2 SCA 527 : 63 Bom LR 127 : 1961 Nag LJ 205 : (1961) 1 SCR 227 : (1961) 2 SCJ 360 : AIR 1960 SC 1223 (1225 to 1232) (Prs 5, 8, 9 to 12, 16 to 18).**

——Arts. 226, 72, 73, 161, 162 and 246 — Order of Governor commuting death sentence confirmed by High Court — Validity — Mandamus directing State to execute death sentence — Cannot be issued.

A combined reading of provisions of Arts. 72, 73, 161, 162 and 246 of the Constitution and those of Ss. 402 and 402-A, Cr. P. Code, indicates that the State Government continues to enjoy the power of commuting a sentence of death and since the expression 'State Government' means the Governor under the General Clauses Act, under S. 402, Cr. P. Code the Governor can commute a sentence of death under S. 402, Cr. P. Code. This power is kept intact by Cl. (3) of Art. 72. Therefore, when after its confirmation by High Court a death sentence of an accused found guilty under S. 302, I. P. Code, is commuted by the Governor a writ in the nature of mandamus commanding the State to execute the order of the High Court regarding the sentence of death and treat the order of the Governor as nullity cannot be issued. **1962 (1) Cr LJ 241 : 1962 All WR (HC) 225 : 1962 All Cr R 144 : AIR 1962 All 151 (152, 153) (Pt A) (Prs 2, 8).**

——Art. 226 — Writ on State Government — (Municipalities — U. P. Municipalities Act (II of 1916), S. 68 (2)).

A writ in the nature of mandamus according to recognition to and approving the appointment by the Municipal Board, of the petitioner as overseer, cannot be issued against the State Government. **AIR 1958 All 681 (682) (Pt A) (Pr 1) (DB).**

——Arts. 226, 19(1) (f), 31, 132 (1) — Right to obtain mining lease, whether fundamental right — Mandamus to State Government to grant mining lease. U. P. Mining Concessions & Mineral Development Rules (1940) — See Ibid, Art. 19 (1) **(f). AIR 1958 All 621.**

——Art. 226 — Mandamus against Government — G. O. No. 615, dated 15-3-1951, Cl. (10) issued under Ss. 3, 4, and 8 of U. P. Industrial Disputes Act — Interpretation of — (U. P. Industrial Disputes Act, (XXVIII of 1947), Ss. 3, 4 and 8).

Under Clause (10) of the Government Order of March 15, 1951, the State Government has undoubtedly been empowered at any time to refer any dispute to the Industrial Tribunal. The formation of an opinion by the Government as to the existence or apprehension of an industrial dispute is a matter entirely within its discretion and jurisdiction. It is not a judicial or quasi-judicial matter at all.

Consequently where the State Government stated in its order of reference that the industrial dispute regarding retrenchment relief and compensation existed but it was silent as to the existence of the dispute relating to the re-employment of the retrenched workers or the payment of salary to them for the period of unemployment, the Court is not competent to direct the Government to refer the dispute regarding which the order of reference was silent. AIR 1953 SC 53, Rel. on. **1956 All WR (HC) 227: ILR (1957) 1 All 212: AIR 1956 All 367 (368) (Prs 5, 6) (DB).**

——Art. 226 — Mandamus against Government.

Reference to Regional Conciliation Board regarding reinstatement of employee — Award — Appeal to Industrial Court — Court confirming findings of Board and making recommendations to Government for reinstatement of employee and payment of past wages — Order of Government dated 3rd December, 1949, directing enforcement of those findings — Validity. See U. P. Industrial Disputes Act (XXVIII of 1947), S. 3 (B). **AIR 1954 All 705.**

[**Overruled** on another point in AIR 1961 SC 420]

——Art. 226 — Fishery Rules — Assam — Administrative orders — Interference under Art. 226 — Mandamus against Executive — Settlement of fisheries in Assam — Mandamus against State Government directing them to hear appeal according to law — Cannot be issued. **AIR 1964 Assam 56 (57, 58) (Prs 6, 7) (DB).**

——Art. 226 — Mandamus against Government — Deprivation of lessee's right to fishery — Mandamus can be issued — Assam Land and Revenue Regulation (1886), Ss. 147, 151.

After a registered fishery was settled with the petitioner, a dispute arose as to whether certain area was covered by the lease granted to the petitioner or by lease of another fishery granted to the respondent, who had started fishing in that area. The State Government directed that the respondent should be allowed to fish in the disputed area on the ground that the disputed area formed part of the respondent's fishery. The petitioner sought to impugn the order of the State Government by a petitioner under Art. 226.

Held, that the petitioner under the settlement acquired a right to the fishery which was a right to property and the petitioner could not be deprived of the right except by the authority of law. Under the circumstances, the petitioner could appproach the High Court under Art. 226 and a mandamus could be granted to the petitioner against the Government directing them not to give effect to the order passed by it. Though no mandamus could be issued against a third party, that

principle could not be invoked in the instant case. AIR 1957 SC 529, Disting. **AIR 1961 Assam 126 (127, 128) (Prs 3, 4, 6) (DB).**

——**Art. 226 — Mandamus against Government.**

Ordinarily if an individual makes a demand from his debtor of any amount, that by itself does not give any right to the debtor to ask for the issue of a writ under Art. 226, but when the Government authorities in the exercise of their powers as such issue a notice of demand, calling upon a person to pay some money, it is not only a case of a notice by a creditor. The demand has got to be justified on some statutory basis and it will not be a valid defence to say that the individual could well have refused to pay and if the Government brought a suit defended the suit on any ground. **ILR (1958) 10 Assam 311: AIR 1959 Assam 136 (138, 139) (Pt B) (Pr 9) (DB).**

——**Art. 226** — Assam Settlement Rules, R. 2 — Special or General orders — Meaning of — Rule cannot derogate from substantive provision — Reduction in area of Settlement by Commissioner — Right under previous settlement put in jeopardy by orders complained of — Writ against Government not to give effect to orders of Commissioner could be issued as the order was without any warrant in law. See Assam Settlement Rules R. 2. **AIR 1955 Assam 45 (DB).**

——**Arts. 226 and 311 — Mandamus —Government servant — Claim for arrears of salary — Mandamus for direction to authority to pay will lie.**

Where Government employees who are suspended for criminal offence, are afterwards reinstated in service as the allegations levelled against them are found untenable and where they ask only for a direction to the authorities to pay the arrears of their salaries, mandamus lies. AIR 1962 SC 1320 and AIR 1961 SC 1438 Rel. on. **(1965) 2 Lab LJ 321: 68 Cal WN 1028: AIR 1965 Cal 281 (282) (Pt B) (Pr 5).**

——**Art. 226**— Mandamus — Writ against Government — State proceeding to take things which had not vested in it — Mandamus or an appropriate writ will issue against Govt. See West Bengal Estates Acquisition Act (1 of 1954), S. 5. **AIR 1957 Cal 350.**

——**Art. 226** — State claiming to be owner of land in possession of petitioner and giving him notice to quit — Writ petition by petitioner for mandamus against State — Maintainability — Petitioner's right to property under Art. 19 (1) (f) how far affected — See Ibid, Art. 19 (1) (f). **AIR 1956 Cal 437 (441, 442, 443) (Pt A) (Prs 12, 13, 14, 15, 16).**

——**Art. 226 — Writ against order of Government — Mala fides alleged — Burden of proof — Evidence Act (1872), Ss. 101 to 103.**

Before a Court can hold that the orders of Government are mala fide, facts must be established upon which the Court can hold affirmatively that an order was not honestly made or not made under a particular provision. It is not sufficient to place facts which raised a suspicion that the order might not have been made honestly. If the Government by its notification wishes to ensure a more reasonable and fair representation of all communities in a Municipality it is no evidence of mala fide. So also ousting of particular commissioner by changing the limits of wards is not by itself undesirable. **55 Cal WN 203: AIR 1952 Cal 147 (147, 148) (Pt A) (Prs 4, 5).**

——**Arts. 226, 311, 309, 16 — Appointment to Government service — Right of applicant to compel Government to disclose materials used in considering antecedents and character of applicant — Held applicant had no such right.**

No doubt, if an opinion or a satisfaction has to be arrived at by a particular authority or an officer functioning under a statute it may be open to the parties, who are aggrieved by decisions arrived at by such officer to urge that the opinion or satisfaction has been reached by the officer or authority concerned on a consideration of irrelevant materials. But such cases stand on a different footing because the statute itself will give an indication as to the purpose which is sought to be served by the said enactment. But appointment to Government service is essentially an administrative or executive action. The position may, no doubt be different if the applicants are able to establish that in addition to the right to apply and being considered for a particular post, they have also a right guaranteed under the Constitution to be appointed to the particular post. But the constitutional right does not extend to conferring a right on any person of being appointed to Government service. The nature of the materials to be collected and the satisfaction that is to be arrived about character and antecedents of the person to be appointed are entirely matters for the appointing authorities, and the appointing authorities have a right to be so satisfied especially in view of the provisions of R. 10 (2) (b) of the Kerala State and Subordinate Services Rules on these matters before a person can be appointed to Government service. When there is no right to be appointed, as such to Government service, and when the limited right that is given under Art. 16 (1) and (2) has been sufficiently complied with, the grounds available to the Government to come to a conclusion one way or the other is not a matter which the High Court can be called upon to scrutinise, especially when the Government is entitled to pick and choose. **AIR 1965 Ker 19 (26) (Pt C) (Prs 41, 42).**

——**Art. 226** — Mandamus — Administrative orders — Order of reference under S. 10 Industrial Disputes Act (1947) — Nature of refusal by Government to make reference based on irrelevant and extraneous considerations — Writ against — Maintainable. See Industrial Disputes Act (1947), S. 10 (1). **AIR 1962 Ker 292.**

——**Art. 226 — Issue of writ of mandamus — (Gwalior State Civil Service Rules, Smt. 1991).**

Where the right which the applicant is seeking to enforce in the petition does not depend merely on an interpretation and construction of certain Civil Service Rules but substantially rests upon certain doubtful facts which are under adjudication in a civil suit and on a controversial legal effect of the facts which may be held to be proved in that suit, there can be no question of issuing an order or a writ to compel the Government of the State to pass a pension payment order, particularly when the Government is willing to perform the act, but which has for the time being become difficult of performance by reason of the applicant's civil suit.

Moreover, to issue an order in the nature of mandamus directing the Government to pass a pension payment order in such circumstances would be "to create a defect of justice" and "not to supply a defect of justice" as it would amount to a determination of matters which are in substantial litigation in the applicant's suit. (1884) 12 QBD 461, Ref. **ILR (1953) MB 393: AIR 1953 Madh B 165 (171) (Pt E) (Pr 11) (DB).**

——**Art. 226 — Mandamus against Government— Dismissal of Civil Servant — Power of High Court.**

Held, on the facts of the case that the prayer of the petitioner for the issue of a writ of mandamus against the Government to the effect that he had a lien either on the post of a Judge, Labour Court or on some equivalent post in the Judicial department could not be granted. Since the petitioner was simply reinstated in service without giving him any particular post permanently no lien on any post was created. Besides that it will be beyond the province of the High Court to suggest to the Government to give a post to any individual. The Executive must have untrammelled powers and any interference in their administrative discretion is not called for. **1957 MPC 796 : 1957 Jab LJ 1115 : 1958 MPLJ 377 : AIR 1958 Madh Pra 135 (139, 140) (Pt D) (Pr 24) (DB).**

——Art. 226 — Mandamus — Application by Union to direct Government to refer industrial dispute — Omission to implead management does not take away Court's jurisdiction to issue writ — Industrial Disputes Act (1947), S. 10 (1).

It is unnecessary for any aggrieved person moving the High Court for the issue of mandamus to direct the appropriate Government to refer an industrial dispute under S. 10 (1) of the Industrial Disputes Act to implead as a party thereto the other party to the dispute and hence it cannot be urged that the Court has no jurisdiction to issue the writ to the Government on the application of the aggrieved Union without giving an opportunity to the employer to show cause against its issue.

A writ of mandamus can issue even with respect to administrative acts, the only requirement being that there should exist a duty, public or quasi-public, in the body to whom the writ is addressed to perform that duty. It cannot be disputed that a writ of mandamus will lie against the Government, if it refused to refer an industrial dispute for adjudication under S. 10 (1) of the Industrial Disputes Act, if such refusal is found to be either not bona fide or based on considerations of wholly irrelevant facts and circumstances. Again where the Government does not record and communicate to the parties its reasons for not making a reference under S. 12 (5), it will be open to the aggrieved party to apply to the Court under Art. 226 of the Constitution for the issue of a writ of mandamus to direct the Government to perform its duty. AIR 1960 SC 1223, Rel. on.

The act which the Government will, in such a case, be directed to do is neither judicial nor quasi-judicial. It would, therefore, follow that in such cases the Government would not be bound to hear the parties before making a reference under S. 12 (5) read with S. 10 (1) of the Industrial Disputes Act. (1960) 1 All ER 274, Rel. on.

There are no two parties before the Government when it makes its mind either to refer or not to refer for adjudication of an industrial dispute by the appropriate tribunal and there can be no question of affecting the right of any party by such an administrative decision.

Therefore, when the superior Court is approached by the aggrieved party to issue a writ of mandamus to the Government the only question before the Court will be whether to issue a writ or not and on that question the only person interested will be the Government and not the other party to the dispute. **(1965) 1 Mad LJ 517 : (1964) 1 Lab LJ 228 : ILR (1964) 1 Mad 850 : AIR 1964 Mad 468 (470) (Pt A) (Pr 2) (DB).**

——Art. 226 — Mandamus — Issue of, against Government.

Where the Government declined to take into account the payments to which the religious institutions were entitled under S. 5 (1) of the Madras Estates Land (Reduction of Rent) Act in computing, even on a rough calculation, the amounts payable to each of these institutions under S. 38 (2) of the Madras Estates (Abolition and Conversion into Ryotwari) Act:

Held, that it being a statutory duty imposed on the Government, the obligation could be enforced by the necessary directions by the High Court. **71 Mad LW 311 : 1958 Mad WN 225 : ILR (1958) Mad 433 : (1958) 2 Mad LJ 65 : AIR 1958 Mad 465 (471) (Pt B) (Pr 31) (DB).**

——Art. 226 — When mandamus may issue against Government.

Although mandamus cannot lie against an authority to compel it to take certain action which it has refused to take after considering pros and cons of the issue involved, yet, where the authority refuses to exercise its statutory powers discharges its statutory duty, mandamus will lie to compel it to carry its statutory duties to take up the matter and decide it according to law. **AIR 1956 Manipur 4 (7) (Pt C) (Pr 10).**

——Art. 226 — Provisional inter-State seniority list by departmental committee of State Government — Nature of — Non-compliance with directions issued by Central Government under S. 117, States Reorganisation Act — Remedy of aggrieved party — Refusal by State Government to forward representation — Mandamus if can be issued. See States Reorganisation Act (1956), Section 115 (5). **AIR 1962 Mys 112 (DB).**

——Art. 226 — Mandamus against Government — Mining and other subsidiary rights — Interference with by Government by granting contradictory lease given to another — (C. P. Land Revenue Act (II of 1917), S. 218 (3)).

Held, on facts that the petitioner having been granted a valuable statutory right under S. 218 (3), C. P. Land Revenue Act the Government could not create a hostile right in favour of respondent 2 without giving adequate notice to the petitioner and hearing him. The Government could not in this indirect manner deprive the petitioner of this valuable right in respect of which he had paid compensation to the owners and rent to the Government. The petitioner was therefore, entitled to the issue of a writ of mandamus against the State Government as well as respondent 2 not to interfere with the occupation of the two fields. **ILR (1956) Nag 27 : AIR 1956 Nag 34 (37) (Pt B) (Prs 13, 16, 17) (DB).**

——Art. 226 — Mandamus — Resignation by President of municipality based on vote of no confidence — Motion not legally passed — Writ to direct Government to accept resignation. See Municipalities — C. P. and Berar Municipalities Act (1922), S. 21. **AIR 1955 Nag 35 (DB).**

●**——Art. 226**—School managed and administered by Brahmo Samaj is entitled to protection guaranteed by Art. 30 (1), even though majority of students are not of Brahmo faith and no instructions in that faith are given — Order of Government interfereing with management is ultra vires and void — Mandamus will issue on Government and direction will issue to managing committee of school to hand over charge to the committee appointed by the Samaj. See Ibid, Art. 30 (1). **AIR 1962 Pat 101 (FB).**

——Art. 226 — Mandamus against Government— Rajasthan Municipalities Act (XXXVIII of 1959), Ss. 26 (iii), 63 (1) (c) — Removal of members— Question regarding disqualification alleged to have

been incurred by members of Board under S. 26 (iii) referrred to State Government — State Government is under statutory obligation to dispose of matter without due delay — Government not taking action in the matter for long period — Mandamus against State to expedite disposal of matter held should be issued.. **1961 Raj LW 266 : ILR (1961) 11 Raj 273.**

——**Art. 226** — Classification of prisoners — Government alone can do — Trial Courts are not authorised to do it — Right of prisoner to move High Court for direction. See Criminal P. C. (1898), S. 401. **ILR (1959) 9 Raj 1212.**

225 (c). Individual officer.

——**Art. 226 — Mandamus — Against whom can be issued — ((Ajmer) Excise Regulation (I of 1915), S. 16 (4) — Notification No. E (1)/3/54-PWN Dt. 19-8-1955).**

No writ should issue against the Chief Commissioner who had at no time prosecuted or threatened to prosecute the petitioner. If the petitioner wanted any relief, he should have asked for the writ against the Collector of Excise who alone controls the action of the officers who are likely to prosecute the petitioner. **1956 Cr LJ 657 : AIR 1956 Ajmer 50 (51) (Pt C) (Pr 6).**

——**Art. 226** — Under S. 30. Police Act the Dist. Supdt. of Police is the only competent authority to pass an order demarcating route for tazia procession and not the Dist. Magistrate — Order passed by Dist. Magistrate without authority and jurisdiction — Mandamus can issue to him to refrain from giving effect to the order by entering it in the Teohar Register. **1960 All WR (HC) 653 : 1960 All LJ 843.**

——**Art. 226 — Mandamus.**

Before a mandamus can issue the petitioner must show that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought. There is no law under which the Deputy Commissioner has the authority or is bound to issue a permit to any one to run a butchery shop within the limits of a town under any circumstances when the Municipal Act does not apply to that place. If the Deputy Commissioner has no such authority or obligation, there would be no corresponding right in the petitioner to insist on a permit from the Deputy Commissioner for carrying on his trade. Where there is no duty cast on him by law to issue any permit for running a butchery shop a permit issued by him is one without any authority and its cancellation and a subsequent refusal to issue any permit do not contravene or infringe any legal right of the person in whose favour the permit was originally issued. AIR 1950 SC 163, Disting. **AIR 1954 Assam 74 (75) (Pt A) (Pr 5) (DB).**

——**Art. 226 — Mandamus — Direction when can be given — (Municipalities — Bengal Municipal Act (XV of 1932), Ss. 21, 529-A).**

No one can be directed by a writ of mandamus to do something which he is not under a binding obligation to do. Even after the publication of the final electoral roll, it remains the duty of the registering authority, that is, the Committee contemplated by S. 21 (1) of Act XV of 1932 to carry out any further amendments that may be directed by the District Magistrate in an appeal under S. 529-A. Hence where the petitioner had not impleaded the registering authority as such, but had impleaded only the Chairman, who was one of the members of the Committee known as the registering authority but not also the remaining members, the Chairman cannot be directed to amend and republish the final electrol roll. **AIR 1955 Cal 541 (543) (Pt A) (Pr 5) (DB).**

——**Art. 226** — Consent validly given and suit instituted on basis of such consent —Consent cannot subsequently be revoked — Mandamus and not certiorari to isue restraining Collector or Advocate General from revoking consent. See Civil P. C. (1908), S. 92. **AIR 1962 J and K 86.**

——**Art. 226 —Powers of administrator and State Government —Public notice issued—Administrator must carry out programme — Writ can be issued for failure — State Government can cancel date fixed for issue of notice — No writ could issue against Government to fix date — City of Jabalpur Corporation Act, Ss. 9 (3), 448 and R. 1 (2) — C. P. and Berar General Clauses Act, S. 20.**

The administrator has not been given any discretion under the rules framed under the City of Jabalpur Corporation Act, in the matter of holding elections and after the issue of a public notice by him he has to carry out the programme specified in the notice. If the administrator of his own accord fails to carry out the programme he could be compelled by a writ of mandamus to carry it out.

There is no express provision under which the State Government could cancel the programme but rule 1 (2) framed under section 9 (3) read with section 448 gives unfettered power to the State Government in the mater of fixing a date for issue of public notice and therefore, under S. 20, C. P. & Berar General Clauses Act Government could cancel date originally fixed and fix another. If Government cancelled the programme they must be deemed to have cancelled date of issue of public notice. There is nothing in any of the provisions of the Act which makes it incumbent on the State Government to fix a date for issue of public notice by administrator within any particular period and no writ could be issued calling upon the Government to exercise these powers under Rule 1 (2). **('52) 1952 Nag LJ (Notes) 24 (DB).**

——**Art. 226 — Mandamus—Writ to subordinate officers.**

Held, that respondents Nos. 2 to 5 being subordinate officers could not be issued writ to deliver possession of the land to the petitioners as they acted in obedience to the orders of their respective Governments. **ILR (1954) Patiala 507 : AIR 1954 Pepsu 174 (179, 180) (Pt E) (Pr 7).**

225 (d). Private individual.

●——**Art. 226 — Mandamus — Issue of writ to private individual — Illegal eviction of displaced person —Another displaced person in possession — Issue of writ to latter — (Public Premises (Eviction) Act (1950), S. 3).**

Normally, a writ of mandamus does not issue against a private individual. The eviction of a displaced person in contravention of the express provisions of S. 3 of the Public Premises (Eviction) Act is illegal and a writ of mandamus can issue to or an order in the nature of mandamus can be made against the Union of India to restore possession of the property to him from which he has been evicted if the property is in possession of the Union of India. If, however, the property is in possession of another displaced person and he is not in collusion with the Union of India or has no knowledge that the eviction was illegal, a writ cannot issue to or an order in the nature of mandamus cannot be made against him. (1885) 25 LJQB 61, Rel. on. Sohan Lal v.

Union of India, **35 Mys LJ 195 : (1957) SCJ 489: (1957) MPC 466 : (1957) BLJR 566 : (1957) 2 An WR (SC) 50 : (1957) 2 Mad LJ (SC) 50 : 1957 All WR 598 : 1957 SCA 417 : 1957 All LJ 382 : AIR 1957 SC 529(532) (Pt B) (Pr 7).**

——Art. 226 — Mandamus — Issue of writ to private individual — Auction-sale in Income-tax recovery proceedings while stay-order was in operation — Sale set aside — Whether auction-purchaser in possession can be directed to restore possession to petitioner.

In the income-tax recovery proceedings, the properties of the assessee were sold by auction-sale and possession was handed over to the auction-purchaser. The assessee filed a writ petition challenging the recovery proceedings and order confirming the sale. The sale was effected in the teeth of the stay order and was not legally possible. The petitioner stood deprived of the title and, possession of his property without authority of law and his rights guaranteed under Art. 31 of the Constitution were infringed. It was not disputed by respondent auction-purchaser that High Court could direct the officers who took possesison of auctioned properties to restore it to the petitioner. The auction-purchasers, however, urged that High Court could not order auction-purchasers to restore possession to the petitioner as they did not hold any statutory office, and had also no statutory duty to perform.

Held, that the High Court could order respondent auction-purchasers to restore possession of properties to the petitioner. Under Art. 226 of the Constitution the High Court was not confined to what was known as the High Prerogative Writ of Mandamus in England. The High Court was not bound by its technical limitations. It could issue other writs, directions and orders. It had jurisdiction to issue such directions and orders as the ends of justice required or in order to effectively repair the breach of a citizen's fundamental rights. As the source of the auction-purchasers' possession was statutory action, the incidents and liabilities of such action attached equally to their right of possession. If such action were to be set aside and the statutory authority were to be directed to undo the wrong by restoring possession the purchasers were in the eye of law duty bound to aid and assist them. At common law they were deemed entrusted with the public duty to give back possession to the authorities. Mandamus was available against a private person or body, entrusted by common law with a public duty. When all concerned parties were before the Court, a complete and effective order was appropriate. **(1965) 2 ITJ 85 : AIR 1966 All 176 (180, 181) (Pt D) (Prs 23, 24).**

——Art. 226—No mandamus against private individual — Private or aided institutions —Managers of, are not public authority.

Unless an individual is acting under some public authority no writ of mandamus can be issued against a private individual. Managers of private or aided institutions cannot be said to be acting in any official capacity. They cannot therefore, be directed to do a certain thing by means of a writ of mandamus. AIR 1957 All 234 and AIR 1957 SC 529, Disting. W. P. No. 1842 of 1957, dated 12th August, 1957 (All), Foll. **AIR 1961 All 282 (283, 284) (Pt A) (Prs 8, 10).**

——Art. 226 — Issue of writ of mandamus.

A writ of mandamus only issues to a public authority or a holder of a public office not to act contrary to any provision of a statute in the capacity of such holder of public office. No such writ can issue against a person, whether an individual or a juristic person, who purports to exercise a right by virtue of a claimed title to a certain property.

Moreover, essentially the purpose for which a 'mandamus' exists is to ensure that justice is done in all cases where there is a specific legal right, and no specific legal remedy exists. For the enforcement of such rights, it is issued as a rule only in those cases where there is no legal remedy of an equally convenient, beneficial and effectual nature. Hence, no application for the issue of a writ of mandamus is maintainable if adequate relief is obtainable by the applicant by any other process of law. AIR 1951 All 1 (FB); AIR 1951 All 746 (FB), Foll. **ILR (1954) 1 All 158 : 1953 All LJ 455 : 1953 All WR (HC) 465 : AIR 1953 All 678 (680) (Pt A) (Prs 4, 5) (DB).**

——Art. 226 — Mandamus — Issue of, against private individuals.

A writ of mandamus normally will not be directed against private individuals nor will it issue to give effect to contractual obligations which could be enforced in the ordinary Courts of law. **AIR 1958 Andh Pra 632 (637) (Pt B) (Pr 7) (DB).**

——Art. 226 — Mandamus — Issue of, against public utility concern.

Normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order, which appertains to his office and is in the nature of a public duty. The statutory duty devolving upon a public utility concern is a public duty. Therefore, it cannot be said that a public utility concern like an electrical undertaking is in the same position as a private party. Such being the position, a writ can issue at the instance of any consumer to a public utility concern for its failure to perform its duty under the Electricity Act or under its licence. Similarly, a writ can issue to it restraining it from abusing its powers under any of the provisions of the Act or under its licence. **1958 Nag LJ 457: 60 Bom LR 1446 : ILR (1959) Bom 592 : AIR 1958 Bom 498 (506) (Pt F) (Prs 46, 47) (DB).**

——Art. 226 — Mandamus — Against whom can issue — Writ against company.

Though a writ of mandamus does not normally or ordinarily issue against a private individual, there are instances in which such writs have been issued in the case of a company, or even a private individual. But in these restricted cases, it would have to be shown that there does not exist an alternative legal remedy or that such remedy is not sufficient or adequate. If it could be shown that the Calcutta Tramways Company, Ltd., was violating any provisions of the law for which there was no adequate remedy provided, then in that event a writ would have lain. AIR 1958 Bom 498, Rel. on. **AIR 1960 Cal 398 (399, 400) (Pt D) (Prs 10, 11).**

——Art. 226 —Mandamus — Writ — Issue of to private bodies.

In order to isue a writ of mandamus, it has to be established that the duties which are sought to be enforced by the writ are duties of a public nature and are duties, performance of which is imposed by a statute. The managing committee of an aided school which is not a creature of any statute is a private body and, therefore, no writ of mandamus can be isued to such a body. **('58) 62 Cal WN 384.**

——**Art. 226 — Mandamus — Writ of against private individual.**

An application for a writ of mandamus may be directed only against the holder of a public office and not against a private individual. **AIR 1952 Cal 74 (75) (Pt B) (Pr 8) (DB).**

——**Art. 226 — Mandamus — Against whom can be made.**

Normally a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order which appertains to his office and is in the nature of a public duty. AIR 1957 SC 529. Foll. **1959 Ker LJ 197: 1959 Ker LR 281: 1959 Ker LT 580.**

——**Art. 226 —Mandamus — Against whom can issue — Private school receiving grant from Government is not public body — Mandamus cannot be issued against management of such school.**

A mandamus cannot issue to private individual and it can be issued only against a person who can be directed to do an act which appretains to his office and is in the nature of a public duty. It is only in respect of a legal right that a mandamus will lie and mandamus can be granted only to compel the performance of duties of a public nature. The mere fact that a private institution receives grant from the State does not make it a public body nor do the conditions subject to which the grant is made, constitute public duties to be performed by those who are the recipients of the grant.

Hence, where the services of a Head Mistress of a private school, which received aid from the State Government, were terminated without giving a month's notice as required by the Mysore Educational Grant-in-aid Code :

Held, that a mandamus could not be issued against the management of the school to reinstate the Head Mistress. AIR 1957 SC 529. Foll. **(1963) 1 Mys LJ 356 : AIR 1963 Mys 18 (19) (Prs 3, 6, 7) (DB).**

——**Art. 226** — Mandamus — Powers of High Court — Invasion of proprietary right of citizen —Issue of writ of mandamus against wrongdoer —Art. 32 — Distinction. **30 Pat 287 : AIR 1952 Patna 23 (26) (Pt C) (Pr 14) (DB).**

225 (e). Quasi-judicial authority.

See also Note 249.

——**Art. 226** — Mandamus — Rejection of nomination papers of members of co-operative Bank for election to Board of Directors by Chariman of Bank is a function performed in exercise of statutory power and is a quasi-judicial act — Mandamus can issue to the Committee (Board of Directors) to accept nomination papers improperly rejected — Mysore Co-operative Societies Act (11 of 1959), S. 129 (2) — Mysore Co-operative Societies Rules, R. 14 (3). **1963 Mys LJ (Supp) 501 (DB).**

225 (f). Statutory bodies of fluctuating nature.

——**Arts. 226 and 12 — Mandamus — Against whom writ lies — Public authority — Meaning— Co-operative Society registered under Bengal Co-operative Societies Act —Writ petition is maintainable against such society or its managing body.**

A Co-operative Society registered under the Bengal Co-operative Societies Act, 1940, or its managing committee is amenable to the writ jurisdiction of High Court. What constitutes a public authority cannot be precisely defined. Commercial undertakings and Companies, which are profit making concerns are not generally public authorities. The management of the affairs, and the activities of such Societies are entirely controlled by the Registrar of the Co-operative Society who is a public authority. Such affairs cannot be private affairs. It is not necessary that a body in order to be a public body must always be constituted by a Statute though its powers and duties are created by an Act or the rules. The control which State Government and the Registrar have over such Co-operative Societies is one of the main distinguishing features for the maintainability of an application under Art. 226 of the Constitution. Even where the Society is a person, there cannot be any broad and general proposition that no writ lies against him. **AIR 1966 Cal 23 (28, 29) (Pt A) (Prs 24, 26 to 28).**

——**Art. 226 —Writ of Mandamus — Issue of— Incomplete right.**

Per Narasimham, J. :— An incomplete right may itself suffice for invoking the mandamus jurisdiction of the High Court. 98 ER 139, Rel. on.

Further, where the act, the doing of which is sought to be compelled by mandamus, is the final thing, and if done gives to the relator all that he seeks proximately or ultimately, then the question whether he is entitled to have that act done may be enquired into by the officer or person to whom the mandamus is sought, and is also to be considered by the tribunal which is moved to grant the mandamus. 38 Corpus Juris P. 585 Para. 56, Rel. on.

Thus, where the approval of the Syndicate is the final act which completes the right of the examinees to a declaration that they have passed certain examination, the examinees have a right to apply for a writ of mandamus issued to the Syndicate to approve their result and to publish it.

Per Ray, C. J. :— The right claimed by the examinees can be well understood with reference to the duties that the Syndicate have to perform in the circumstances of the instant case. Rights and duties are always correlated. One in whose interest or for whose benefit a public duty is enjoined by law has always the right to enforce the performance of the duty. The position, therefore, is that where the action of a public functionary threatens to violate the plain and imperative duty cast upon them to the substantial prejudice of the rights of the parties and where all other remedies are utterly inadequate, the speedy and prompt relief of mandamus is undeniable. **ILR (1951) Cut 407 : 17 Cut LT 320 : AIR 1952 Orissa 1 (7, 8, 10, 11) (Pt B) (Prs 18, 30) (DB).**

[**Reversed** on another point in AIR 1954 SC 217.]

225 (g). Universities.

——**Art. 226 — Mandamus — When can issue — Corporate body like University Syndicate passing resolution without notice to members — All members except one present — Question discussed not on agenda — Resolution unanimous — Case held not fit for issue of mandamus—(University — Meeting of Syndicate — Resolution without notice) — (Corporation — Resolution without notice) — AIR 1952 Orissa 1, Reversed.**

Though an incorporated body like an University is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in

its corporate capacity by resolutions properly considered, carried and duly recorded in the maner laid down by its Constitution. If its rules require such resolutions to be moved and passed in a meeting called for the purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views. Individual assents given separately cannot be regarded as equivalent to the assent of a meeting because the incorporated body is different from the persons of which it is composed. Hence, an omission to give proper notice even to a single member in these circumstances would invalidate the meeting and that in turn would invalidate resolutions which purport to have been passed at it. But this is only when such inflexible rigidity is imposed by the incorporating constitution. The position is different when, either by custom or by the nature of the body or by its constitution and rules, greater latitude and flexibility are permissible. Each case must be governed by its own facts and no universal rule can be laid down: also it may well be that in the same body certain things, such as routine matters, can be disposed of more easily and with less formality than others. It will depend on the nature of the body and its rules. The substance is more important than the form and if there is substantial compliance with the spirit and substance of the law, an unessential defect in form will not be allowed to defeat what is otherwise a proper and valid resolution.

The ordinary meeting of the University Syndicate had been called to consider certain matters. The question of the leakage of a question paper of certain examination was not on the agenda but the last item was 'other maters, if any'. The Vice Chancellor who presided over the meeting put the question before the committee. After carefully considering the question the members present unanimously passed a resolution that they were satisfied that there was leakage of the question paper, that the examination in that particular subject be cancelled and that another examination in the subject be held. The Syndicate consisted of twelve members. In the meeting there was one absentee. The resolution was unanimous. The absentee member was not told that the question of leakage would be one of the matters to be considered at the meeting. Some days afterwards another meeting was called. This time also the question of reconsideration of the previous decision was not on the agenda. But the Vice Chancellor brought the question before the meeting suo motu. This time also only eleven members were present but the absentee member was not the same person who was absent in the first meeting. By unanimous resolution the members refused to review its previous decision.

Held, that there was actual appearance without objection at meetings properly convened and that there was complete unanimity on both occasions, that the two resolutions were not invalid and that whatever might be thought about each taken separately, the defects if any were cured when the two were read together and regarded as a whole. AIR 1952 Orissa 1, **Reversed.**

Held, further that in mandamus petitions, the High Court and the Supreme Court would not act as Court of appeal and consider and examine the facts for themselves. It was not the function of the Court of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question was entrusted by the law. The University authorities acted honestly as reasonable and responsible men confronted with an urgent situation were entitled to act. This was decidedly not the sort of case in which a mandamus ought to issue. Vice Chancellor, Utkal University v. S. K. Ghosh, **1954 SCJ 252: 1954 SCA 311: 20 Cut LT 206: ILR (1954) Cut 288: 1954 SCR 883: AIR 1954 SC 217 (219, 220) (Prs 16 to 19).**

——**Art. 226** — Election under S. 11 (4) (i) (a) of Allahabad University Act (3 of 1921) — Election not held according to system of proportional representation by means of single transferable vote is void and cannot be protected by doctrine of internal management. See Allahabad University Act (3 of 1921), S. 11 (4) (i) (a). **AIR 1966 All 45.**

——**Art. 226 — Writ against University authorities — Disciplinary action against students — Orders imposing punishments of rustication and expulsion passed by Authority having no jurisdiction — Interference by High Court.**

Held, in the instant case (i) that in the special circumstances of the case the High Court would interfere in the proper exercise of its jurisdiction under Art. 226: AIR 1953 All 623 and AIR 1946 All 46 and AIR 1956 All 539 and AIR 1957 Bom 246 and AIR 1954 SC 217, Dist. (ii) that as the proceedings which culminated in the impugned orders were of an administrative nature and not judicial or quasi-judicial in character, a writ of certiorari could not be issued quashing the proceedings. But since the impugned orders were without jurisdiction and nullity a writ of mandamus should be issued to the respondents not to enforce the impugned orders. **AIR 1960 All 256 (263, 264) (Pt C) (Prs 41, 50, 51).**

——**Art. 226** — Allahabad University Act (3 of 1921), Ss. 32 (c) and 34 (1) (b) — Ordinances and Regulations under Act — Ordinances (1) and (2) of Chap. 36 — Two years' course for B. Sc. Examination — College authorities can detain students on failure at class examination at end of first year — Regulation providing for such examination is not in contravention of Statutes. See Allahabad University Act (3 of 1921), S. 32 (c). **AIR 1953 All 194.**

——**Art. 226** — (Allahabad University) Draft Ordinances — Ordinances 11 and 14 — Faculty of law asking applicant to revise thesis —Issue of writ of mandamus. See (Allahabad University) Draft Ordinance 11. **AIR 1953 All 6.**

——**Art. 226** —(Allahabad University) Draft Ordinances — Ordinances 10, 11 and 12 — Ordinances requiring. University to arrange for viva voce examination, if report of examining body is that thesis is satisfactory — No viva voce examination held — It cannot be said that the Faculty acted mala fide —No mandamus will go ordering the Faculty to act in particular manner. See (Allahabad University) Draft Ordinance 10. **AIR 1953 All 6.**

——**Art. 226** — Allahabad University Ordinances for the Degree of Doctor of Laws (Published at page 302, Vol. I of Calendar of University of Allahabad for the year 1948-49) — Thesis for Doctorate — Condition to be fulfilled — Faculty of law or Sub-committee — Examiners appointed to examine thesis cannot be considered as Sub-committee or Faculty of Law — Thesis not approved by Faculty of Law or Sub-committee thereof — Applicant cannot claim mandamus to the University ordering it to accept the thesis and award him degree of Doctor of Laws. See Allahabad University Ordinance for the Degree of Doctor of Laws (Published at p. 302; Vol. I of Calendar

of University of Allahabad for the year (1948-49). **AIR 1953 All 6.**

——**Art. 226 — Writ of mandamus against University.**

A writ of mandamus would lie against public bodies compelling them to carry out their duties. The University is a public body. Ordinarily, a Court would be most reluctant to interfere with the internal discipline of the University and its autonomous working under the Statute. An august body of such importance is entitled to all the reasonable latitude which its position deserves. But the University is a creature of the statute and must obey the rules and regulations by which it professes to be bound. If it acts in violation of those rules and thereby adversely affects the rights of others, its conduct is open to question. Case-law Rel. on. **58 Cal WN 54: ILR (1954) 6 Assam 528: AIR 1954 Assam 65 (68, 69) (Pt E) (Prs 14, 15) (DB).**

——**Art. 226** — Illegal withholding by Principal of recommendation under S. 9 (a) of Calcutta University Regulations — Court has jurisdiction to issue mandamus. See Calcutta University Regulations, Ch. LI. **AIR 1962 Cal 93.**

——**Art. 226 — Writ against University.**

A writ of mandamus can be issued upon the University directing it to forbear from giving effect to an order made in violation of its own rules. Case-law Rel. on. **58 Cal WN 295: AIR 1954 Cal 141 (144) (Pt B) (Pr 15).**

——**Art. 226 — Mandamus.**

Governing body of State Medical Faculty cancelling examination without giving opportunity to examinees to allay suspicion entertained by examiners as to the adoption of unfair means in examination — Principles of natural justice not observed — Good faith not enough to justify action — Amounts to failure to exercise their powers reasonably and with due care and caution — Cancelling of entire examination was not justified — Mandamus to revoke the order issued. Case-law Relied on. **AIR 1953 Cal 289 (293) (Pt B) (Pr 16).**

——**Art. 226 — Petitioners aggrieved by acts of Calcutta University Syndicate — Prerogative writs against Calcutta University.**

It is true that the Syndicate being a statutory body vested with the executive government of the University the persons constituting it become ipso facto holders of a public office and can be proceeded against by an application under S. 45 of the Specific Relief Act. This however, does not mean that any application for the issue of prerogative writs against the Calcutta University which is a body corporate and a statutory body and which is responsible for the acts of the Syndicate is necessarily bad. The acts of the Syndicate are the acts of the University and an application for a prerogative writ against the University should not be thrown out on such a highly technical ground although no doubt the appropriate thing would be to proceed against the Syndicate where its specific acts are complained of. 40 Mad 125, Ref. **('51) 55 Cal WN 443: AIR 1953 Cal 172 (176) (Pt C) (Pr 20).**

——**Art. 226** — Admission to college — Cancellation — Mandamus to University and Principal of college to forbear from preventing petitioner to complete his course and appear for examination. See Evidence Act (1872), S. 115. **AIR 1956 Mad 309.**

——**Art. 226 — Writ of mandamus — Issue of, against public body like University Syndicate — Powers of High Court.**

The High Court can, in its exercise of its special jurisdiction under Art. 226, issue a mandate in the nature of mandamus against a public body created by statute, like the Syndicate of a University compelling it to carry out its duties. AIR 1918 Mad 763, and 93 ER 698, Rel. on.

A body exercising statutory powers cannot rely on good faith alone for escaping the jurisdiction of the High Court under Art. 226. It must be further shown that the statutory powers were exercised reasonably and with due care. (1951) 1 App Cas 66, 46 ER 356; (1905) App Cas 426 and (1876) 1 App. Cas 611, Rel. on.; Case law referred.

The High Court, however, will not interfere with or revise the opinion of an administrative public body if there is anything on which that body could reasonably have come to its conclusion. But the discretion should be exercised in a judicial spirit, not allowing extraneous consideration to affect their decisions. (1915) 2 KB 466, Rel. on.

The High Court cannot take upon itself the functions of an appellate Court of fact, scrutinise the materials that were available to the public body and substitute its own discretion and judgment for that of the body. But the writ of mandamus being of the most extensive remedial nature and intended for supplying defects of justice its application should not be refused in cases where there is an abuse of discretion by a responsible statutory body.

Where, therefore, a Syndicate of a University was found to have acted with undue haste, assumed the existence of certain facts which did not exist, ignored certain papers that were before them and were carried away by the hearsay statement of certain person far beyond the limits to which he himself was prepared to go, in deciding that there was leakage of certain question papers and, therefore, passing a resolution that the result of that examination should not be published:

Held, that the resolution was passed unreasonably and with want of due care and a writ of mandamus was issued on the Syndicate requiring it to take immediate steps to publish the results.

Per Ray, C. J. :— A writ of mandamus cannot in any event be used as a substitute for an appeal or a writ of error to revise or correct the alleged errors by a public body in the proper exercise of its lawful jurisdiction however, inequitable and inconsistent its decision may be. The High Court should not interfere if the errors of law or wrongful conclusion of fact result from a mistaken judgment. A line of distinction, however fine should, however, always be drawn between a mistaken judgment and misguided judgment. Where a tribunal, whether administrative or judicial, allows its judgment to be vitiated by lack of reasonableness and care, the decision shall be subject to the superintendence and control by mandamus. **17 Cut LT 320: ILR (1951) Cut 407: AIR 1952 Orissa 1 (4, 7, 10, 11) (Pt A) (Prs 7, 17, 26, 27, 31) (DB).**

[**Reversed** on another point in AIR 1954 SC 217.]

——**Art. 226** — Mandamus against University authority — Delhi University — Rules relating to admission to the L. L. B. (Previous) Class of the Faculty of Law — Rule requiring character certificate from Magistrate — Character certificate from Joint Secretary of Government countersigned by Magistrate — Rule not satisfied — Manda-

tory rule — Writ against refusal to admit, in writ proceedings — Cannot be granted — Words and Phrases — Countersign —Writ Petn. No. 518-D of 1962, dated 15-10-1962 (Punj). **Reversed** — Observations to the contrary in AIR 1960 Punj 150, held obiter. AIR 1956 SC 140, Disting. **AIR 1963 Punj 419 (420 to 422) (Prs 5, 6, 10, 12, 14, 15) (DB).**

——**Art. 226** — Jurisdiction of visitor, when can be invoked — No question of proceedings not being in conformity of Act Statute or Ordinance arising — Jurisdiction cannot be invoked— No mandamus will issue to visitor to act under S. 7-A (7) —Arbitration under S. 45 — Award filed — Objection by University to award — Proceedings are in conformity with S. 45. See Delhi University Act (1922), S. 7-A (7). **AIR 1963 Punj 331 (FB).**

——**Art. 226 — Word "person" — If include Punjab University.**

The word "person" occurring in Art. 226 of the Constitution includes the University of the Punjab which is a Corporation. That being so, the High Court has authority to issue mandamus to the University if the other conditions for that relief are present. **54 PLR 485 : ILR (1953) Punj 50 : AIR 1952 Punj 395 (398) (Pt D) (Prs 19, 21) (DB).**

——**Art. 226 — Grant of degree of Ph. D. by University — Petition for writ of mandamus against University to restrain it from conferring the degree —Petitioner's right not infringed — Writ of mandamus — Requirements for the issue of.**

In order to maintain a writ for grant of mandamus the petitioner must show that there resides in him a right entitling him to compel the opposite party to act in a particular manner or to forbear from acting in a particular manner. In the absence of any such right the petition for the grant of mandamus cannot be allowed. The petitioner must show that his personal rights have in any way been infringed by the act of the opposite parties.

Hence, where the petitioner, who was a graduate of the University of Rajasthan, applied for a writ of mandamus to restrain the University from granting the degree of Ph. D. to a certain person:

Held, that the petition could not be entertained as the petitioner's right had in no way been infringed by the act of the University. **ILR (1965) 15 Raj 50: 1965 Raj LW 53: AIR 1965 Raj 84 (86) (Pr 5) (DB).**

——**Art. 226** — Writ of mandamus against University — Power of High Court to interfere with internal working of University —Candidate taking his examination on faith of certain regulations in force at time of examination — University has no power to alter or substitute regulations with retrospective effect to candidate's disadvantage — Candidate entitled to benefit under old regulation — Fact that he took supplementary examination under new regulation cannot disentitle him to such benefit — No estoppel against statute — AIR 1954 Assam 65 and AIR 1952 Orissa 1, Rel. on. Virendra Kapur v. University of Jodhpur, **1964 Raj LW 328 : ILR (1964) 14 Raj 463 : AIR 1964 Raj 161 (169 to 173) (Pt F) (Prs 32 to 34, 38, 40, 42, 44, 46, 49, 50) (FB).**

——**Arts. 226, 15 (1) and 29 (2) — Mandamus— University — Admission to public institution — Right of eligible persons — Nature of — Refusal on the basis of illegal instructions of University — Mandamus lies against the University and the authority refusing the admission.**

In case of colleges maintained by the State so long as there are vacancies all persons who fulfil the requisite qualifications for admission have got a right to be admitted and not to be discriminated against or shut out from being admitted on arbitrary or illegal grounds. It is the duty of the Principal to run it in accordance with law and he cannot ignore the rules and the instructions by a mere refusal to admit a student at his sweet will. It is not for the University to which such colleges are affiliated to decide as to what students should be admitted to such colleges. When the University fails to carry out its duty according to law, it can be compelled to do so by a writ of mandamus. 1950 Raj LW 19, Rel. on.

Held, on facts that (i) the matter of admissions was not discretionary. Being the head of a public institution it was the duty of the Principal to act according to law in the matter of admission and he could not ignore the rules and refuse admission at his sweet will. The petition was maintainable. AIR 1953 All 194 and AIR 1959 All 224, Dist.; (ii) A writ of mandamus could lie against public bodies compelling them to carry out their duties. The University being a public body and not having followed the relevant law regarding admission, a writ could be issued against it. AIR 1954 Assam 65, Foll.; AIR 1956 Raj 158 and AIR 1959 Raj 260 (SB), Dist. **1962 Raj LW 500: ILR (1962) 12 Raj 277 : AIR 1963 Raj 172 (174, 175) (Pt A) (Prs 8, 9) (DB).**

225 (h). Body of persons holding office.

——**Art. 226 — Application against State Medical Faculty — Governing Body not made party — Impleading of State Medical Faculty by its name — Propriety — Duties of Faculty in deciding whether examination of candidates should be cancelled for using unfair means.**

Where to an application under Art. 226 of the Constitution for a writ of mandamus directing withdrawal of the order of cancellation of the examination of the applicants for using unfair means the State Medical Faculty which was established by a resolution of the Government of Bengal, has been properly made a party, the Governing Body which passed the resolution for cancellation of the examination is also before the Court and the omission to make the Governing Body a distinct party is no obstacle to the success of the application. When the State Medical Faculty has been made a party, it is neither necessary nor proper that any part of it should be separately made a party. A command on the State Medical Faculty will, in law amount to a command on all its component parts —the Governing Body, the Fellows, the Members and the Licentiates.

Although the State Medical Faculty is not a body corporate, it is as such a "person" within the meaning of Art. 226 of the Constitution against whom a direction, order, or writ can issue.

The State Medical Faculty or the Governing Body, in performing its duty of deciding whether the candidates have been guilty of unfair means and what punishment should be inflicted, must not only act in good faith, but also fairly and reasonably and without violation of the principles of natural justice. Where the Faculty, gave no notice at all to the candidate of the charges against them and no opportunity whatsoever of showing that the allegation was not true or that even if the allegation was true, the punishment

should not be what the Governing Body proposed, and apart from this there was no individual consideration of the different candidates, a writ of mandamus may issue to ensure that it performs its duties properly. **ILR (1953) 2 Cal 107: 56 CWN 861: AIR 1953 Cal 212 (214, 215) (Pt C) (Prs 18, 30, 31, 32) (DB).**

——Arts. 226 and 227 (4) — Power of High Court — Issue of writ of mandamus — Acts and proceedings of military authorities and tribunals— Interference by Civil Court — Acts without or in excess of jurisdiction or in violation of fundamental rights — Interference.

The general power conferred on the High Court under Art. 226 of the Constitution has to be construed subject to the limitation imposed by Art. 227 (4) which prohibits the High Court from exercising any power of superintendence over any Court or Tribunal constituted by or under any law relating to the armed forces. Matters which are placed within the jurisdiction of the military tribunals or authorities constituted under the military law must be determined by such authorities themselves and their decisions cannot normally be reviewed or set aside by the Civil Courts, including the High Court; the civil Courts will not interfere with the administration of military law by the properly constituted tribunals acting within their jurisdiction or with the proceedings of a military Court of inquiry or with any action taken by the Army Council. If, however, there has been any violation of the fundamental rights guaranteed by the Constitution, and if the entire proceedings resulting in the orders passed by the military authorities are void ab initio, the parties aggrieved would certainly be entitled to the protection of their rights by means of a writ in the nature of mandamus. It cannot be said that the High Court has no jurisdiction to relieve against unauthorised or illegal acts of military authorities affecting the fundamental rights of persons in military service; the civil Courts can certainly interfere when the authority constituted under military law acts without or in excess of jurisdiction and does something which would be a wrong at common law. Where, however, the fundamental rights guaranteed by the Constitution have not in any way been violated or infringed by the proceedings or acts of the military authorities an application for the issue of a writ is clearly unsustainable and cannot be granted. **1951 KLT 385: AIR 1952 TC 7 (8) (Pt A) (Pr 3).**

225 (i). Order merging in appellate order.

——Art. 226 — Writ against original authority after appeal — Order of Regional Transport authority merging in order of Appellate authority — Order of appellate authority maintained — Writ of mandamus directing Regional authority to rehear cannot be issued. **AIR 1955 NUC (All) 3589.**

226. Alternative remedy.

See Note 7.

227. Application for.

(a) Contents of.

(b) Joint application.

227. Application for.

——Art. 226 — Writ of mandamus, when issued.

There is no doubt that where a party, who has a legal right to the performance of a legal duty by another party, has no other specific remedy, the High Court will assist him by issuing under Art. 226 an order in the nature of mandamus in order to his obtaining such right. But the Court will not assist him unless he first shows that he has a clear and undisputable right and that justice cannot be done to him without a writ of mandamus being issued.

The object of Art. 226 being the enforcement of fundamental rights and other statutory rights and not the establishment of a legal right, the right of a petitioner to the performance of a statutable duty must be clear and complete.

If the High Court finds itself unable to decide on the rights of the parties and thinks they could be investigated more properly in a civil suit, no direction under Art. 226 can be issued. AIR 1952 SC 12, Foll.

The power under Art. 226 would not be exercised if the petitioner's right depended on facts which were disputed and on the legal effect of facts to be proved. AIR 1952 Madh B 105, Rel. on. **ILR (1953) MB 393: AIR 1953 Madh Bha 165 (169, 170) (Pt A) (Pr 8) (DB).**

——Art. 226 — Mandamus — Essentials.

There are four prerequisites essential to the issue of the writ of mandamus; (1) whether the petitioner has a clear and specific legal right to the relief demanded by him; (2) whether there is a duty imposed by law on the respondent; (3) whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the respondent; (4) whether the petitioner has any remedy, other than by way of mandamus for the enforcement of the right which has been denied to him. These are the questions, but only some of the questions, which are necessary to be decided in every application for mandamus. **60 Punj LR 425: (1958-59) 15 FJR 49: (1959) 1 Lab LJ 274: ILR (1958) Punj 2061: AIR 1959 Punj 75 (78) (Pt A) (Pr 7) (DB).**

227 (a). Contents of.

——Art. 226 — Mandamus — Application for — Essentials.

Held, that where all the facts had been brought to the notice of the Court it could issue any direction having regard to the facts of the case under Art. 226 and therefore the failure on the part of the petitioner to specifically ask for the issue of a direction that the order should be quashed and a consequential mandamus should be issued directing the Returning Officer not to hold fresh elections was immaterial. Where the order itself had been placed before the Court by the opposite party and the Court came to the conclusion that order was without jurisdiction there was no bar to issuing a necessary direction quashing that order and a consequential mandamus. **1957 All WR (HC) 182: 1957 All LJ 938: AIR 1957 All 213 (215) (Pt B) (Pr 9).**

——Arts. 32, 226 — Mandamus — False statement in application — This alone may be sufficient reason for throwing out application. **(1957) 8 STC 105: AIR 1956 Cal 596 (599, 600) (Pt F) (Pr 13).**

——Art. 226 — Mandamus — Writ of — Duty of applicant to make full disclosure — Failure — Effect.

A person who makes an ex parte application under Art. 226 of the Constitution for the issue of a writ of mandamus is under an obligation to the court to make full disclosure of all material facts within his knowledge and if he deliberately suppresses material facts then he disentitles him-

self to get any relief. (1917) 1 KB 486, AIR 1938 Cal 385, Rel. on. **56 Cal WN 302: AIR 1952 Cal 72 (72) (Pt A) (Pr 8).**

——Art. 226 — Mandamus — Grounds — Apprehension of not having fair and impartial trial — Facts must be stated. ILR (1954) Madh Bha 440: Madh BLR 1954 Civil 140: Madh BLJ 1954 HCR 578: AIR 1954 Madh B 111 (113) (Pt C) (Pr 4) (DB).

——Art. 226 — Right to apply for writ of mandamus.

Whether a person has a legal right to make an application for the issue of a writ of mandamus must depend upon the facts of each case and it would not be right to lay down a hard and fast rule enumerating the circumstances under which such a right can be said to exist. **32 Pat 592: 1953 BLJR 513: AIR 1953 Pat 370 (373) (Pt B) (Pr 13) (DB)**

——Art. 226 — Merwar Land Revenue Act (1949), S. 231 — Occupation of land under S. 231 — Writ application — It must be shown that provisions of S. 231 have not been complied with — See Merwar Land Revenue Act (40 of 1949) S. 231. **AIR 1953 Raj 173.**

——Art. 226 — Mandamus — Issue of writ — Conditions.

A writ of mandamus is granted ordering that to be done which a statute requires to be done and the applicant for such a writ must show that there resides in him a legal right to the performance of a legal duty by the party against whom the mandamus is sought. Again, the writ of mandamus is normally a discretionary writ and should not be issued when there is a specific remedy which is convenient, adequate and effective. **1952 RLW 118: ILR (1951) 1 Raj 134.**

227 (b). Joint application.

——Art. 226 — Mandamus — Writ of — Joint petition by two or more persons, against similar but separate orders — Maintainability — (Civil Procedure Code (1908) O. 1).

Two or more persons cannot join in a single petition for a writ of mandamus to enforce separate claims. There must be separate applications for separate writs, although the orders are similar in nature and involve a point of common interest. Principles embodied in O. 1, R. 1, Civil P. C. cannot be extended to such a case. The case, however, may be different where a common or class injury is done by some common order or orders. Even in cases where joint application is thus permissible the principle is that if it is found that even one of the applicants is disentitled to relief the whole application must fail. The general rule that there should be a separate petition for a separate writ is a rule of practical convenience warranted by the nature of the proceeding. AIR 1956 Mad 628, Relied on. AIR 1956 Cal 291, held obiter. **1957 An LT 189: (1957) 1 An WR 130: AIR 1957 Andh-Pra 88 (89, 90) (Pr 3).**

——Art. 226 — Mandamus to compel Municipality to supply scheduled quantity of water — Joint application by several rate payers — Maintainablity — (Civil Procedure Code (1908), O. 1 (Gen.), O. 1, R. 1).

Where mandamus is sought by several rate-payers having different causes of action to compel a Municipality to supply scheduled quantity of water for domestic purposes, it would be sufficient to follow analogously the provisions of O. 1, Civil Procedure Code. **60 Cal WN 299: AIR 1956 Cal 291 (294, 295) (Pt D) (Pr 8).**

228. Body of persons holding office.

See Note 225.

229. Certiorari and mandamus compared.

See also Note 183.

——Art. 226 — Certiorari and Mandamus — Writs of — Distinction.

A writ of certiorari is available for the removal of any judicial or quasi-judicial act of an inferior tribunal, whereas a writ of mandamus is issued to compel the performance of duties of a public nature. The condition that the act complained of should be a judicial act applies to the former relief and not to the latter. The division of the panchayat into wards and the conduct of elections are administrative acts of the Government but that itself is not a ground for rejecting a writ petition against Government. **AIR 1960 Andh Pra 493 (494) (Pt A) (Pr 5) (DB).**

——Art. 226 — Writ of Certiorari and of Mandamus — Distinction — Prayer for alternative reliefs — Duty of Court — Petition for enforcing statutory duty against State Government — Maintainability. **(1958) 1 Andh WR 480: ILR (1958) Andh Pra 466: AIR 1958 Andh Pra 458 (461) (Pt B) (Pr 8) (DB).**

——Art. 226 — Writs of Mandamus and Certiorari — Distinction between pointed out. ILR (1955) 7 Assam 189: AIR 1955 Assam 163 (169, 170) (Pt D) (Pr 14) (DB).

——Art. 226 — Writs of mandamus and certiorari — When may be granted indicated. ILR (1955) 7 Assam 159: AIR 1955 Assam 163 (169, 170) (Pt E) (Pr 14) (DB).

——Art. 226 — Mandamus and Certiorari — When can issue — Pending proceedings.

Normally, a petitioner applying for writs of certiorari and mandamus must establish some material or pecuniary injury to him or the infringement of any legal right in his favour. But where, the question raised in the petition is a question of fundamental importance, going to the root of the matter, and affects the very jurisdiction of the authority to entertain or decide the lis before it, the matter can and ought to be decided by the High Court. **1957 Nag LJ 105.**

——Art. 226 — Writs of — Mandamus and Certiorari, when can issue stated — Power of officer conditioned by limitation — Conditions not satisfied — Mandamus can issue — Requisition under Bombay Land Requisition Act of premises — Premises not premises to which the Act applies — Mandamus can issue — (Bombay Land Requisition Act 33 of 1948), S. 6. ('52) 54 Bom LR 681: AIR 1952 Bom 468 (471 to 474) (Pt B) (Prs 3, 5, 6, 8, 10) (DB).

——Art. 226 — Writ of mandamus and certiorari —Demand and refusal.

For the issue of a writ in the nature of mandamus, a demand for justice and its refusal is a condition precedent. In the case of a statutory body a demand of justice from such a statutory body would take the form of a letter or petition or something of that sort. In the case of a writ in the nature of certiorari prior demand of justice is not a condition precedent. If a quasi-judicial body exercises its powers beyond its jurisdiction or assumes jurisdiction wrongly, or there is an error on the face of the proceedings, any person affected can come up to the High Court and have the order quashed and/or set aside as a matter of right. **60 Cal WN 13: AIR 1956 Cal 490 (492) (Pt A) (Pr 4).**

——**Art. 226** — Mandamus and certiorari — Matters to be considered by High Court in application for writ of mandamus or certiorari, indicated. **AIR 1952 Cal 808 (811, 812, 813, 814, 815) (Prs 13, 18, 19, 20, 21, 22, 23, 24, 25).**

——**Art. 226** — Difference between writ of mandamus and writ of certiorari pointed out. — (1950) SCR 621, Foll. **1951-20 ITR 400: 56 Cal WN 232: AIR 1952 Cal 601 (603) (Pt D) (Prs 14, 15, 16) (DB).**

——**Art. 226** — Consent — Revocation — Consent validly given and suit instituted on basis of such consent — Consent cannot subsequently be revoked — Mandamus and not certiorari to issue restraining Collector or Advocate General from revoking consent. See Civil P. C. (1908), S. 92. **AIR 1962 J. & K. 86.**

——**Art. 226 — Mandamus and certiorari — When available.**

The exercise of power by the public authority should normally of course involve public duties. The mandamus is the form of a command issued to any public officer, corporation or authority or inferior tribunal compelling him or it to do or refrain from doing a thing which pertains to his office and is in the nature of a public duty. It will be available both against administrative and inferior tribunals. But Where a statutory authority or body is vested with judicial or quasi-judicial power it acts as a tribunal and the apporpriate process is certiorari. It serves to call for or remove the record or order from an inferior Court with a view to correct errors of jurisdiction the absence, excess or irregular exercise of it or errors of law apparent on the face of the record or order and this remedy in view of the later tendency of the legislatures to entrust more and more judicial or quasi-judicial power to authorities or bodies constituted as Tribunal, now extends to keep them within the bounds of the law. **(1963) 2 Lab. LJ 304: AIR 1964 Mad 335 (346) (Pt D) (Pr 13).**

——**Art. 226 — Writ of mandamus and certiorari — Distinction pointed out. 22 Camp Cas (Ins) 33: ILR (1952) Punj 11: AIR 1952 Punj 9 (18) (Pt H) (Pr 60) (DB).**

230. Contracts, rights relating to.

See also Note 29.

● ——**Art. 226 — Mandamus — Rights relating to contract — Administration of Evacuee Property Act (1950), S. 10 (2) (b) — Appointment of manager under S. 10 (2) (b) is contractual.**

A writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdictions, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Art. 226 of the Constitution. The appointment of a person as a Manager by the Custodian by virtue of his power under S. 10 (2) (b) of the Administration of Evacuee Property Act is contractual in nature and there is no statutory obligation as between latter and the former. Thus the former is not entitled to move the High Court for grant of a writ in the nature of mandamus under Art. 226 of the Constitution AIR 1936 P. C. 269 and AIR 1947 Cal 307, Approved. Lekhraj Sathramdas Lahani v. Shah, Deputy Custodian-cum-Managing Officer Bombay. **(1965) 2 SC WR 885: (1966) 1 SCJ 24: AIR 1966 SC 334 (336, 337) (Pt C) (Pr 5).**

——**Art. 226 — Mandamus — Allegation of infringement of fundamental right — Dispute pertaining to contractual obligations — Dispute not capable of being resolved on affidavits — Court justified in refusing mandamus, although resort to alternative remedy was no bar. ILR (1963) 2 All 400: AIR 1964 All 236 (240, 242, 243) (Pt A) (Prs 11, 38, 45) (DB).**

——**Art. 226 — Mandamus — Issue of writ to enforce contractual right.**

The power of the High Court to issue writ to 'any person' can only mean the power to issue such a writ to any person to whom, according to well-established principles, a writ lay. A writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III. But the words 'and for any other purpose' must mean for any other purpose for which any of the writs mentioned would, according to well-established principles, issue'. English and American Courts do not issue a writ or an order of mandamus in a case where the right which the petitioner wants to enforce by means of a writ is founded purely on a contract. The law in India on this point is not different from that prevailing in England and America. **AIR 1960 All. 72 (80, 81) (Pt J) (Prs 24, 25, 26).**

● ——**Art. 226 — Applicability — Contractual rights — Enforcement of.**

Where a contract is given by the Government to the petitioner which is subsequently cancelled and given over to another person, there is no discrimination because it is perfectly open to the Government, even as it is to a private party, to choose a person of their liking, to fulfil contracts which they wish to be performed. Similarly, a contract which is held from Government stands on no different footing from a contract held from a private party. The breach of the contract, if any, may entitle the person aggrieved to sue for damages or, in appropriate cases, even specific performance, but he cannot be granted any relief under Art. 226 of the Constitution on these facts which he can effectively seek by means of a suit. AIR 1959 SC 490 and AIR 1960 All 72, Rel. on. The High Court will not issue a writ of mandamus or any direction in the nature of mandamus for the enforcement of contractual rights as an obligation under a contract cannot be regarded as a statutory obligation. Parbananda Das v. Executive Engineer, Assam, **(1960) 1 Assam LR 150: ILR (1960) 12 Assam 356: AIR 1961 Assam 101 (104, 105, 106) (Pt B) (Prs 11, 15) (FB).**

● ——**Art. 226 — Writ of mandamus — When issued — Enforcement of contractual rights.**

Before a petitioner can get mandamus, he has to establish — (i) that a public officer has exercised his authority not in accordance with law and (ii) that the rules which he is alleged to have violated have statutory force.

Where the petitioner under Art. 226, in whose favour a contract was granted by the Government but was subsequently cancelled and given over to another party, attacks the validity of the contract given to the other party, he is, in effect, asking for a declaration that the contract in favour of the other party is illegal and this relief cannot be granted to the petitioner under Arti-

cle 226. AIR 1953 Pat. 370 and AIR 1954 Pat 235 and AIR 1953 SC 309, Disting.

Held, further that it could not be said that there had been any failure to observe any public duty which could be enforced by means of a writ of mandamus by the High Court, under Article 226.

Per Deka, J., Contra. — The Government's order directing the Executive Engineer to cancel the work order in favour of the petitioner was vitiated and was ineffective in the eye of law, and accordingly, a writ of mandamus could issue according to the accepted principles of law. Parbananda Das v. Executive Engineer, Assam, **ILR (1960) 12 Assam 356: (1960) 1 Assam LR 150: AIR 1961 Assam 101 (107, 108, 109, 110, 111, 113) (Pt C) (Prs 20, 28, 42) (FB).**

——Art. 226 — Mandamus — Writ of — Issue for enforcing contractual rights — Permissibility.

Contractual rights are not enforceable by writs of mandamus. The remedies are by way of suit.

The petitioners Calcutta Gas Company who were the managers of Oriental Gas Company of Calcutta applied under Art. 226 challenging the validity of Oriental Gas Company Act (15 of 1960):

Held, that as far as the petitioner's contract in respect of agency or managing agency was concerned it was not touched upon by the legislation. In the case of persons having contractual relation with the owner of property which is affected by legislation the agent or manager would not be able to enforce rights of the owner. There must be a legal right of the person applying and the duty which is sought to be enforced must also be a legal duty. In the present case the petitioner had no legal right under the legislation inasmuch as the petitioner's rights, if any, were not touched or affected by the legislation. Hence the petition under Art. 226 was not maintainable: AIR 1952 SC 12 and AIR 1958 SC 532 and AIR 1959 SC 490 and AIR 1959 SC 735 and (1825) 4 B. and C. 899 and (1897) 1 QB 498 Rel. on. **65 Cal WN 545: AIR 1961 Cal 267 (280, 281, 282) (Pt D) (Pr 36).**

[**Reversed** in AIR 1962 SC 1044].

——Art. 226 — Mandamus to restrain performance of contractual obligation — Declaration under Art. 226 that contract is illegal.

A Mandamus does not lie to enforce or restrain the performance of a contractual obligation. AIR 1947 Cal 307, Rel. on.

Further, it is inappropriate to grant a declaration in an application under Article 226 that a particular contract is illegal and therefore unenforceable because it contains a provision for Begar or forced labour.

Even if an agreement had in fact been entered into under duress the remedy would be by an action and not under Art. 226 of the Constitution. **AIR 1952 Cal 496 (498) (Pt A) (Pr 6).**

——Art. 226 — Writ or order of mandamus — Conditions for issue stated — Mandamus to enforce contract cannot be issued. 87 CLJ 149: AIR 1952 Cal 315 (318, 319) (Pt A) (Prs 11 to 14).

——Art. 226—Mandamus — Writ compelling Government to carry out terms of contract — If can issue.

No writ of mandamus can be issued to compel the Government to carry out the terms of the contract for it is essential for the issue of a writ of mandamus that there ought to be a statutory duty imposed upon the authority against whom a writ of mandamus is sought and if such authority fails to carry out the statutory duty, then the Court would issue a writ of mandamus. **ILR (1956) Hyd 630: AIR 1957 Hyd 19 (20) (Pt A) (Pr 5) (DB).**

——Art. 226 — Right founded purely on contract — Writ of mandamus cannot issue to enforce it. AIR 1960 All 72, Rel. on. **1964 Kash LJ 306: AIR 1965 J & K 39 (43) (Pt C) (Prs 24, 27) (DB).**

——Art. 226 — Mandamus — Writ to restrain party from enforcing illegal contract cannot issue. AIR 1961 J and K 1 (2, 3) (Pt A) (Pr 6) (DB).

——Art. 226 — Mandamus — Writ of — Grounds — Ends of justice.

A writ of mandamus can only lie when the ends of justice so require. Where the petitioners had entered into the contract with open eyes and after full knowledge of the consequences they cannot subsequently turn round and ask the High Court for a declaration that the contract is void, for this would really amount to allowing the petitioners to take advantage of their own wrong. **AIR 1961 J & K 1 (2) (Pt B) (Pr 6) (DB).**

——Art. 226 — Mandamus — Contract — Writ to restrain authorities from recovering sum — Competency. See Jammu and Kashmir Land Revenue Act (12 of 1996, Smt.), S. 90. **AIR 1961 J and K 1 (DB).**

——Art. 226— Mandamus — Writ of, will not issue to enforce contractual obligation — Writ cannot be used as alternative mode of redress. AIR 1960 J and K 12 (14) (Pt B) (Pr 9).

——Art. 226— Mandamus to compel Government to enter into contract with third party will not issue. 1959 Ker LJ 197: 1959 Ker LR 281: 1959 Ker LT 580.

——Art. 226 — Mandamus — Contractual rights — Enforcement of.

Mandamus or an order in the nature of mandamus will not be issued for the enforcement of a private right. Therefore, it cannot be issued for enforcing a right arising out of a contract. AIR 1947 Cal 307 and 87 Cal LJ 147, Rel. on. **ILR (1953) MB 24: AIR 1953 Madh B 54 (55) (Pt A) (Pr 3) (DB).**

——Arts. 226, 227 — Mandamus — Contractual rights — Enforcement or prevention of breach of — Mining lease under Mineral Concession Rules, 1960 — Direction cannot be issued under Art. 226 or 227 for enforcing rights under the lease or preventing a breach thereof — C. P. Code (1908), S. 9. AIR 1962 SC 1044 and AIR 1954 SC 447 and AIR 1959 SC 735, Dist. **1963 MPLJ 701: 1963 Jab LJ 783: AIR 1964 Madh Pra 42 (44) (Prs 7, 9) (DB).**

——Art. 226 — Mandamus — Writ of —Nature of duty to be enforced — Contractual obligations — Enforcing managing agency rights conferred under Memorandum and Articles of Association — Specific Relief Act, S. 45, Proviso (b) — (Companies Act (1956), Ss. 36 and 291).

It is clear from S. 45 (b) that the duty imposed on the person, Corporation or Court must be a duty imposed by any statute or law for the time being in force and that an order of mandamus will be granted only for ordering that to be done which a statute or rule of law requires to be done, and not for the enforcement of contractual obligations.

The duty sought to be enforced by the petitioners though embodied in the memorandum and articles of the company having regard to Ss. 36

and 291, Companies Act, cannot be placed on a higher footing than a contractual obligation, of which the articles and the memorandum are only the documented evidence, and a mandamus does not lie to enforce the contractual obligation.

Secondly, in denying the petitioner's right as managing agents, there is no question of any public duty involved, the matter being purely a private right between the petitioner on the one hand and the company on the other based upon contractual relations which were incorporated in the Memorandum and the Articles of Association. **(1956) 26 Com Cas 431 : ILR (1957) Mad 383 : 70 Mad LW 28 : (1957) 1 Mad LJ 254 : AIR 1957 Mad 309 (314 to 316) (Pt C) (Prs 9, 10, 17) (DB).**

——Art. 226 — Mandamus — Corporations.

Duties arising out of private contractual relations cannot be enforced by mandamus. See Specific Relief Act (1877), S. 45. **AIR 1955 NUC (Mad) 3915.**

——Art. 226 — Mandamus, writ of — Cannot be issued to enforce contractual obligation. (1954) 1 MLJ 429: ILR (1954) Mad 754: 1954 Mad WN 27: AIR 1954 Mad 549 (551) (Pt A) (Prs 5, 6, 8) (DB).

——Art. 226 — Mandamus — Issue of, to enforce contract — (Bihar and Orissa Excise Act (II of 1915), Ss. 34, 35).

It is well settled that a right that accrues under a contract cannot be the subject of mandamus. A writ of mandamus cannot be issued to carry out the terms of a contract.

Thus, where the petitioners bid at an auction of license of certain liquor shop with the full knowledge of its terms and voluntarily accept a provisional settlement, they have no right to invoke the jurisdiction of the High Court under Art. 226, as the alleged rights of the petitioners are merely contractual. **19 Cut LT 501 : AIR 1954 Orissa 74 (75) (Pt B) (Pr 4) (DB).**

——Art. 226 — Writ of mandamus when can be issued.

A party who has entered into an agreement with another party and is illegally dispossessed by the other in breach of the agreement cannot ask the High Court for a writ of mandamus as the aggrieved party can get an effectual and adequate remedy by an ordinary action in the Civil Court. **AIR 1951 Pat 231 (241) (Pt B) (Pr 26) (DB).**

231. Contractual duty.

——Art. 226 — Mandamus — Contract — Offer and acceptance — Tender notice calling for quotations — Mere offer of quotations does not create contract — Rights and duties of persons calling for quotations — Distinction between Government and private person — Acceptance of lowest quotations — Not obligatory — Refusal by Government to accept lowest quotations —Writ petition — Maintainability. See Contract Act (1872), S. 2 (a). **AIR 1962 Manipur 47.**

232. Decree, mandamus to enforce.

——Art. 226— Writ of mandamus — Writ cannot be issued for execution of decree — Specific Relief Act (1877), S. 45. **ILR (1952) Madh Bha 231 : AIR 1950 Madh B 46 (53) (Pt K) (Pr 15) (DB).**

——Art. 226 — Mandamus —Execution of decree or order — Writ cannot be issued for the purpose — Assessment of tax set aside — Absence of provision in taxation rules for refund — Direction for refund cannot be made — Remedy is by suit — Indore Industrial Tax Rules (1927), R. 8-A (2). AIR 1959 SC 135 and AIR 1959 SC 149, Rel. on. **1961 MPC 375: 1961 MPLJ 751: 1961 Jab LJ 999 : ILR (1962) Madh Pra 48 : AIR 1962 Madh Pra 10 (11, 12) (Prs 3, 4, 5, 6) (DB).**

233. Defined.

(a). Specific Relief Act (1877), S. 45, powers under.

(b) Principles applicable.

233. Defined.

——Art. 226 — Mandamus — When cannot be issued.

A writ of mandamus is issued only for directing a person or authority to do a certain thing and not to restrain him from doing it. **1965 All LJ 576.**

——Art. 226 — Mandamus — Nature of writ— Mandamus to quash order of requisition under S. 6 (4), Bombay Land Acquisition Act — (Bombay Land Requisition Act (XXXIII of 1948), S. 6 (4)).

The Court issues a writ of mandamus in order to compel an authority to act according to the mandate of the Legislature. But mandamus can only function and operate within the law. Its main function is to see that law is observed. Therefore, where the Legislature has laid down certain provisions, if those provisions are complied with, then the assistance of the High Court cannot be sought because the citizen may feel a grievance that hardship is caused to him or that a better procedure should have been substituted in place of the one that the Legislature has thought fit to incorporate in the legislation.

The Court in exercising its jurisdiction under Art. 226 and issuing a writ of mandamus does not alter the law in order to remove the grievances. Its function is to enforce the law, whatever the nature or character of the law might be, and when a party comes to the High Court under Art. 226, it requires the assistance of the Court to carry out the provisions of the law on the assumption that those provisions are valid provisions and effect must be given to those provisions.

Therefore, the High Court cannot interfere by issuing a writ of mandamus under Art. 226 with a declaration made by a competent authority under S. 6 (4), Land Requisition Act that certain premises were vacant or had become vacant.

No question of mandamus can possibly arise where the Legislature has chosen to make the decision of a certain authority final and conclusive. AIR 1951 Bom 303, Approved: AIR 1954 SC 202 : Expl. and Disting. Kaikhusroo Phirozshah Doctor v. State of Bombay, **ILR (1955) Bom 69 : 57 Bom LR 24: AIR 1955 Bom 220 (223) (Pt B) (Prs 4, 5) (FB).**

——Art. 226 — Mandamus — Nature of writ — When will issue.

A writ of mandamus is a high prerogative writ, and by it the Court issues a command in order to remedy, a grave error or to set right in justice. The Court would never issue such a command unless it is certain that the command would be respected and carried out. **ILR (1952) Bom 785: 54 Bom LR 137: AIR 1952 Bom 277 (281) (Pt C) (Pr 7) (DB).**

——Art. 226 — Writ of mandamus — Condition for its issue.

The existence of a legal right or obligation is the foundation of every writ of mandamus. The applicant for an order of mandamus must show that there resides in him a legal right to the performance of a legal duty by the party against

whom the mandamus is sought. Jyoti Prokash Mitter v. Hon'ble Mr. Justice H. K. Bose, Chief Justice of High Court, Calcutta, **67 Cal WN 662: AIR 1963 Cal 483 (492) (Pt H) (Pr 49) (SB).**

——Art. 226 — Mandamus — Writ of — Object of, stated — Cannot rectify absence of remedy under common law — Specific Relief Act, S. 45. (1956) 26 Com Cas 431: 70 Mad LW 28: (1957) 1 Mad LJ 254: ILR (1957) Mad 383: AIR 1957 Mad 309 (317) (Pt F) (Pr 21) (DB).

——Art. 226 — Mandamus — Nature and scope of writ.

An order of mandamus is in form, a command directed to some inferior Court, tribunal or board or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law. It compels a tribunal to exercise a jurisdiction which it possesses but declines to exercise. **ILR (1957) Punj 152: 59 Punj. LR 272: AIR 1958 Punj. 168 (170) (Pt A) (Pr 6) (DB).**

233 (a). Specific Relief Act (1877), S. 45, powers under.

——Art. 226 — Scope — S. 45, Specific Relief Act — Difference — Principles under English law— Applicability.

Article 226 of the Constitution is wider in scope than S. 45, Specific Relief Act and empowers the High Court to issue a writ of mandamus for the enforcement of any of the fundamental rights conferred by Part III "and for any other purpose" that is to say, for the enforcement of ordinary legal rights and duties. The High Courts have to keep the broad and fundamental principles that regulate the exercise of the jurisdiction in the matter of granting writs under the English law. **ILR (1956) Andh Pra 480: 1956 Andhra WR 711: AIR 1957 A. P. 833 (835, 836) (Pt D) (Prs 6, 8) (DB).**

——Art. 226 — Scope — (Specific Relief Act (1877), S. 45).

Article 226 is certainly much wider in its scope and amplitude than S. 45 of the Specific Relief Act. **58 Cal WN 54: ILR (1954) 6 Assam 528: AIR 1954 Assam 65 (68, 69) (Pt F) (Pr 14) (DB).**

——Art. 226 — Power under — Not limited by Ss. 45, 46, Specific Relief Act — (Specific Relief Act (1877), Ss. 45, 46, 50). **AIR 1955 NUC (Cal) 2073.**

●——Art. 226 — Application under — Conditions appertaining to application under S. 45 of Specific Relief Act — If apply.

Article 226 of the Constitution has conferred almost unlimited powers on the High Court to make suitable orders or to give suitable directions which it can exercise in appropriate cases. The conditions appertaining to an application under S. 45 of the Specific Relief Act would not be strictly applicable to an application under that Article. Chairman, Budge Budge Municipality v. Mangru Mia, **57 CWN 25: AIR 1953 Cal 433 (441, 446) (Pt G) (Prs 28, 60) (SB).**

——Art. 226 — Mandamus — Writ for — English law — Specific Relief Act (1877) S. 45.

Before the Constitution the High Courts here could not issue any writ of mandamus after the Specific Relief Act of 1877 came into force. But the High Courts of Calcutta, Madras, Bombay and Rangoon could make orders under S. 45 of that Act for the enforecment of public duties. But in dealing with an application under S. 45 of the Specific Relief Act, the principles applicable to a writ of mandamus were generally followed. S. 45 of the Specific Relief Act has not been repealed by Art. 226 of the Constitution. That Article has enlarged the jurisdiction of these Courts for the issue of the writs mentioned in that Article. Our Constitution has adopted the nomenclature of the English writs and the English Law relating to these writs must govern the issue of the writs herein so far as they are not opposed to our Constitution. **1951-20 ITR 400: 56 Cal WN 232: AIR 1952 Cal 601 (602, 603) (Pt B) (Prs 9, 10) (DB).**

——Art. 226 — Mandamus, writ of — English principles of prerogative writ of Mandamus as embodied in Ss. 45 and 46, Specific Relief Act, should be followed in applications under Art. 226 — Petition not verified by affidavit of petitioner himself but by Tadbirkar of petitioner — Petition cannot be entertained — AIR 1951 Cal 396 and AIR 1947 Cal 307 Rel. on. **56 Cal WN 302: AIR 1952 Cal 72 (73) (Pt B) (Pr 11).**

——Art. 226 — Mandamus — Administrative direction — Enforcement by writ.

An administrative direction which creates a duty that is to be observed, can be enforced by Courts under S. 45, Specific Relief Act. The position is not different under Art. 226 of the Constitution, for rules regarding mandamus under S. 45 should be generally followed for mandamus under Art. 226: ILR 28 Cal 479 and AIR 1952 SC 16, Rel. on. **1960 Ker LJ 498: (1960) 1 Ker LR 610: 1960 Ker LT 543: ILR (1960) Ker 1006: AIR 1961 Ker 23 (25) (Pt B) (Pr 6) (DB).**

——Art. 226 — Mandamus — Jurisdiction, nature of — Refusal to make reference under S. 18, Land Acquisition Act — (Specific Relief Act (1877), S. 45) — (Land Acquisition Act (1894), S. 18).

The jurisdiction under S. 45 of the Specific Relief Act is a special jurisdiction conferred on the High Courts of Calcutta, Madras and Bombay. But the significance of such a special jurisdiction conferred on these three High Courts disappeared with the passing of the Indian Constitution. The power to issue a writ of mandamus is now possessed by all the High Courts in India by virtue of Art. 226 of the Constitution and a party aggrieved by a Land Acquisition Officer's wrongful refusal to make a reference under section 18 of Land Acquisition Act can invoke the aid of this Article and seek an order to compel him to make a reference. **ILR (1958) Ker 854: 1958 Ker LJ 1012: 1958 Ker LT 791: AIR 1959 Ker 136 (141) (Pt B) (Pr 6) (DB).**

——Art. 226 — Powers of High Court — Specific Relief Act (1877), Ss. 45 and 50.

Though S. 50, Specific Relief Act, lays down that nothing in the chapter would affect the power conferred on a High Court by Clause 1 of Art. 226 of the Constitution, and though as a first impression, it would appear as if the terms of Art. 226 are of much wider import and give almost unlimited power to issue a writ of mandamus against any person and under any circumstances and for any purpose whatever, it is now well established that the High Court can issue a writ of prohibition or mandamus only in accordance with the established principles and which are formulated in S. 45 of the Specific Relief Act. **(1956) 26 Com. Cas. 431: ILR (1957) Mad 383: 70 Mad LW 28: (1957) 1 Mad LJ 254: AIR 1957 Mad 309 (314) (Pt B) (Pr 8) (DB).**

——Art. 226 — Principles of mandamus — See Specific Relief Act (1877), S. 45. **AIR 1955 NUC (Mad) 3915.**

——Art. 226 — Mandamus — (Specific Relief Act (1877), S. 45).

A petitioner applying for issue of a writ of mandamus under Art. 226 must be able to bring his case within the principles underlying S. 45 of the Specific Relief Act. Case-law discussed. **ILR (1953) Punj 472: AIR 1953 Punj 137 (144) (Pt E) (Pr 27) (DB).**

——Art. 226 — Principles for issue of writs.

Per Soni J.: S. 45 Specific Relief Act lays down good conditions to be fulfilled before a writ can be issued even under the Constitution of India, Art. 226 has not varied in any manner the principles under which the writs were issued. **22 Comp Cas (Ins) 33: ILR (1952) Punj 11: AIR 1952 Punj 9 (30) (Pt M) (Pr 127) (DB).**

233 (b). Principles applicable.

——Art. 226 — Mandamus — Nature of writ — Principles governing the issue of.

Mandamus is a writ which compels a person to perform a duty the law has imposed on him and it can be used to order things to be done as well as not to be done. The issue of the writ is entirely discretionary with the Court, and this being so, it is open to a Court to refuse it in cases where, for example, a Court of equity would in the exercise of a sound discretion refuse to lend its protection. Essentially the purpose for which a mandamus exists is to ensure that justice is done in all cases where there is specific legal right, and no specific legal remedy exists. For the enforcement of such rights, it is issued as a rule only in those cases where there is no legal remedy of an equally convenient, beneficent and effectual nature. Asiatic Engineering Co. v. Achhru Ram, **1951 ALJ 576: ILR (1952) 2 All. 838: AIR 1951 All 746 (768) (Pr 56) (FB).**

——Art. 226 — Before mandamus can issue petitioner must show that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought. **AIR 1954 Assam 74 (75) (Pt A) (Pr 5) (DB).**

——Art. 226 — Mandamus, writ of — When can be issued — Duty of High Court.

A writ of mandamus is ordinarily issued to a public officer in order to compel him to discharge his statutory obligations, and before a Court would issue such a writ it must ascertain what the statutory obligations of the public officer are and whether he has failed to discharge those obligations.

If the High Court finds that the public officer has discharged its duty under the statute and what the court is called upon to do upon a petition for writ of mandamus is to substitute its own decision for that of the officer; it will refuse to issue the writ. A petition for mandamus does not constitute the Court which issues the writ a Court of appeal from the decision of the public officer against whom the writ is intended to be directed. **54 Bom LR 137: ILR (1952) Bom 785: AIR 1952 Bom 277 (280, 281) (Pt B) (Pr 6) (DB).**

——Art. 226 — Mandamus — Foundation for — Departmental instructions — Suspension under — Specific order — Necessity for — Post and Telegraphs Manual, Vol. II, Appendix 3, Section IV.

By mandamus the Court will enforce statutory rules or rules which have the force of a statute, mere departmental instructions cannot be the foundation for the issue of mandamus.

The rules contained in the general regulations of Vol. II of the Posts and Telegraphs Manual are not statutory rules which have the force of a statute and the position under the rules which are found in section IV in Appendix 3 of Vol. II, is that a Government servant against whom proceedings have been taken for arrest for a debt or for a criminal charge, is automatically considered to be under suspension, during the time he is detained in custody or is undergoing imprisonment. But if he is to be suspended for a period during which he is not in custody or undergoing imprisonment, it is necessary to make a specific order to the effect, "during the period he is actually detained in custody or imprisoned."

Where a person was suspended inasmuch as he was arrested and the memorandum directing his suspension was on the footing that he was arrested by virtue of certain charges having been preferred against him:

Held, that the order could not be taken to be a specific order which directed his suspension during a time when he was not detained in custody or imprisoned. A specific order was therefore necessary for a suspension during the period when he was not actually detained in custody or imprisoned. There was no such order. Therefore he could not be taken to be under suspension after the period of his detention in custody or imprisonment. **ILR (1956) 1 Cal 255: 58 Cal WN 656: AIR 1955 Cal 365 (365, 366) (Prs 2, 3).**

——Art. 226 — Mandamus — Writ to do impossible act — Issue of.

It is one of the fundamental principles of issuing a writ of mandamus that a public officer should not be commanded to do something which it is impossible for him to perform. **ILR (1955) 2 Cal 470.**

——Art. 226 — Mandamus, writ of — Conditions for issue of, stated. **ILR (1953) Myd. 665: AIR 1954 Hyd 25 (27, 28) (Pt C) (Pr 5) (DB).**

——Art. 226 — Foundation for writ of mandamus is existence of a legal right in the petitioner — Petition for writ is not entertained merely on the ground that a public authority had a statutory or public duty to perform though the petitioner had no specific right in that behalf — AIR 1962 SC 1210, (1897) 1 QBD 498 (500-1), (1907) 2 KB 764 and AIR 1951 SC 46 (52), Rel. **1965 MPLJ (Notes) 111.**

——Art. 226 — Mandamus — Writ of — Nature and scope — Conditions for issue — Legal remedy available but not immediately or at the moment — Risk of loss incapable of being compensated in money — Jurisdiction to issue writ.

A writ of mandamus is a most extensive remedial measure. Its purpose is to supply defects of justice and it will issue to the end that justice may be done in all cases where there is a specific legal right and no specific legal remedy for enforcing such right, and it may issue in cases where, although there is an alternative legal remedy, yet such mode or redress is less convenient, beneficial and effectual.

Where the lessees of certain coal mines were served with notice by the State Government to quit and deliver vacant possession within a fortnight, after cancelling the mining leases granted to them, it cannot be said that they have been left an opportunity to do necessary preliminaries that they have to do before they can sue the Government in a competent civil Court im-

mediately or at the moment. The alternative of vacating the mines will cause them irreparable loss and irremediable loss of possession of the mining leases involving huge waste of labour, machinery and other resources of equipments of immense value hardly capable of being remedied by money compensation in case of success in the long run in establishing their right to remain in possession. In the circumstances therefore, the Court issued a writ against the Government directing them till three months or one week after the institution of a regular suit, to refrain from disturbing the applicants' (lessees') possession over the mining areas, and to permit the applicants to operate the mines in the usual manner subject to certain conditions as to the payment of rents and royalties, prevenion of devastation or damage, observance of rules and regulations and indemnity to make good the loss to Government in case Government succeeded in the long run, as well as the giving of security. I. A. Supp. Vol. 10 (17). Ref. **ILR (1951) Cut 398.**

[Reversed in AIR 1952 SC 12].

——Art. 226 — Mandamus — Nature of remedy — Writ to restrain action by Government.

Mandamus is a positive or remedial process, not a negative or preventive one. It is not the province of mandamus to prohibit the passing of an order or to review one which has already been passed, or to undo an act which has already been performed, or to revise action which has already been taken, or to restrain or prevent an improper interference with the rights of petitioners. It is a coercive and not a corrective writ. It cannot lie to restrain action and cannot compel the State Government to recall an order of reference such as of an industrial dispute which has already been made by it in exercise of the powers conferred by law. **60 Punj LR 425 : (1958-59) 15 FJR 49: (1959) 1 Lab LJ 274: ILR (1958) Punj 2061: AIR 1959 Punj 75 (80) (Pt F) (Pr 15) (DB).**

——Art. 226 — Mandamus — Who can apply for.

A writ of mandamus is controlled by equitable principles and can be issued only in favour of a person who comes into Court with clean hands and who is not guilty of fraud or bad faith in respect of the matters in controversy between the parties. **59 Punj LR 259 : ILR (1957) Punj 168: AIR 1957 Punj 220 (221) (Pt A) (Pr 3) (DB).**

——Art. 226 — Mandamus.

Where an act is specially enjoined by law, the manner of performance of which involves judicial action, mandamus will lie to compel performance of the act but not to compel performance in any particular manner. In other words, the office of mandamus is to compel the exercise of judicial action not to determine in advance what the action shall be. (Principles under which a writ of mandamus is issued stated). **55 Punj LR 304: ILR (1954) Punj 225: AIR 1953 Punj 225 (226) (Pt A) (Pr 4) (DB).**

——Art. 226 — Mandamus writs — When to issue.

A writ of mandamus can be issued only when an authority under an obligation to perform a legal duty fails to perform it. Mandamus does not lie in a case where the authority has functioned and the only criticism is that the order passed is unsustainable on the merits. What the Court can do is only to direct the authorities to do their duty if they have declined to do it. It is beyond the competence of the Court to direct the authorities to do the duty in a particular manner as in that case the Court would be **appropriating to itself the jurisdiction of the authorities which the law does not allow. 1953 Ker LT 170 : ILR (1953) TC 52 : AIR 1954 Trav-Co 114 (115) (Pr 4).**

234. Demand and refusal of relief.

See also Note 36.

(a) Absence of, if absolute bar to application.

(b) Implied.

(c) Proof of.

234. Demand and refusal of relief.

See also Note 36.

——Art. 226 — Administrative order — Before a writ of mandamus is issued the High Court must be satisfied that the petitioner approached the proper authorities for the redress of his grievance. AIR 1958 SC 1018, Rel. on. **AIR 1961 All 92 (93) (Pt C) (Pr 8).**

——Art. 226 — Powers of High Court — No prior demand by petitioner for relief — If bar to issue of writ.

The requirement of a demand by a person who seeks the issue of a writ of mandamus is necessary where that person seeks to compel a public authority or a public body to perform its duties under the statute. But where what the petitioner is seeking is not a demand for the performance of a duty but the issue of an appropriate writ, order or direction restraining a public body like a municipal corporation from doing an act which according to him, is in contravention of the statute, what the petitioner is seeking is not a writ of mandamus. If the Court comes to the conclusion that the petitioner is entitled to have his grievance removed, then it has the power to issue an appropriate writ or order though it may not strictly be a writ of mandamus. AIR 1950 SC 163, Rel. on. **1959 Nag LJ 263 : 61 Bom LR 1299: ILR (1959) Bom 1736: AIR 1959 Bom 458 (459, 460) (Pt B) (Prs 6, 8) (DB).**

[**Reversed** on another point in AIR 1963 SC 897.]

●——Art. 226 — Demand and refusal of justice — If condition precedent to order being made.

The Court should of its own motion put limitations upon the wide powers conferred upon it under Art. 226 of the Constitution. While in a case of urgency, where an immediate order may be necessary, the Court may not insist upon conditions similar to those laid down in S. 46, Specific Relief Act, namely, a demand for justice and its denial before an order can be made, in ordinary cases the Court must insist upon compliance with those conditions. While the Court must be anxious to protect the fundamental rights of the citizens, it should also give an opportunity to Government to comply with the requirements made by citizens before it is dragged to Court. 52 Bom LR 544, Ref. Nusserwanji Balsara v. State of Bombay, **ILR (1951) Bom 17 : 52 Cr LJ 80: 52 Bom LR 799: AIR 1951 Bom 210 (225, 226) (Pt P) (Pr 28) (FB).**

[Partly **Reversed** in AIR 1951 SC 318.]

——Art. 226 — Mandamus — For issue of mandamus a demand for justice and its refusal is a condition precedent. In the case of a statutory body a demand of justice from such a statutory body would take the form of a letter or petition or something of the sort. **60 Cal WN 13: AIR 1956 Cal 490 (492) (Pt A) (Pr 4).**

——Art. 226 — Mandamus — Demand for justice.

Where the authority which can amend the

electoral roll is the registering authority there must be demand of justice from the registering authority. **AIR 1956 Cal 456 (458) (Pt D) (Pr 6).**

——Art. 226 — Demand of justice and failure.

Where issue of a writ in the nature of mandamus is asked for, there must be an averment of a demand of justice having been made and its refusal. AIR 1951 Cal 396; AIR 1952 Cal 601, Rel. on. **AIR 1953 Cal 756 (756) (Pt A) (Pr 3).**

——Art. 226 — Writ of mandamus — Requirements.

A demand for performance of a legal duty and its refusal is ordinarily a condition precedent to the maintainability of a petition for a writ of mandamus. **AIR 1951 Him Pra 36 (40, 41) (Pt C) (Prs 11, 13).**

——Art. 226 (1) — Writ of mandamus — Conditions for issue.

In order that a writ of mandamus may issue there must be a legal and specific right in the applicant which can be enforced and there must be a deprivation of that right and ordinarily this writ will not be issued where there exists an alternative remedy equally sufficient and adequate. There must also be the possibility of effective enforcement of the writ and a sufficient demand to perform the act sought to be enforced and non-compliance thereof should also be proved before a prayer for writ of mandamus can be entertained. **AIR 1955 Manipur 49 (53) (Pt B) (Pr 11).**

——Art. 226 — Mandamus, when can be issued— Previous demand and refusal necessary.

An application for mandamus must always be preceded by a demand and a refusal. Where there was no demand by the servant that he should either be declared as suitable for employment in a quasi-permanent capacity or that his case for employment in a quasi-permanent capacity should be considered under the first instruction of the instructions regulating the declaration to be made under R. 3 (ii) of the Central Civil Services (Temporary Service) Rules (1949), the application for mandamus does not lie, and cannot, therefore, be considered. **ILR (1961) Mys 1129.**

——Art. 226 — Mandamus, writ of, requires demand and refusal — In the absence of proof of this, writ of mandamus will not lie. AIR 1951 Cal 396, Rel. on. **55 Punj LR 279: ILR (1953) Punj 279: AIR 1953 Punj 30 (33) (Pt B) (Pr 24) (DB).**

[**Overruled** on another point in AIR 1963 Punj 9.]

——Art. 226 — Mandamus — There must have been a definite demand and a definite refusal before a writ of mandamus can be granted. **54 Pun LR 236: AIR 1952 Punj 351 (353) (Pt C) (Pr 9) (DB).**

——Art. 226 — Writ of mandamus — Demand of performance of duty and its refusal should precede. AIR 1955 Tripura 33 (35) (Pt B) (Prs 7, 9).

234 (a). Absence of, if absolute bar to application.

——Art. 226 — Mandamus — Demand and refusal of relief — Circumstances rendering formal demand impossible — Petition maintainable. 67 Cal WN 460: AIR 1963 Cal 565 (569, 570) (Pt B) (Prs 15, 16).

——Art. 226 — Mandamus — Demand and refusal of relief — Necessity — Petition asking for writ in the nature of mandamus against Municipal Corporation — No demand in writing for justice upon Corporation made — Petition must fail in limine. **65 Cal WN 339: AIR 1961 Cal 389 (391, 392) (Pt B) (Pr 1).**

——Art. 226 — Mandamus — Conditions — Demand for justice — Absence of — When fatal. **64 Cal WN 134: ILR (1960) 2 Cal 572: AIR 1960 Cal 102 (112) (Pt D) (Pr 24).**

——Arts. 226, 310 and 311 — Mandamus — Issue of writ — Termination of service of Government servant — Demand for justice is essential condition. (1959) 1 Lab LJ 141: 62 Cal WN 352: AIR 1958 Cal 654 (655) (Pt A) (Prs 6, 7).

——Art. 226 — Mandamus — Demand of relief — Necessity — Form of demand.

The rule requiring that a demand for justice should be made before a party moves the Court for a writ of mandamus is to ensure that the respondent got an opportunity of knowing what was required of him to do and for deciding whether he would do it of his own motion without being compelled by the Court. It is no objection to the application for a writ that no formal demand had been made. **ILR (1959) 1 Cal 91: AIR 1958 Cal 219 (221, 222) (Pt A) (Pr 7) (DB).**

——Art. 226 — Mandamus — Demand of relief — Breach of public duties — Where there has been a breach of a public duty on the part of State or a Public Officer, affecting, by its consequence, the general interests of the public and where such duty is one imposed by a statute, it is not necessary that a demand for justice should be made before the Court is moved for relief against the breach by way of a writ of mandamus. If the performance of the duty sought to be enforced is of such a character that it cannot be expected to be performed unless it is demanded, a demand is essential; and so also is a demand essential where the proper mode of performance is doubtful and, therefore, a demand specifying the proper mode is required before mandamus can be granted. **ILR (1959) 1 Cal 91: AIR 1958 Cal 219 (222, 223) (Pt B) (Prs 9, 14) (DB).**

——Art. 226 — Mandamus — Petition for — Absence of demand for justice and denial thereof— Effect.

In a petition for mandamus the petitioner must state his rights in the matter in question, his demand for justice and the denial thereof is not merely a technical point but a point of substance. The idea underlying the making of demand is that the authorities may have an opportunity of redressing the wrong. AIR 1952 Cal 601 and AIR 1952 SC 16, Rel. on

Held, on facts that in absence of any valid excuse for not complying with this salutary rule of law the petition was not maintainable. **60 Cal WN 917: (1957) 1 Lab LJ 69: AIR 1956 Cal 532 (535) (Pt A) (Prs 9, 11).**

——Art. 226 — Issue of writ of mandamus.

Before a writ of mandamus can issue it must be shown that there is a distinct demand of that which the party seeking the mandamus desires to enforce and that such demand was met by a refusal. This is not merely a technical point but a point of substance. AIR 1952 Cal 601, Rel. on.

Where there is no specific pleading or any evidence to show that any such demand was made and the demand was refused, no relief can be

granted to the petitioner by the issue of a writ of mandamus. AIR 1953 Cal 581 (583) (Pt B) (Prs 9, 10).

——Art. 226 — Mandamus — Writ for — When may be issued.

The petitioner was the Manager and Director of a company. He was getting a certain amount of salary and commission. He was assessed to income-tax and super-tax. The Income-tax Officer under Section 40 (2) of the Income-tax Act forwarded to the Collector a certificate under his signature specifying the amount of arrears due from the petitioner. The Collector proceeded to recover from the petitioner the amount specified in the certificate and certificate proceedings under the Public Demands Recovery Act were taken. Pending these proceedings on the 18th March 1949 the Income-tax Officer issued notice under S. 46 (5-A) of the Income-tax Act.

By issuing notice under this section the Income-tax Officer effectually stopped payment by the Company to the petitioner. In these circumstances the petitioner made an application to the Certificate Officer for allowing the petitioner to pay the amount due by monthly instalments. The instalment order was made without giving a hearing to the Income-Tax Officer. The petitioner's advocate informed the Income-tax Officer that the Certificate Officer had granted instalments to his client and requested him to withdraw all notices under S. 46 (5-A). The petitioner then askd for issue of a writ of mandamus or a writ of a like nature, of an order directing the Income-tax Officer to show cause why the order dated the 18th March 1949 should not be set aside.

Held, that the notice under section 46 (5-A) of the Income-tax Act was not a judicial or quasi-judicial act. It was an administrative act. Therefore, if the circumstances warranted it the proper writ would be a writ of mandamus.

However in a petition for mandamus the petitioner must state his rights in the matter in question, his demand of justice and the denial thereof. In this case the petitioner never asked the Income-tax Officer to do what he prayed for in the petition for mandamus. His demand was to withdraw the notice under S. 46 (5A). It was not to accept payment by instalments. There was no previous demand or refusal of the right which the petitioner sought to enforce in the High Court.

This was not merely a technical point but was a point of substance which must be taken into consideration when the Court issues a writ of mandamus. It would not be consistent with justice in circumstances of this case to issue the writ of mandamus. The granting of this writ is a matter for discretion with the Court and the Court must take into consideration all the circumstances of the case before it exercises its discretion. Therefore the Income-tax Officer should not be required to amend or modify the notice under S. 46 (5A) or to accept payment of the arrears due from the petitioner by instalments. **1951-20 ITR 400: 56 Cal WN 232: AIR 1952 Cal 601 (605, 606) (Pt A) (Prs 40, 41, 44, 45) (DB).**

——Art. 226 — Mandamus, writ of — Petition not clearly setting out that there was any demand or refusal of the relief asked for before application for mandamus was made — Petition cannot be sustained. **56 Cal WN 302: AIR 1952 Cal 72 (73) (Pt D) (Pr 14).**

——Art. 226 — Application under Art. 226 for Issue of writ of mandamus — Absence of allegation of demand of justice and its refusal in petition is fatal to its maintainability. AIR 1951 Cal 396, Foll. **('51) 55 Cal WN 583: (1951) 2 STC 111.**

——Art. 226 — Writ of mandamus — Issue of — Failure to demand justice — Specific Relief Act (1877), S. 45.

Where the petitioner, being aggrieved by the order of the Health Minister of the State moved the High Court for a writ of mandamus without first approaching the Health Minister for a demand of justice and contending that in view of the stubborn attitude of the Health Minister it was meaningless to approach him for justice and that the act of the petitioner in asking the Health Minister to give him an opportunity of being heard by counsel was itself a demand of justice, Held, negativing the contentions, that the petitioner having failed to fulfil the essential requirement of a demand of justice, the petition for the issue of a writ of mandamus was not maintainable. **ILR (1952) Madh Bha 231: AIR 1950 Madh B 46 (52) (Pt H) (Pr 14) (DB).**

——Art. 226 — Mandamus — Demand for redress — If condition precedent.

Demand is not an absolute legal necessity before a petition for a writ under Art. 226 can be entertained. **AIR 1959 Manipur 1 (8) (Pt C) (Pr 39).**

——Art. 226 — Mandamus — Issue of writ — Previous demand — Tenancy ended by conduct — Tenant expanding munz on land — Idea of permanency of tenancy implicit in contract — Govt. ejecting tenant — Remedy by way of suit after notice under S. 80 Civil P. C. not equally convenient, beneficial and effectual — Govt. determined to evict — Previous demand would have been useless — Demand is not absolute legal necessity before petition for writ of mandamus can be entertained — Petition cannot be refused because there was no previous demand and refusal. See Transfer of Property Act (1882), S. 105. **AIR 1958 Manipur 31.**

——Art. 226 — Mandamus, writ of — Demand and refusal of justice not established — Writ cannot be issued. **1962 Mys LJ (Supp) 510 (DB).**

——Art. 226 — Petition for writ of mandamus — No demand or refusal under impugned Act — Application whether maintainable.

Per Mangalmurti and Mudholkar, JJ.:— Ordinarily before a person petitions for a mandamus to enforce the performance of a public duty or makes some other demand, he must show that he had made such a demand from the appropriate authority and that the demand was refused or not met. This is however, not an inflexible rule. So, when in the particular circumstances such demand could not have been met, the absence of a demand has been held to be immaterial.

Thus where a petitioner applies under Art. 226 for a writ of mandamus directing the State Govt. not to enforce against him the C. P. and Berar Prohibition Act, 1938, or some sections thereof and to withdraw and cancel certain rules and notifications thereunder and it was found that he had not done any act under the Act nor was any action taken under the Act to his detriment and that there was no demand and refusal of a permit under the Act to him.

Held, that what the petitioner sought was something which the State Govt. or its agencies could not as things stood, be expected to comply with and hence, in the circumstances of the case, it

being idle for him to make a demand upon them the absence of demand did not affect the tenability of the petition.

Per Hidayatullah J.:— The mandamus could not issue unless there was demand and a refusal or some act or omission is to be ordered and hence the application should be dismissed. Sheoshankar v. State Govt. of Madhya Pradesh, **52 Cri LJ 1140: ILR (1951) Nag 646: AIR 1951 Nag 58 (69, 79) (Pt D) (Prs 65, 143) (FB).**

——Art. 226 — Tolls of ferry — Public auction — Highest bidder — Competency to apply for writ — (Bengal Ferries Act (1 of 1885) S. 9).

It is true that the advertisement of a sale by public auction does not amount in law to a contract with any one who might act upon the advertisement. But where the highest bidder at an auction sale of tolls of a ferry deposits the whole amount of the bid and executes a registered kabuliat, but the Magistrate rejects his bid and makes a private settlement, the bidder is competent to apply for a writ of mandamus to get the settlement cancelled, even though he did not make a formal demand for performance of duty on the part of the Magistrate. **1953 BLJR 686: 32 Pat 1129: AIR 1954 Pat 235 (237, 238) (Pt B) (Prs 9, 11) (DB).**

——Art. 226 — Writ of mandamus — Demand of performance of duty when may not be made.

There are certain cases in which previous demand, which is a condition precedent for a writ of mandamus, may not be possible or sometimes may not be necessary and these cases can be (1) where it appears that a demand would be unavailing, it need not be made; (2) where the respondent has by his own conduct made a demand impossible; (3) where the duty sought to be enforced is of a public nature affecting the people at large and there is no one especially empowered to demand performance; (4) where the duty is imperatively required by law of ministerial officer particularly where respondent has done an act which he calls a performance; and (5) where a person has by inadvertence omitted to do some act which he was under a duty to do and where time within which he can do it has passed. **AIR 1955 Tripura 33 (35) (Pt C) (Pr 10).**

234 (b). Implied.

——Art. 226 — Mandamus — Demand and refusal of relief — No order passed on application — Writ petition, if premature.

Held, on facts that when the earlier petition for registration under the Post Offices Act was rejected as being infructuous, the petitioner was permitted to file a fresh petition and it is also clear from the attitude adopted by the opposite parties in the past that they had come to the conclusion that the periodicals did not fulfil the requirements of S. 9 and consequently there was no possibility of the petitioner's application being considered on its own merits. **ILR (1957) 2 All 328: AIR 1957 All 662 (664) (Pt A) (Pr 4).**

——Art. 226 — Mandamus — When can issue — Dereliction of duty on part of municipality — Mandamus against — Madras District Municipalities Act (5 of 1920) Ss. 250 and 321 (ii) — Application for permission to instal machinery— Failure to reply by municipality — Effect. **(1958) 2 Andh WR 187: 1958 Andh LT 681: AIR 1959 Andh Pra 460 (460, 461) (Prs 6 to 11).**

——Art. 226 — Mandamus — Demand of justice and refusal.

If there was substantially a demand of justice and refusal, that would be sufficient. **58 Cal WN 617: AIR 1955 Cal 72 (75) (Pt F) (Pr 19).**

——Art. 226 — Demand of justice and refusal thereof — Inference of refusal.

In order to succeed in an application under Art. 226 the petitioner should show that there was a demand of justice and refusal thereof. But it is not necessary that the word "refuse" or any equivalent to it should be used. It is enough to show that the party withholds compliance and distinctly determines not to do what is required of him. Refusal may be inferred from conduct. 40 Cal LJ 44, Rel. on. **AIR 1951 Cal 570 (573) (Pt B) (Pr 16).**

——Art. 226 — Mandamus — Demand and refusal of relief.

There is no doubt that in a case of a writ of mandamus a demand for relief from the authorities against whom he has made the application should be made. Where, however, the petitioner had made repeated representations, which constituted demand for justice before petitioning for a writ of mandamus, he had complied with this requisite. **AIR 1956 Tripura 9 (12) (Pt B) (Prs 17, 18).**

234 (c). Proof of.

——Art. 226 — High Court has no jurisdiction to issue mandamus contrary to law. **1959 All LJ 567.**

——Art. 226 — Mandamus — Issue of writ — Grounds for — Demand and refusal.

One of the conditions for the grant of relief of mandamus is that there must have been a demand for the relief and its refusal by the authority concerned. The plea is not one of form but of substance. It is sufficient if there is in substance a demand and refusal may be inferred from conduct, no particular form or language being necessary. A demand is not required where it is manifest that it would be but an idle ceremony.

Held, that the prior institution of suit by the applicants for an injunction, to restrain the respondent from holding elections and the contest made by the respondent for the grant of interim injunction in that suit, was a sufficient demand and refusal. **1956 Andhra WR 711: ILR (1956) Andh Pra 480: AIR 1957 AP 833 (837) (Pt F) (Prs 15, 17) (DB).**

——Art. 226 — Petition for writ of mandamus — When may be entertained, pointed out — Duty of Court stated. AIR 1947 Cal 307, referred to. **55 CWN 255: AIR 1951 Cal 396 (397) (Prs 6, 7) (DB).**

——Art. 226 — Writ of mandamus — Demand for justice and denial — Failure to prove — Specific Relief Act (1877), S. 45.

Per Mehta J.:— The petition for a writ of mandamus and the affidavit should state in clear and unequivocal terms the demand for justice and the denial thereof. Where the petitioner fails to prove this, the petition is defective. **ILR (1952) Madh Bha 231: AIR 1950 Madh B 46 (54) (Pt L) (Pr 22) (DB).**

——Art. 226 — Writ of mandamus — Demand for justice must be independent of motion for writ of mandamus — Specific Relief Act (1877), S. 45. **ILR (1952) Madh Bha 231: AIR 1950 Madh B 46 (54) (Pt M) (Pr 22) (DB).**

——Art. 226 — Mandamus — Demand and denial of right must be prior to application for mandamus. 1956 Cr LJ 252: AIR 1956 Manipur 11 (12) (Pt C) (Pr 6).

——Art. 226 — Writ of mandamus — Petitioner has to show that he had made demand for justice — Refusal may be implied from facts stated. ILR (1952) Patiala 392: AIR 1952 Pepsu 152 (154) (Pt A) (Prs 7, 9) (DB).

235. Discretionary matters.

(a). Correctness of decision not to be questioned.

(b). Power coupled with duty.

235. Discretionary matters.

——Art. 226 — Writ of mandamus — Court's discretion — Election of Speaker.

The relief of writ of mandamus is discretionary with the Court. This discretion should not be exercised in the matter of election such as that of a Speaker of an Assembly in a manner that will make the will of the minority prevail over that of the majority even if for a short period. AIR 1946 Cal 121, Rel. on. **AIR 1955 Ajmer 33 (38) (Pt E) (Pr 19).**

——Art. 226 — Natural justice — Motor Vehicles Act (1939), S. 57 — Oral allegation against rival applicant — R. T. A. acting on such allegations — Tribunal setting aside those findings — Discretion of Tribunal — High Court cannot interfere under Art. 226. AIR 1965 All 194 (195, 196) (Pr 9).

——Art. 226 — U. P. Imposition of Ceiling on Land Holdings Act (1 of 1961) — Exemption of sugarcane plantations under S. 6 (vi) is in discretionary powers of State — Writ of mandamus cannot be issued. 1963 All LJ 793: 1963 All WR (HC) 669: ILR (1964) 1 All 211: AIR 1965 All 175 (182) (Pt K) (Pr 35) (DB).

●——Art. 226 — Writ Petition under — Existence of alternate remedy — Important questions involved in the matter — Correct decision by lower appellate Court — Petition need not be entertained. Per Desai C. J. Baburam Ashok Kumar v. Antarim Zilla Parishad, **ILR (1964) 2 All 76: 1964 All WR (HC) 167: 1964 All LJ 353: AIR 1964 All 534 (535) (Pt E) (Pr 9) (FB).**

——Art. 226 and Art. 311 (2) — Mandamus — Government servant — Fixation of his seniority in cadre — No law as to — It depends upon discretion of Government — No writ of mandamus can be issued. ILR (1961) 1 All 940: AIR 1963 All 358 (360) (Pt A) (Prs 5, 6).

——Art. 226 — Writ of mandamus — Under Excise Rules, acceptance of bid and the grant of licence is in the discretion of Excise authorities— Writ not proper even if rules were not merely executive directions but had statutory force. **ILR (1962) 2 All 409.**

——Art. 226 — Scope — Writ to compel Government to issue licence — Mining licences — Government deciding not to grant mining leases at all — Government cannot be compelled to grant leases. See Mineral Concession Rules (1949), R. 18. **AIR 1960 All 570.**

——Art. 226 — Mandamus — Writ of — Mandamus ordering District Magistrate to sell books containing forms — Police Regulations, Para 183 (ii).

Under Para. 183, Sub-Cl. (ii) of the Police Regulations, the District Magistrate cannot be compelled to sell the books containing form No. 54 to any party, nor can any party claim an unqualified right to obtain these forms from the District Magistrate. Hence, the issue of a writ of mandamus ordering the District Magistrate to sell the said books to the petitioner is not justified by the rule. **1960 All WR (HC) 563: 1960 All Cr R 358: 1960 All LJ 761.**

——Art. 226 — Powers of High Court.

The High Court cannot in the exercise of its writ jurisdiction issue any order to an authority to exercise its discretion in a particular manner. **1957 All LJ 493.**

——Art. 226 — Mandamus — Against whom can issue — Writ cannot issue against opposite parties directing them to modify list of seniority of drivers of Locomotive Running Staff. **AIR 1955 NUC (All) 5818.**

——Art. 226 — Making of report under S. 16, U. P. Industrial Disputes Act, 1947 — Discretion of District Magistrate — It is an administrative act — Not statutory duty — No writ can be issued. See U. P. Industrial Disputes Act (XXVIII of 1947), S. 16. **AIR 1955 NUC (All) 3544.**

——Art. 226 — U. P. Industrial Disputes Act (XXVIII of 1947), Ss. 3, 4 and 8 — G. O. No. 615 dated 15th March, 1951, Cl. 10 — Power of Government to refer dispute for adjudication is discretionary — Exercise of discretion not arbitrary — Writ of mandamus cannot be issued. **AIR 1955 NUC (All) 1764.**

——Art. 226 — Mandamus in discretionary matters — High Court when will not interfere.

In a petition to the High Court to issue a writ of mandamus to the State Government directing it to issue a notification under section 1 (3) of the Bar Councils Act, 1926, applying the provisions of that Act to the High Court: it was held that the High Court cannot do so as the State Government has a discretion in the matter and that it is not obligatory on the State Government to make the requisite notifications. **1954 All LJ 400: 1954 Cr LJ 1498: AIR 1954 All 735 (735, 736) (Pt B) (Prs 1, 5) (DB).**

[**Overruled** on another point in AIR 1955 All 269 (FB).]

——Art. 226 — Mandamus, writ of — Mandamus where duty is discretionary — U. P. Agricultural Income-tax Act (III of 1949), S. 6 (1) Proviso.

It may be that while an officer may, in certain extraordinary circumstances, be compelled by mandamus to exercise his discretion one way or the other and not just simply refuse to act at all yet after he has honestly and reasonably exercised his discretion, mandamus will not lie where the act is truly discretionary, to control that discretion, as to the particular manner of performance, even though the discretion be erroneously exercised, for there is no method of review or correction provided by law to control such a discretion. The writ of mandamus can never be used as a substitute for appeal or what has been called in America a "writ of error".

Where the Senior Member, Board of Revenue, had exercised his discretion to grant permission under S. 6 (1) Proviso, U. P. Agricultural Income-Tax Act (III of 1949) to make a change in the method of computation of income for purposes of the Act, honestly and on a full consideration of the materials before him and had refused permission, there is no scope for the High Court to interfere by means of the writ of mandamus. **1952 All WR (HC) 517: 1952 All LJ 557: ILR**

(1953) 1 All 817: AIR 1953 All 25 (29, 30) (Pt G) (Prs 26, 27) (DB).

——**Art. 226 — Mandamus, discretionary remedy.**

A writ of mandamus is a discretionary remedy and cannot be claimed as a matter of course or of right. **(1964) 2 Andh WR 375.**

——**Art. 226 — Mandamus — Discretion — Amendment of date of birth — Government of India Act (1919), S. 96-B — Fundamental Rules, R. 74 (a) (IV) and note.**

If the statute imposes a duty and the particular claimant has corresponding rights to enforce, mandamus would be issued. On the other hand, where the particular provision only confers discretionary powers, different considerations would arise. The word 'can' in the note to R. 74 (a) (IV) cannot be construed as creating an obligation: it merely confers a power to amend the mistake as to date of birth entered in the service book. Hence, mandamus would not lie to enforce the exercise of this power or discretion unless there is wrong exercise of discretion. **(1959) 2 Lab LJ 567: AIR 1960 Andh Pra 363 (364) (Pt B) (Pr 4).**

——**Art. 226 — Mandamus — When can issue.**

A mandamus cannot be claimed as of right, nor need such a writ issue for every omission or irregularity even when it cannot be shown to have affected the jurisdiction or the merits of the case. The granting of relief by way of extraordinary writs is discretionary. The writ of mandamus is not a writ of right and the Court cannot be oblivious to the facts of the case. 59 Cal WN 373, Relied on. **(1956) 29 ITR 122: ILR (1955) 7 Assam 362: AIR 1955 Assam 201 (209) (Pt D) (Pr 22) (DB).**

[**Reversed** on another point in AIR 1961 SC 1579].

——**Art. 226** — Mandamus — Writ or order under Art. 226 can be issued to secure licence under S. 38, Calcutta Police Act. See Calcutta Police Act (IV of 1866), S. 39. **1965 (1) Cri LJ 679: AIR 1965 Cal 312 (DB).**

——**Art. 226** — Administrative act — Grant of licence by Commissioner, under S. 39, Calcutta Police Act, is administrative and not quasi-judicial act — Not mandatory on Commissioner to give hearing to applicant — Grant is discretionary with Commissioner — Discretion if based on considerations extraneous to Act mandamus would lie — (Calcutta Police Act (IV of 1866), S. 39): AIR 1961 SC 705, Rel. on. **1965 (1) Cri LJ 679: AIR 1965 Cal 312 (317) (Pt A) (Pr 7) (DB).**

——**Art. 226** — Mandamus — Application to renew licence of eating house under S. 39, Calcutta Police Act — Refusal by Authority — Prayer under Art. 226 to re-examine facts and direct issue of mandamus — Held, High Court would not examine facts as Court of Appeal: AIR 1954 SC 217, Foll. **1965 (1) Cri LJ 679: AIR 1965 Cal 312 (328) (Pt B) (Pr 70) (DB).**

——**Art. 226** — Mandamus — Refusal of Police Commissioner to issue licence under S. 39 of Calcutta Police Act for running boarding and eating house — Use of discretion by Police Commissioner — Petition for issue of writ of mandamus — Duty of Court — Court has only to see whether there were materials for the exercise of proper and reasonable discretion by the Commissioner — Order refusing or granting licence is an administrative order — The discretion spoken of is dependent on the subjective satisfaction of the Commissioner as to whether the conditions in the section are duly satisfied — Calcutta Police Act (1866), S. 39. AIR 1961 SC 705, Rel. on. **66 Cal WN 487: AIR 1962 Cal 556 (559, 560) (Pt A) (Prs 10, 11, 12, 13, 19) (DB).**

——**Art. 226** — Mandamus — Issue of writ — Discretion — Writ of mandamus is not a writ of right. See Electricity Act (1910), S. 4. **AIR 1958 Cal 85 (DB).**

——**Arts. 226, 32 — Mandamus — False statement in application — Effect.**

Where a petitioner comes to the Court with a false statement, that alone may be a sufficient reason for throwing out his application. **(1957) 8 STC 105: AIR 1956 Cal 596 (599, 600) (Pt F) (Pr 13).**

——**Arts. 226, 311** — State Railway Establishment Code, Vol. II Rule 2046 (2) (a) — Railway employee in ministerial service — No right to continue in service after age of 55 — Thereafter it is discretionary and the High Court cannot control a discretion either by the issue of a writ of mandamus or certiorari. See Ibid, Art. 311. **AIR 1956 Cal 93.**

——**Art. 226** — Renewal of eating house licence — Discretion of Police Commissioner — Mandamus. See Calcutta Police Act (4 of 1866), Ss. 35, 39 and 40. **AIR 1955 NUC (Cal) 193.**

——**Art. 226 — Mandamus against a registered Trade Union refusing to enroll a person as a member — (Trade Unions Act (1926), S. 21).**

The law relating to corporations incorporated under a statute would be fully applicable to Trade Unions incorporated under an Act. A Trade Union incorporated under the Trade Unions Act, like a corporation, has as an incident belonging to it, a right to make any person it likes member, unless it is clearly deprived of that right by prescriptions or express words in its charter.

The rules of the Trade Union like the Asansol Iron and Steel Workers' Union are not statutory rules and are not like regulations which might be framed under S. 29 of the Trade Unions Act.

There is nothing in the Trade Unions Act or the rules made thereunder which confers absolute right upon a person to be admitted as a member of this particular Trade Union. Such a right might have been brought into existence if there was an express provision in the Act or the constitution of the Trade Union, that no one having the requisite qualifications could be refused membership. A mere description in the constitution of the class of persons who can become members, or the qualifications necessary for membership, does not confer an absolute right of becoming a member upon any person who might belong to that class or answer that description or possess such qualification and the Court will not enforce such a claim by mandamus. In other words, mandamus will lie to compel a corporation to do its statutory duty, but not where there is no duty cast by statute or where the corporation has a discretion in the matter. **ILR (1956) 1 Cal 247: 58 Cal WN 457: AIR 1955 Cal 189 (191) (Pt B) (Prs 12, 13, 15).**

——**Art. 226** — Municipalities — Bengal Municipal Act (1932) S. 402 — Discretion to maintain slaughter house — Interference. See Municipalities — Bengal Municipal Act (15 of 1932) S. 402. **AIR 1953 Cal 433.**

——**Art. 226** — Renewal of eating house licence — Discretionary powers of Commissioner — Refusal — No right to mandamus. See Calcutta Police Act (4 of 1866), S. 35. **('53) 92 Cal LJ 81.**

——**Art. 226 — Writ of mandamus.**

An order for the issue of a writ of mandamus is a matter for the absolute discretion of the Court. Some of the essential conditions for the grant of such a writ are: (i) that the person applying must show that he is really and specially interested in the subject-matter and has a specific legal right to enforce; (ii) that there resides in him a legal right to the performance of the legal duty by the party against whom such a writ is sought; and (iii) that there is no other equally efficacious, convenient and beneficial remedy. **ILR (1953) Hyd 311: AIR 1953 Hyd 222 (224) (Pt D) (Pr 9) (DB).**

——**Art. 226 — Mandamus in discretionary matters.**

Where there is no rule under which the Government can be made to count the period of service of a person towards the period of service which counts for his pension and it is a matter for the Government to relax the rules if they so desired in the case of any individual it is not open to the person to ask the Court for any direction to the Government to show favours to him. His remedy is to apply to the Government for such favour bringing to their notice the cases of those who had been granted such relaxation. **AIR 1958 J and K 43 (45) (Pt D) (Pr 14).**

——**Art. 226** — Appointment to police service — Inclusion of names of petitioners in list of approved candidates selected by State Public Service Commission — No right to appointment to such post is conferred — State can exclude candidates from appointment if requisite qualifications prescribed by R. 10 (b) (ii) are not fulfilled — Art. 16 not violated. See Ibid, Art. 16 (1). **AIR 1963 Ker 59.**

——**Art. 226** — Writ to compel the Municipal Council to issue a licence to the petitioner under S. 261 of the Travancore District Municipalities Act (1116) — The reports before the Municipality ought to be taken as decisive on the issue as to nuisance in proceedings under Art. 226 — AIR 1960 Orissa 88, Rel. on. **(1960) 2 Ker LR 342: ILR (1960) Ker 1159: 1961 Ker LJ 40: 1961 Ker LT 475: AIR 1962 Ker 30 (31, 32) (Pt C) (Pr 3).**

——**Art. 226 — Mandamus — Delay in presentation of petition.**

A writ of mandamus is not a writ of course or right, but is within the discretion of the Court; and if there has been undue delay in the presentation of the petition for issue of the writ, it is usually not granted. It would, however, depend on the facts of each case as to whether the delay in that particular case was sufficient to disqualify the petitioner from getting the relief. The mere fact that the petitioner was in jail does not prevent him from making a petition for issue of the writ to the High Court. **AIR 1956 Kutch 9 (12) (Pt D) (Prs 18, 19).**

——**Art. 226 — Mandamus — Discretionary remedy.**

Grant of writ of mandamus rests purely on the discretion of the High Court. **Madh BLJ 1955 HCR 1577: AIR 1955 Madh Bha 202 (205) (Pt C) (Pr 29) (DB).**

——**Art. 226 — Mandamus — Issue of, to direct — Exercise of discretion.**

Held, on facts that it was in the discretion of the chairman of the Board to condone the deficiency in attendance of any candidate and that discretion having been already exercised in favour of the petitioner by permitting him to appear at the practical examinations, it was not open to the Board to disallow him from taking examinations in theory subjects. After having exercised the discretion once the chairman does not retain the liberty to alter the decision taken by him by exercising it a second time.

Held further, that mandamus does not lie where the duty is clearly discretionary and the party upon whom the discretion rests has exercised the discretion reasonably and within his jurisdiction, but where a discretion is abused so as to work injustice it can be controlled by mandamus. **1960 MPLJ (Notes) 134.**

——**Art. 226 — Mandamus — Principle of merger of original order into appellate order applies in cases of writs of mandamus also — Writ compelling an authority to disobey orders of Superior authority cannot be issued. 76 Mad LW 76: ILR (1963) Mad 252: (1963) 2 Mad LJ 207.**

——**Art. 226 — Mandamus to compel institution of legal proceedings.**

A writ of mandamus will not lie to compel a person to institute legal proceedings. AIR 1955 Nag 33, Rel. on. **1959 Mad WN 649: (1961) 2 Mad LJ 235: AIR 1960 Mad 231 (235) (Pt A) (Pr 20).**

——**Art. 226—Mandamus — Issue of — Discretion.**

The grant of an order of mandamus is, as a general rule, matter for the discretion of the Court. It is not an order granted as of right and it is not issued as a matter of course. Courts will not exercise jurisdiction in this class of cases unless substantial injustice has ensued, or is likely to ensue. AIR 1955 SC 425, Rel. on.

Where to issue the writ would be to place an intolerable burden of inconvenience on numerous citizens of India, and another adjoining territory, namely, Pondicherry and to set at nought the usage of more than century and a quarter:

Held, that this was a case where writ of mandamus should be refused. **1959 Mad WN 649: (1961) 2 Mad LJ 235: AIR 1960 Mad 231 (235) (Pt B) (Prs 21, 22, 23).**

——**Art. 226** — Specific Relief Act (1877), S. 45 — Mandamus — Remedy is discretionary — Jurisdiction is subject to considerations of importance of case or of principle involved or delay on applying or of merits of case — Court is under obligation to take liberal views. **AIR 1955 NUC (Mad) 3915.**

——**Art. 226** — Mandamus — Refusal to issue passport — Matter entirely within discretion of State. See Ibid, Art. 14. **AIR 1954 Mad 240 (DB).**

——**Art. 226** — Industrial Disputes Act (1947), S. 12 (5) — Non-compliance with S. 12 (5)—Power of Court to direct State to make reference to Tribunal. See Industrial Disputes Act (1947), Section 12 (5). **AIR 1952 Mad 297 (DB).**

——**Art. 226** — Mandamus — Refusal of Registrar to register society under S. 11 Assam Co-operative Socities Act — Mandamus will not issue. **AIR 1965 Manipur 1 (3) (Pt B) (Prs 5, 7).**

——**Art. 226 — Order passed in proper exercise of discretion upon direction of High Court under Section 517, Cr. P. C. — No case for issue of mandamus. 1956 Cr LJ 252: AIR 1956 Manipur 11 (12) (Pt A) (Prs 3, 4).**

——**Arts. 226, 14 and 19 (1) (g) — Mandamus to compel authority to start legal proceedings — Minimum Wages Act (1948), Ss. 20, 22 — Legal proceedings for enforcement of Act — Person**

not authorised by Act cannot compel authority to start prosecution — Court will refuse mandamus — Section 20, Minimum Wages Act contains complete machinery for enforcement of provisions of the Act. (1955-56) 8 FJR 106: (1955) 2 Lab LJ 13: 1955 Cr LJ 262: ILR 1954 Nag 839: 1954 Nag LJ 648: AIR 1955 Nag 33 (34, 35) (Prs 5, 6, 7, 8, 9, 10) (DB).

——Art. 226 — Writ of mandamus when is not proper remedy — [Municipalities — Orissa Municipal Act (XXIII of 1950), S. 134 (d)].

Where a writ of mandamus is sought to be issued against a Municipality on the contention that the provisions of S. 134 (d) being mandatory, unless provisions for cleansing of private latrines, urinals and cesspools are made, no tax shall be leviable, and if the tax is imposed without the said conservancy arrangements the taxation is bound to be declared as illegal, and the contention is met by the production of the records kept in the Municipal Office showing that arrangements have been made for so cleansing, then it is not a fit case where the jurisdiction of the High Court under Art. 226 can be invoked. If the petitioners dispute the fact that the arrangements contemplated under S. 134 (d) have not been made, they may seek their remedy in appropriate proceedings. Where facts are disputed, they cannot be effectively determined in the writ proceedings. **AIR 1954 Orissa 76 (77) (Pt A) (Prs 4, 5) (DB).**

——Art. 226 — Writ of mandamus — Nature of.

The grant of a writ of mandamus is as a genral rule, a matter for the discretion of the Court and is not a writ of right. **AIR 1951 Pat 231 (241) (Pt C) (Pr 26) (DB).**

●**——Art. 226** — Mandamus — Discretionary matters — Mandamus upon State Government directing it to refer dispute under S. 10 (1) Proviso, Industrial Disputes Act — Matter lies in complete discretion of State Govt. — Mandamus will not issue. Bagaram Tuloule v. State of Bihar, **ILR 29 Pat 491: 1951 Cri LJ 1509: (1950-51) 2 FJR 71: AIR 1950 Pat 387 (388, 391) (Prs 5, 6, 8, 9, 10, 11, 15) (FB).**

—Art. 226 — Mandamus — To issue writ is in discretion of Court — Conduct of petitioner has to be considered (Mandamus refused). **ILR (1952) Patiala 482: AIR 1953 Pepsu 9 (12) (Pt C) (Pr 11).**

——Art. 226 — Mandamus — Discretionary matter — Writ to recall reference under Industrial Disputes Act, 1947 — Administrative Acts.

The Industrial Disputes Act 1947, confers upon the State Governments the power, and imposes upon it the duty to decide for itself, in the exercise of its own judgment and discretion whether an industrial dispute does or does not exist or whether such dispute should or should not be referred for adjudication to a tribunal. The duty imposed upon the State Government is not of a ministerial character but is one involving judgment and discretion. AIR 1956 Cal 550, Rel. on. The decision may be wrong, but it cannot be said that by coming to a wrong decision the State Government has attempted to perform an act over which it had no jurisdiction. AIR 1952 Bom 468, Rel. on. Where the decision of the State Government was made in the exercise of judgment and discretion conferred by law, it cannot be controlled by mandamus. AIR 1953 SC 53 and (1840) 10 Law Ed 559 and (1903) 190 US 316, Rel. on. **60 Pun LR 425: (1958-59) 15 FJR 49: (1959) 1 Lab LJ 274: ILR (1958) Punj 2061: AIR 1959 Punj 75 (78, 79) (Pt D) (Prs 10, 12a) (DB).**

——Art. 226 — Mandamus — Issue of writ — Grounds for.

The Courts can by mandamus compel the performance of acts prescribed by law, but they have no power to interfere with discretion of Government or require Government to act or to decide in a particular manner. They can ask Government to act, but not how to act. Courts exercise no general supervisory powers over Government or executive officers of Government; they cannot coerce or control their action in matter which requires the exercise of official judgment or discretion; and they cannot override or interfere with their decision even if erroneous, provided it is based on a sound and reasonable discretion founded on facts and exercised in good faith without collusion or fraud and not from motives of personal favouritism or ill-will. (1840) 10 Law Ed 559 (568), Rel. on. **58 Punj LR 299: ILR (1957) Punj 122: AIR 1956 Punj 201 (202) (Pt A) (Pr 7) (DB).**

——Art. 226 — Mandamus — (Income-tax Act (1922), S. 45).

Petitioners were assessed under S. 23 (4), Income-tax Act. They therefore applied under S. 27 for cancellation of the assessment. The application was dismissed and while the appeal was pending another application to the Income-tax Officer was made under S. 45 to keep the recovery in abeyance. The Income-tax Officer fixed the instalments. But the petitioners moved the higher authority and obtained stay. The same was later on vacated and petitioners finally applied for writ of mandamus on the ground that the I. T. Officer did not exercise his discretion properly.

Held, Per Kapur. J.: (1) Under S. 45 whatever discretion there is, is of the Income-tax Officer and he having exercised it in a particular manner which was neither mala fide nor capricious, nor done for collateral purposes, nor had he taken matters into consideration which were extraneous to the issue, it was not open to the High Court to interfere in its supervisory jurisdiction. Case law discussed.

(2) When exercising his discretion under S. 45, Income-tax Act, the Income-tax Officer has not to look to the correctness of his own order of assessment. There are other considerations which have to be seen at the time of declaring an assessee to be a defaulter or otherwise. (1951) 20 ITR 51 (Cal) Dissented.

Per Soni, J.: It is a grave thing to interfere in the orderly administration of justice by the ordinary or special Tribunals constituted by the Legislature. Where they are acting within the limits of the powers assigned to them by the Legislature and have exercised their discretion, High Court will not ordinarily interfere unless the discretion has been exercised so capriciously or in such an outrageous manner as to attract the extraordinary jurisdiction of the High Court. **(1952) 22 ITR 410: AIR 1953 Punj 113 (115, 116) (Prs 16, 17, 20) (DB).**

235 (a). Correctness of decisions not to be questioned.

——Art. 226 — Mandamus — Powers of High Court — Public purpose within S. 6, Land Acquisition Act — High Court will not examine facts — (Land Acquisition Act (1894), S. 6 (1)). AIR 1958 All 126 (135) (Pt M) (Pr 28).

——Art. 226 — Mandamus — Error in exercise of jurisdiction — Refusal to grant exemption from excise duty against all reasonable interpretation

of relevant item in Tariff Schedule — High Court can interfere in writ jurisdiction.

If two constructions are reasonably possible, then the Court will not interfere simply because the customs authorities have adopted the one which is most beneficial to the Revenue. But where refusal by the customs authorities to grant exemption from excise duty is against all reasonable interpretation and is perverse the Court will interfere in its writ jurisdiction. AIR 1961 SC 1506 and AIR 1963 SC 1319, Expl. and Foll. **69 Cal WN 328: AIR 1965 Cal 428 (433) (Pt E) (Pr 13).**

——**Art. 226 — Mandamus cannot be issued to vacate erroneous administrative orders — Grant of licence upon wrong interpretation of statutory rule — (R. 13, Abkari Rules, under Section 26, Travancore Abkari Act) — Error of decision — Writ cannot be issued.** AIR 1946 Bom 407 and AIR 1952 Bom 468, Dissented: AIR 1954 SC 403 and AIR 1954 SC 415 and AIR 1954 SC 440 and AIR 1958 SC 1018, Disting. (1850) 81 Rr. 520; American Jurisprudence Vol. 34, p. 813 and Halsbury's Laws of England (3rd Ed.), Vol. II, p. 101, Rel. on. **1960 Ker LJ 1208: 1960 Ker LT 1109: ILR (1961) 1 Ker 134: AIR 1961 Ker 318 (321) (Pt B) (Prs 9, 10) (DB).**

——**Art. 226**—Mandamus in discretionary matter—Travancore Jenmi and Kudiyan Act (V of 1071), S. 46 — Mandamus to State Government to revise commutation rates for Jenmikaran in accordance with S. 46 — Remedy is open to the party if the Government uses its discretion arbitrarily or capriciously. **1960 Ker LT 569: (1960) 1 Ker LR 691: 1960 Ker LJ 748: AIR 1961 Ker 133 (135) (Pr 6).**

——Art. 226 — Mandamus — When issued — Petitioner must have legal right of which performance can be enforced — Where statute confers discretion on authority mandamus will not lie unless exercise of discretion is capricious, arbitrary or mala fide. AIR 1962 SC 1210 Foll. Patna University Act (XXV of 1951), Reg. 7. **1965 BLJR 229.**

——**Art. 226 — Discretionary orders — Order by Board of Revenue under Section 43 of B. and O. Excise Act II of 1915 — Discretion not properly exercised — Mandamus could be issued. 1961 BLJR 201: AIR 1961 Pat 328 (329) (Prs 3, 4) (DB).**

——**Art. 226 — Mandamus — Issue of writ — Grounds of — Public Officer entrusted with judicial power — Decision of — Interference with by writ of mandamus — Error of law or fact — If ground for.**

It is quite unusual to direct a judicial tribunal to act in a particular way unless it is quite plain that what they have to do is purely ministerial, and not judicial. The Court will not by mandamus order a public officer who is invested with judicial, as distinct from ministerial, power to perform a specific act in order to carry out his public duty. Where a question within the jurisdiction of a public officer entrusted with judicial powers has been bona fide entertained and decided by such officer, the Court will not interfere with his decision merely upon the ground that the decision was erroneous either with respect to facts or in points of law. 51 Cal 279, Rel. on. **31 Pat 145: AIR 1953 Patna 47 (50) (Pt C) (Pr 16) (DB).**

[**Held overruled** by AIR 1952 SC 64 in AIR 1953 Pat 293.]

235 (b). Power coupled with duty.

●——**Art. 226** — Industrial Disputes Act (1947), Sections 10, 12 — Discretion of Government to refer dispute under S. 12 (5) — Section 12 (5) does not confer power on Government to make reference independently of S. 10 (1) — Under S. 12 (5) Government can consider other relevant facts besides the report of Conciliation Officer — Government in considering question of reference taking into consideration extraneuos matters — Writ of mandamus can issue requiring Government to reconsider its decision. See Industrial Disputes Act (1947), S. 10. **AIR 1960 SC 1223.**

——**Art. 226 — Mandamus in discretionary matters.**

The exercise of discretion by the authority on which such discretion is conferred must not be lightly interfered with, more so in exercise of the powers of the High Court under Art. 226 of of the Constitution. There is an essential distinction between refusal to exercise the discretion and manner of its exercise. If the authority fails to discharge his duty by refusing to exercise his discretion when facts calling for its exercise exist, or if he exercises discretion which is not an exercise of discretion in law, the Court will compel him to do so. If the authority concerned exercises his discretion honestly and in the spirit of the statute, no mandamus will be issued directing him to exercise his discretion in a particular way. AIR 1957 Andhra Pra 114, Rel. on. **AIR 1957 Andh Pra 830 (832) (Pt B) (Prs 11, 12).**

——**Art. 226** — Interpretation of statutes — Exercise of discretion — If the discretionary power under Income Tax Act is exercised arbitrarily, capriciously or unreasonably or by taking into consideration extraneous and irrelevant considerations, in the eye of law, the authority must be deemed to have not exercised the discretion at all, that is he has not discharged his duty — He can be compelled by mandamus to discharge his duty — (Civil P. C. (1908), Pre.) — (Income-tax Act (1922), S. 45). **1956 Andh LT 656: (1956) 30 ITR 252: 1956 Andh WR 752: ILR (1956) Andh 994: AIR 1957 Andh Pra 114 (117, 118, 119) (Pt B) (Prs 6, 7, 8, 14) (DB).**

——**Art. 226 — Power of Court — Mandamus — Object of — Act of Government or Officer under power conferred by Act — Power of Court to interfere with exercise of power.**

The main and principal object of a writ of mandamus is to compel Government or its officers to carry out their statutory obligation. The duty of the Court is to see that Government and its officers do not overlap the limits and the bounds prescribed by Statute for the exercise of their power. The whole object of the Court is to see that the mandate which the Legislature has given to the Government or its officers is carried out, and if the Court finds that the mandate is not carried out or is being violated, the Court will pull up the Government or the officer and compel them to obey the mandate which the Legislature has issued.

It cannot be disputed that in the case of a discretion the Court cannot interfere by a writ of mandamus. But when the existence of an objective fact is laid down as a condition precedent to the exercise of power, there is no question whatever of the exercise of any discretion by the authority which has got to be satisfied about the existence of the objective fact before the power is exercised. The determination by the authority is not made final and is not made binding upon the Court. The objective fact must exist as a fact and it does not help the authority at all that it has determined that the fact exists. Its determination is irrelevant because

the condition precedent is made justiciable and the Court of law is entitled to go behind the declaration of the authority of that fact and come to its conclusion whether the fact exists or not. AIR 1950 SC 222, Expl.; (1905) AC 426; (1951) AC 426, Ref. **54 Bom LR 681: AIR 1952 Bom 468 (471, 472, 473, 474) (Pt B) (Prs 3, 5, 6, 8, 10) (DB).**

——**Art. 226 — Mandamus in discretionary matters — Issue of.**

The High Court can issue a writ in the nature of a mandamus to a public body only in respect of duties which are obligatory, but not in respect of duties which are of a discretionary character. **AIR 1956 Cal 563 (569) (Pt F) (Pr 35) (DB).**

——**Art. 226 — Discretion of public officer — Power of review.**

It is well settled that a Court of law does not ordinarily exercise jurisdiction to review an exercise of discretion vested in a public officer entrusted with the discharge of public duties. If however the reasons given are irrelevant to the matter in hand, if people who have to exercise a public duty, by exercising their discretion take into account matters which the Court consider not to be proper for the guidance of their discretion then in the eye of law they have not exercised their discretion. An arbitrary or capricious exercise of discretion would be no exercise at all. **('51) 55 CWN 667.**

——**Art. 226** — Mandamus — **Writ or direction** in the nature of — Power of High Court — Income-tax Act, S. 45 — Discretion of Income-tax officer — Interference by Court — Officer not passing orders on application for time for payment and not refusing same nor giving grounds for not extending time pending appeal under S. 30 of the Income-tax Act — Power of High Court to direct officer to forbear or refrain from taking steps to enforce payment of tax pending disposal of appeal. See Income-tax Act (1922), S. 45. **(1951) 20 ITR 51 (Cal).**

——**Art. 226 — Mandamus — Discretionary orders — Interference.**

A tribunal vested with the discretion is authorised to follow a policy but that should not be used as an invariable rule and to preclude exceptional circumstances of a particular case being decided on merits. Fettering of such discretion by self-created rule of policy is contrary to law. Where there be failure to exercise discretion mandamus can be issued, and therefore vesting of discretionary power in the authority does not preclude the High Court from exercising powers under Art. 226: (1957) 1 QB 350, Rel. on. **1960 Ker LJ 498: (1960) 1 Ker LR 610: 1960 Ker LT 543: ILR (1960) Ker 1006: AIR 1961 Ker 23 (25) (Pt A) (Pr 4) (DB).**

——**Art. 226** — Discretionary orders — Order under S. 45, Income-tax Act — No failure to exercise discretion — No interference. See Income-tax Act (1922), S. 45. **1958 Ker LT 216.**

——**Art. 226 — Mandamus — When issued.**

Writ of mandamus cannot be issued for controlling the discretionary power vested in an authority or for directing it to exercise its discretion in a particular way, but where the authority fails to exercise any discretion at all and decline jurisdiction, then it can be compelled by a writ of mandamus to exercise the discretion vested in it. (1910) 2 KB 165, Rel. on.

Thus where in a case of quarry-lease the State Government (lessor) turned down the lessee's request for being allowed to transfer the lease to certain company by a wrong construction of the two agreements concluded by the lessee and failed to exercise at all the discretion given to it under the rules, the lessee's application was regarded as pending before the Government and the Government was directed to dispose it of according to law. **1965 MPLJ 51: 1965 Jab LJ 130: AIR 1965 Madh Pra 153 (158) (Pt E) (Pr 12) (DB).**

——**Art. 226** — Writ of mandamus — M. P. Secondary Education Board Regulations (1959), Ch. XVI, R. 9, Chap. XXIII Rr. 5, 8 — Deficiency in attendance — Chairman has discretion to condone — Student allowed to appear for practical examination despite deficiency in attendance — Admission card with roll number issued — Exercise of discretion is complete — Permission to appear for theory cannot be withheld — Mandamus will issue — Though mandamus will not lie where the duty is clearly discretionary and where the party upon whom the duty rests, has exercised the discretion reasonably and within his jurisdiction, where the mandatory direction that is sought is for compelling the opponents to act according to the decision they have already taken in exercise of their discretion such a writ will issue. Where a discretion is abused so as to work injustice, it can be controlled by mandamus. See M. P. Secondary Education Board Regulations (1959), Ch. XVI, R. 9. **AIR 1962 Madh Pra 3 (DB).**

——**Art. 226** — Industrial Disputes Act (1947), S. 10 (1) — Scope — Section whether imposes a duty on Government to make a reference — Refusal to make reference under section 12 (5) without recording reasons — Writ of mandamus can be issued — See Industrial Disputes Act (1947), S. 10 (1). **AIR 1952 Mad 74.**

——**Art. 226 — Mandamus, when to be issued — Mandamus for declaration under Rule 3 (ii) of Central Civil Services (Temporary Service) Rules (1949) — Not to be issued unless appointing authority desisted from making declaration even after satisfaction. ILR 1961 Mys 1129.**

——**Art. 226 — Mandamus — Exercise of power when becomes duty.**

It is a well-established rule of law that where the power is conferred in the nature of trust, there is an obligation to exercise it for the benefit of cestui que trust. (1880) 5 AC 214, Rel. on. **1957 BLJR 299 (2): ILR 36 Pat 557: AIR 1957 Pat 515 (527) (Pt H) (Pr 17) (DB).**

——**Art. 226 — Writs when can be issued.**

Per Lakshmikanta Jha C. J. — Writs of mandamus and other writs "of like nature" can issue for the protection of legal rights to a corporation or to a person holding a public office who is required by reason of such office to do some particular thing which appertains to his office; it is within the discretion of the Court issuing the writ to decline to interfere by a writ of mandamus or by any other writ "of like nature" if it considers that there is another legal remedy available to the aggrieved person: Case law discussed. **30 Pat 287: AIR 1952 Pat 23 (26) (Pt D) (Pr 15) (DB).**

——**Arts. 226, 310 and 311 — Mandamus in discretionary matters — Civil servants.**

The petitioner who was rejected for recruitment to the police service on the ground that he had been found medically unfit applied for the issue of a writ of mandamus directing the Government to appoint him to the service or to send him up for a second examination because the medical board which found him unfit had ap-

plied wrong standards of medical fitness. It was found that the medical board which ought to have applied the standard prescribed by the revised instructions failed to do so.

Held, it was for the Government to consider the suitability or otherwise of the candidate when he fulfilled all other requirements including that of physical fitness. But inasmush as the opinion of the medical board regarding his physical fitness was not in conformity with the instructions of the Government a direction to the Government to appoint a second medical board to examine the petitioner according to the proper instructions would be given. **ILR (1958) 8 Raj 37: AIR 1958 Raj 242 (245) (Pt B) (Prs 11, 13) (DB).**

236. Discretionary remedy.

——Art. 226 — Mandamus — Rules as to issue of.

When there are different conflicting interests and when the necessary parties are not on the record and the materials are not adequate for a complete adjudication of the points involved without going into evidence, the Court will not exercise its extraordinary jurisdiction in favour of the petitioner which will put the other claimants in a disadvantageous position. The grant of an order of mandamus is, as a general rule, a matter for the discretion of the Court. It is not an order granted as of right and it is not issued as a matter of course. **1959 BLJR 12: ILR 38 Pat 271: AIR 1959 Pat 243 (245, 246) (Pt B) (Pr 7) (DB).**

237. Duties that can be enforced.

(a) Duty and liability, distinction.
(b) Legal duty and right.
(c) Private right.

237. Duties that can be enforced.

——Art. 226 — Act duly passed by Legislature — Government not issuing, within reasonable time, notification with regard to commencement of Act — Remedy lies in invoking writ jurisdiction of High Court for issue of mandamus. See Ibid, Art. 245. **1964 (2) Cr LJ 124: AIR 1964 All 339.**

——Art. 226 — Mandamus — Nature of duties which can be enforced by.

Mandamus cannot be issued to compel the subordinate authority to perform an implied duty. It can be issued only for the performance of a statutory or legal duty. **1959 AWR (HC) 166.**

——Art. 226 — Writ of mandamus or prohibition in pending appeal.

Scope of writ of mandamus and prohibition never embraced in its ambit or direction to inferior Tribunal to decide any cause or appeal pending before it in any particular way. Writ may be issued to direct subordinate judicial authority to exercise a jurisdiction vested in it. **1955 All LJ 211: AIR 1955 All 422 (425) (Pt A) (Pr 6) (DB).**

——Arts. 226, 7 — Person migrating to Pakistan after 1-3-1947 and obtaining Pakistani Passport — Ceases to be Indian Citizen — If he subsequently intends to become an Indian Citizen he must obtain a permit for resettlement or permanent return — If Govt. of India is not willing to grant him such permit it cannot be compelled to do so. See Ibid, Art. 7. **AIR 1961 Cal 482.**

——Art. 226 — Governor amending statutory rules of recruitment of Gazetted probationers — Public Service Commission having no more power or statutory duty to make selection — Issue of mandamus against P. S. C. would be meaningless. See Ibid, Art. 245. **AIR 1963 Mys 263 (DB).**

——Arts. 226 and 215 — Prohibitory order, what is — Writ of mandamus directing authority to do what was imposed on him under law — Nature of — Direction held not prohibitory order — Action in contempt — Service of order held not necessary — (Contempt of Courts Act (1952), S. 3). See Ibid, Art. 215. **1957 Cri LJ 1156: AIR 1957 Pat 528 (DB).**

——Art. 226 — Mandamus — Nature of duties that can be enforced — Inter-State trade — Sale of goods from Bombay — Assessment of tax under Central Sales Tax Act — Additional Assistant Excise and Taxation Commissioner, Punjab issuing notices for same — Commissioner having no jurisdiction to issue notices can be stopped by issuing writ. Civil Writ No. 1618 of 1962 (Punj) dated 24-5-1963 Reversed. 1964 Cur. LJ 442: 66 Pun LR 978: (1964) 15 STC 746: ILR (1964) 2 Punj 869: AIR 1965 Punj 62 (64, 65) (Pt C) (Prs 6, 7) (DB).

——Art. 226 — Writ of mandamus — Writ can be issued only if there is any statutory duty cast on Government to do something. **52 Cri LJ 1230: AIR 1951 Punj 90 (1) (90) (Pt B) (Pr 4) (DB).**

237 (a). Duty and liability, distinction.

——Art. 226 — Mandamus — Condition contained in S. 25-F (c) is not condition precedent — R. 80 of Industrial Disputes (Bombay) Rules, 1947, is consistent with policy underlying S. 25-F (c) — Non-compliance with Cl. (c), assuming it to be condition precedent, does not give rights to mandamus. See Industrial Disputes Act (1947), S. 25-F (c). **AIR 1964 SC 1617.**

——Art. 226 — Writ of mandamus — Issue of — Claim for dearness allowance by Government servants — Fundamental Rules, R. 44.

Mandamus can be granted only when there is in the applicant a right to compel the performance of some duty cast on the opponent. Rule 44 of the Fundamental Rules confers no right on the Government servants to the grant of dearness allowance; it imposes no duty on the State to grant it. It merely confers a power on the State to grant compassionate allowance at its own discretion. No mandamus can therefore issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced. State of M. P. v. Mandawar, **1955 SCR 599: (1954) SCJ 503: (1954) 2 MLJ 51: 1954 SCA 767: AIR 1954 SC 493 (495) (Pt B) (Pr 5).**

——Art. 226 — Jurisdiction to do an act is different from duty to do it. There must be jurisdiction before there arises a duty to do an act but there must be something besides mere jurisdiction to make it a duty to do it. Order by Sessions Judge to Magistrate to accept bail and release the prisoner — Order taken to Magistrate — Magistrate leaving office before 5 p.m. and going home — Order taken to Magistrate's home — Order on Magistrate as presiding officer — Magistrate held not bound to carry out order at his house — Sessions Judge's order was in nature of mandamus — Magistrate was required to do positive act — Action in refusing to carry out order was not contempt — His action held, however, was vindictive and required investigation. See Contempt of Courts Act (1952), S. 3. **AIR 1956 All 417.**

237 (b). Legal duty and right.

——Art. 226 — Scope — Notice of demand — Duty of Income-tax Officer — Failure to issue notice — Writ of mandamus can be issued. See

Income-tax Act (1922), S. 29. **(1965) 3 SCR 536: AIR 1966 SC 81.**

● ——**Art. 226 — Refund — Tax — Payment by person not liable—Assessment set aside in appeal — No statutory provision for refund — Government's refusal to refund — Appropriate remedy stated — Suit — Practice — Mandamus does not lie solely to compel State to effect payment due under law — Non-statutory liability — Whether amenable to constitutional writ of mandamus— Specific Relief Act, 1877 (Central Act 1 of 1877), See 45, Proviso (b) — Indore Industrial Tax Act, 1927 — Indore Excess Profits Duty Order, 1944. AIR 1962 SC 1161; AIR 1962 SC 1320; AIR 1964 SC 1006: AIR 1957 SC 529: AIR 1952 SC 16; Ref. Suganmal v. State of M. P.. (1965) 1 ITJ 472: (1965) 56 ITR 84: (1965) 1 SCJ 443: (1965) 16 STC 398: (1965) 2 SCWR 582: 1965 Jab LJ 1046: 1965 SCD 1168: 1966 Mah LJ 361: 1966 MPLJ 385: AIR 1965 SC 1740 (1742, 1743, 1744) (Prs 6, 9, 13, 14).**

● ——**Art. 226 — Mandamus — Petitioner must have a legal right to enforce the performance of the alleged duty — University of Bihar Act (XXVII of 1951), S. 20 — Statutes under. Rai Shivendra Bahadur v. Governing Body of the Nalanda College, Bihar Sharif, (1962) 3 Fac LR 507: 1963 SCD 87: 1962 Supp (2) SCR 144: (1962) 1 Lab LJ 247: (1962) 1 Ker LR 566: (1962) 2 SCJ 208: AIR 1962 SC 1210 (1211) (Pr 5).**

● ——**Art. 226 — Mandamus — Income-tax Officer — Refusal to carry out directions given by Appellate Tribunal — Mandamus should issue. AIR 1956 Bhopal 18, Reversed, Bhopal Sugar Industries, Ltd. v. I. T. Officer, Bhopal, (1961) 1 SCR 474: (1960) 40 ITR 618: 1961 Jab LJ 1: (1961) 1 Ker LR 1: (1961) 1 MLJ (SC) 35: (1961) I An. WR (SC) 35: 1961 SCJ 191: AIR 1961 SC 182 (185) (Prs 8, 9).**

● ——**Art. 226** — Industrial Disputes Act (1947), Ss. 10, 12 — Discretion of Government to refer dispute under S. 12 (5) — Section 12 (5) does not confer power on Government to make reference independently of Sec. 10 (1) — Under S. 12 (5), Government can consider other relevant facts besides the report of conciliation officer — Government in considering question of reference taking into consideration extraneous matters — Writ of mandamus can issue requiring Government to reconsider its decision. State of Bombay v. K. P. Krishnan, **(1960) 1 FLR 392: (1960) 2 Lab LJ 592: (1960-61) 19 FJR 61: (1960) 2 SCA 527: 63 Bom LR 127: 1961 Nag LJ 205: (1961) 1 SCR 227: (1961) 2 SCJ 360: AIR 1960 SC 1223 (1225. 1226, 1227, 1228, 1230,, 1231, 1232) (Prs 5, 8, 9, 10, 11, 12, 16, 17, 18).**

● ——**Art. 226 — Mandamus — Obligation on part of authority — (Hyderabad Court of Wards Act (XII of 1350-F), S. 53 (c) — Applicability.**

The property was taken possession of immediately after the death of one Raja Durga Reddy and the supervision of the Court of Wards was established by notifications of the Government. It was thereafter that the Virasat in respect of Jagir Samasthan Papannapet was sanctioned in the name of Rani Shankaramma by a Firman of the Nizam. That Firman specifically committed the care of the property and the person of Rani Shankaramma to the Court of Wards. Subsequent proceedings had treated the supervision of the Court of Wards over the property as having been established by the Firmans of the Nizam.

Held, in the circumstances it was not shown that the Court of Wards was under a statutory obligation in this case to hand over to Rani Shankaramma possession of the properties which were in their control. Raja Ramachandra Reddy v. Rani Shankaramma, **1956 SCJ 459: 1956 SCA 636: ILR (1956) Hyd 398: 1957 Andh LT 127: AIR 1956 SC 319 (335) (Pt B) (Pr 16).**

——**Art. 226 — Mandamus — When to be issued — Authorities concerned having no reasonable chance in the matter of time to make decision— Mandamus will not be issued. AIR 1963 All 394 (395) (Pt A) (Pr 7).**

——**Art. 226** — Mandamus when can issue — Mandamus can only be issued to compel performance of duty imposed by law — Petitioner had no legal right to be promoted to a particular post under memorandum issued by Chief Secretary to Government. **(1960) 1 Fac LR 516: 1960 All LJ 50: (1960) 1 Lab LJ 286: AIR 1961 All 315 (316) (Pt A) (Prs 4, 5) (DB).**

——**Art. 226 — Mandamus directing authorities to renew permits — If can issue.**

Where the route in respect of which the petitioner held a permit has since become a notified route and only Stage carriages run on it, Chapter IV of the Motor Vehicles Act including Section 58 becomes inapplicable. No permit can be granted to any one in respect of that route. Nor can any renewals be made. No writ of mandamus can be issued directing the authorities to do anything they are not entitled in law to do. **AIR 1960 All 209 (210, 211) (Pt B) (Pr 8).**

——**Art. 226 — District Magistrate acting under S. 30, Police Act declaring and demarcating route for tazia procession — Legality — Route passing through Sahan of petitioners — Mandamus issued — (Police Act (1861), S. 30). 1960 All WR (HC) 653: 1960 All LJ 843.**

——**Art. 226 — Mandamus — When issued — No mandamus for declaring result of examination held under Executive Orders — (U. P. Government Industrial Manual, 1950 — Examination Rules for Government Technical Institutions, R. 4). AIR 1937 PC 31, Rel. on. AIR 1959 All 681 (683, 684) (Pt C) (Prs 10, 11, 13).**

——**Arts. 226 and 227 — High Court has no jurisdiction to issue mandamus contrary to law — Temporary permits — R. T. A. cannot be compelled to grant — (Motor Vehicles Act (1939), S. 62). 1959 All LJ 567.**

——**Art. 226 — Mandamus — When can issue — Industrial Disputes (Banking Companies) Decisions Act (XLI of 1955) — Bank Award — Contravention — Interference.**

The order of mandamus is an order of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. For an order of mandamus to issue for the enforcement of a statutory right, it must appear that the statute in question imposes a duty.

The Industrial Disputes (Banking Companies) Decisions Act by itself does not create any statutory obligation against any person. The awards recognised by the Act cannot be placed on a higher footing than a decree of a civil Court. High Court cannot issue a writ of mandamus. Moreover the management of the Bank (Central Bank of India, Ltd.) not being a judicial body or tribunal, certiorari cannot issue against them, in order to quash the disciplinary action against the petitioner (a bank employee) being contrary

the terms of the Award. **AIR 1958 All 413 (415) (Pt B) (Prs 10, 11, 12, 13).**

——Art. 226 — Mandamus — Issue of, for enforcing provisions of press notification.

Press notifications issued by the State Government have no legal force. Where they do not appear to have been passed under the provisions of the Income-tax Act or any other law, the petitioners are not entitled to any relief by way of mandamus directing the opposite parties to enforce the provisions of the press notifications. **(1957) 32 ITR 133: AIR 1957 All 711 (712, 713) (Pt A) (Pr 3) (DB).**

——Art. 226 — Mandamus directing reference of dispute to Court regarding compensation under Land Acquisition Act — (Land Acquisition Act (1894), Ss. 35, 36 and 37).

The land of the petitioner acquired under S. 35, Land Acquisition Act, was restored and the Collector made an award under S. 36 (2) awarding compensation to the petitioner for the damage done to the land. The petitioner filed an application before the Collector disputing the amount of compensation. The Collector refused to interfere with the award. A petition was filed under Art. 226 of the Constitution of India contending that there was a duty cast upon the opposite parties to refer the matter to Court for determination of the amount of compensation.

Held, that (1) as no dispute was raised at the stage of acquisition there was no mandatory duty under S. 35, sub-S. (3) which could be enforced by the High Court by means of a writ of mandamus. (2) The petitioners had no right to ask for a mandamus for a reference to any Court, if there was any dispute with regard to the amount of compensation for the damage done to the land payable under S. 36 (2) of the Act. (3) Mandamus could not also be issued directing the opposite parties to make a reference to Court under S. 37. **(1957) All WR (HC) 96.**

——Art. 226 — Mandamus — (Houses and Rents— U. P. Cantonments (Rent Control and Eviction) Act (X of 1952), S. 10) — Petitioners forcibly dispossessed without authority of law — Mandamus to deliver back possession will be issued. Writ No. 679 of 1952 (All), Rel. on. 1957 AWR (HC) 35: 1957 All LJ 183.

——Art. 226 — Municipalities — U. P. Municipalities Act (2 of 1916), S. 87-A(11) — Duty of Presiding Officer under S. 87-A (11) — Failure of duty — Writ of mandamus can be issued. 1957 All LJ 114: 1957 All WR (HC) 228.

——Art. 226 — Mandamus — Right to claim pension under Pensions Act — (Pensions Act (1871), S. 8).

There is a duty cast upon the Deputy Commissioner or the Collector to pay the money payable to the applicant as a pension or grant of money or land revenue and it is open to the applicant to enforce the duty by means of a writ of mandamus. **AIR 1956 All 564 (567, 568) (Pt B) (Pr 11) (DB).**

——Art. 226 — Mandamus — Writ against custodian of evacuee property — (Administration of Evacuee Property Act (1950), Ss. 8 (4) and 9).

Where the petitioners are mere trespassers and have not acquired any rights under U. P. Zamindari Abolition and Land Reforms Act, any rights they might acquire by payment of rent to the custodian could be put an end to by the custodian. In such a case a notice given by the custodian for the surrender of possession is a valid and legal one and he could use or cause to be used such force as may be necessary for taking possession of the property from the person, who may be asked to surrender possession. Therefore, the prayer for the issue of a writ of mandamus commanding the custodian to refrain from taking any steps to dispossess the petitioners from the land in dispute cannot be granted. **1955 All LJ 218: 1955 All WR (HC) 257: AIR 1955 All 538 (541) (Pt C) (Pr 9).**

——Art. 226 — Writ of mandamus — When can be issued — It can be issued only for directing public servant to act in accordance with law or to refrain from acting contrary to law. **AIR 1955 NUC (All) 1993.**

——Art. 226 — Interference.

Railway authorities — No statutory or legal duty to keep railway servant in employment until age of 60 — No grievance made out — No interference by High Court. **1953 All WR (HC) 162: 1953 All LJ 76: AIR 1953 All 352 (352) (Pt B) (Pr 3) (DB).**

——Art. 226 — Mandamus — Issuance of — Essentials — Petitioner must have a clear legal right to the performance of a legal duty by the person against whom writ is sought. (1965) 58 ITR 840: (1962) 2 Andh WR 436: AIR 1963 Andh Pra 324 (327) (Pt A) (Pr 25).

——Art. 226 — Mandamus — When can issue — Dereliction of duty on part of Municipality — Statutory power coupled with duty — Exercise of power left to discretion of statutory body — It does not excuse it from discharging its duty — Petitioner's application for renewal of licence to instal machinery — No reply — There is clear dereliction of duty — (Municipalities — Madras District Municipalities Act (V of 1920), Ss. 250 and 321 (ii)). See Municipalities — Madras District Municipalities Act, S. 321 (ii). **AIR 1959 Andhra Pra 460.**

——Art. 226 — Mandamus — Nature of duties which can be enforced by.

Mandamus cannot be issued to compel the subordinate authority to perform an implied duty. It can be issued only for the performance of a statutory or legal duty. **1959 AWR (HC) 166.**

——Art. 226 — Mandamus — When issued.

When a person is granted a mining lease of a portion of land which has already been leased for mining purposes by the State to the petitioner, an application for the issue of a writ of mandamus, praying that the Government be refrained from giving effect to the subsequent lease, would not lie because mandamus would be issued only to compel the performance by the Government or a public body of its statutory duties or to refrain from doing something contrary to law. **AIR 1958 Andh Pra 632 (637) (Pt A) (Pr 7) (DB).**

——Art. 226 — Mandamus — Issue of writ — Absence of statutory duty — Effect — (Hyderabad Land Revenue Act (VIII of 1317-F), S. 59 and Settlement Rules, R. 8).

In order to be entitled to a direction in the nature of the mandamus, the petitioner must have a legal right to compel the performance of a legal duty and the person against whom it is sought must be under the legal obligation to perform that duty.

When lands are taken under Government supervision under R. 8 of the Settlement Rules, if the heirs appear within one year and are held duly entitled to the Patta of the land, the lessee to whom the land was leased out by the Revenue authorities shall be dispossessed after the harvesting of the last crop of the year and permanent patta of the land shall be sanctioned in favour of the rightful heir in accordance with S. 59 of the Hyderabad Land Revenue Act. S. 59 of that Act

relates only to the granting of a patta and does not provide for the delivery of possession of the property. The High Court cannot, therefore, direct the delivery of actual possession by writ of mandamus. **(1958) 1 An WR 216.**

——**Art. 226** — Mandamus — Breach of duty — Issue of writ. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), S. 34. **(1958) 1 An. WR 124.**

——**Art. 226 — Mandamus — Acquisition officer erroneously refusing to pay interest on amount of compensation — Mandamus can be issued to such officer to consider application for payment of interest — Assam Land (Requisition and Acquisition) Act, 1948, S. 7. (1969) 1 Assam LR 233: ILR (1961) 13 Assam 382: AIR 1962 Assam 20 (22, 23) (Pt C) (Pr 7) (DB).**

——**Art. 226** — Mandamus — Delegation of Financial Power Rules, 1960, framed by Government under Art. 166 — Settlement of forest coupe with petitioner by Conservator of Forests; subject of sale notice—Terms providing for appeal to Government — Petitioner when he submitted tender was bound by terms — Settlement set aside in appeal — He cannot claim that settlement by Conservator of Forests was final — Delegation of Financial Power Rules which have force of law do not deal with settlement of present coupe — Petitioner has no legal right and is not entitled to mandamus. See Assam Forest Regulation (1891), S. 2. **ILR (1962) 14 Assam 416.**

——Art. 226 — Mandamus — Violation of statutory provision by executive authority — High Court is competent to issue mandamus. **ILR (1962) 14 Assam 139.**

——**Art. 226** — Mandamus — Appeal — Mandamus may be issued to compel Income-tax Officer, to perform his duty under S. 45, Income-tax Act. See Income Tax Act (1922), S. 45. **AIR 1960 Assam 162 (DB).**

——**Art. 226** — Mandamus — Municipalities — Assam Municipalities Act (15 of 1957) Ss. 68, 119, 117, 154 — Scope — Rickshaws — Licence — There cannot be restriction on number of — Obligation to grant licence, when person is willing to pay license fees. See Municipalities — Assam Municipalities Act (15 of 1957) S. 68. **(1960) 1 Assam LR 118.**

——**Art. 226 — Mandamus to enforce performance of duty — (Land Acquisition Act (1894), S. 18).**

Section 18 of the Land Acquisition Act would require the performance of certain duty on the part of the Collector and when he fails to perform such duty that would entitle the High Court to interfere and direct him to do that. **ILR (1958) 10 Assam 113.**

——**Art. 226** — Mandamus — Before mandamus can issue the petitioner must show that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought. **AIR 1954 Assam 74 (75) (Pt A) (Pr 5) (DB).**

——Art. 226 — Industrial Disputes Act (1947), S. 12 (5) — Duty of Government to make reference — Refusal — Neglect or misconduct of worker if proper reason — Refusal even when satisfied that there was case for reference — Power of High Court to issue mandamus — (Words and Phrases — 'May'). See Industrial Disputes Act (1947) S. 12 (5). **AIR 1956 Bom 273.**

——**Art. 226 — Mandamus — Municipalities — Bombay Provincial Municipal Corporation Act (LIX of 1949), Sch. Chap. 12, R. 4 — Disapproval by Municipality of construction of proposed building — Disapproval not lawful — Mandamus against Municipality to give permission will be issued. AIR 1956 Bom 117 (119) (Pt C) (Pr 4) (DB).**

——**Art. 226 — Mandamus — Collector refusing to convene meeting for election of new President under S. 23 (1-A), Bombay Municipal Boroughs Act (XVIII of 1925) — Mandamus will issue — Municipalities — Bombay Municipal Boroughs Act (XVIII of 1925), S. 23 (1-A). ILR (1955) Bom 584: 57 Bom LR 421: AIR 1955 Bom 334 (336) (Pt C) (Pr 6) (DB).**

——**Art. 226** — Mandamus — There must be legal duty incumbent on officer — Registrar filing decree passed by Judge acting extra cursum curiae — No writ can be issued forbidding Registrar to file decree which he is bound by law to file — Decision of Judge of High Court cannot be challenged in petition under Art. 226. **AIR 1965 Cal 3 (10, 11) (Pt B) (Pr 10).**

——**Art. 226** — Mandamus — Petitioner has to satisfy the Court that he has a legal right which can be enforced by the writ. See Life Insurance Corporation Act (1956), S. 11 (1). **AIR 1961 Cal 285 (DB).**

——**Art. 226** — Mandamus — Government refusing to make reference of industrial dispute — Writ to compel Government — Issue of. See Industrial Disputes Act (1947), S. 10. **AIR 1958 Cal 271.**

——**Art. 226 — Mandamus, writ of — If can be issued to compel Municipality to give scheduled quantity of water to rate-payer — (Municipalities — (Bengal Municipal Act (XV of 1932), Ss. 278, 302 (1) and 311) — (House Connection Rules, R. 19).**

Where it can be clearly shown that the Municipality, which is under a statutory obligation to supply to a ratepayer paying water rate certain minimum quality of water for domestic use under the rules made by Government, has got the means of supplying the full scheduled quantity and still is not doing so, there is no reason why a mandamus should not issue to compel the Municipality to carry out its statutory liability. **AIR 1956 Cal 291 (294) (Pt C) (Pr 7).**

——**Art. 226** — Bengal Municipal Act (15 of 1932) — House Connection Rules, Rr. 10, 19 — Municipality realizing water rate from inhabitants — Statutory liability of Municipality to provide sufficient supply of water for domestic use — See Municipalities — Bengal Municipal Act (15 of 1932), S. 278. **AIR 1956 Cal 291.**

——**Art. 226** — Right to carry on business is fundamental right — There is, however, no right to carry it in particular fashion — Existence of rival business is not invasion of his fundamental right — Diminution of income is not invasion of fundamental right — There being no legal right involved mandamus cannot be issued. See Ibid, Art. 19 (1) (g). **AIR 1955 NUC (Cal) 4290.**

——**Art. 226 — Mandamus.**

In order to succeed in an application for a writ of mandamus the applicant must satisfy the Court that he had a legal right to compel the performance of the duty and the person against whom the right is sought was under a legal obligation to perform that duty. The High Court has no power to issue any directions or writs under Art. 226 unless the applicant has a right. AIR 1952 SC 12, Ref. **57 Cal WN 790: AIR 1954 Cal 159 (162) (Pt C) (Prs 11, 12) (DB).**

——**Art. 226 — Mandamus, writ of — When can be issued.**

A writ of mandamus would be issued only when there is a legal right in the petitioner and a statutory obligation imposed on the State to do a particular act.

Hence, where a Government servant is dismissed as a result of an enquiry held in accordance

with the Hyderabad Public Servants (Tribunal of Enquiry) Act, a writ of mandamus for his reinstatement cannot be issued. **ILR (1953) Hyd 648: AIR 1954 Hyd 28 (32) (Pt H) (Pr 10) (DB).**

——Arts. 226, 309 and 310 — Mandamus — Circular No. 1864/1887, dated 19th May, 1950, of the Director of Public Instruction, Hyderabad.

Before a writ of mandamus can be issued to a public servant it must be shown that a duty towards the applicant has been imposed by the Constitution or by a Statute upon the public servant, so that he can be charged thereon independently of any duty, which he may owe to the State as his principal.

The phrase "service at the pleasure" has certain well defined implications and one of them is that infringements of the rules relating to the public servants do not give rise to any cause of action. Shenton v. Smith, (1895) AC 229, Rel. on.

The disregard of the service rules, when the employment is at the pleasure, do not furnish any cause of action for damages and a fortiori it cannot be made the basis of an application for a writ of mandamus. In both cases the reason is common that the rules being directory do not create any duty in favour of the employee. Hence that circular No. 1864/1887 issued by the Director of Public Instruction is contrary in the Hyderabad Civil Service Rules will not justify the issue of a writ of mandamus.

Similarly the Regional Languages Examination Rules framed and published by order of Nizam in exercise of his power under proviso to Art. 309 is not mandatory and is liable to variation. AIR 1952 Raj 17; AIR 1952 Madh B. 105; AIR 1953 Trav.-Co. 140 and AIR 1937 PC 31, Rel. on.

The regulations relating to the public services under the Constitution are directory, liable to be changed to suit the public policy of the State. Where the executive of the State in pursuance of the policy of making regional languages the medium of instruction in all primary schools have varied as regards teachers in such schools, the rules of examination of these languages for public servants in general and by doing so no duty towards the teachers has been violated because there were not officers whose tenures of office were guaranteed under the Constitution and there was no act of legislature which regulated the conditions of public service in the State a writ of mandamus cannot be issued against the circular containing the variations.

Further in the case of public servants no matter to what service the servants may belong and no matter what position they hold in the service and whatever may have been the terms of their employment, the qualification that the terms of their services are always subject to the qualification dictated by the public policy is implied in the engagement and further they cannot claim that the rules in force at the time of their employment are to be observed for all time to come. Therefore the circular cannot be declared void on the ground that it sought to enforce stipulations which were not in force at the time of their employment. **ILR (1953) Hyd 498: AIR 1953 Hyd 298 (301, 302) (Pt B) (Prs 8, 9, 10, 11, 12) (DB).**

——Art. 226 — Tax illegally collected by State Government — Writ of mandamus may be issued to State Government to refund tax illegally collected. AIR 1959 SC 135 and 1961 Ker LJ 1336, Rel. on. **ILR (1962) 2 Ker 400: 1962 Ker LJ 1312: 1962 Ker LT 826: AIR 1963 Ker 31 (42, 43) (Pt D) (Pr 67).**

——Art. 226 — Inspector General of Municipalities incurring obligation under Gwalior Municipalities Act to notify election — S. 2, M. B. Municipalities Act if provides for implementation of such obligation — Issue of writ of mandamus. See Municipalities — M. B. Municipalities Act (1 of 1954), S. 2. **AIR 1955 NUC (Madh B.) 3753 (DB).**

——Arts. 226, 16 — Mandamus — Candidate eligible to appear for competitive examination — Permission refused by Public Service Commission — Writ of mandamus will be issued. **AIR 1955 NUC (Madh B.) 3348 (DB).**

——Art. 226 — Mandamus — Madhya Bharat Sthan Niyantran Vidhan (1950), Section 9. District Judge refusing to entertain appeal — Writ of mandamus. See Houses and Rents — Madhya Bharat Sthan Niyantran Vidhan (1950), S. 9. **AIR 1955 NUC (Madh B.) 2118 (DB).**

——Art. 226 — Writ of Mandamus, when issued — Party must have a legal right to the performance of legal duty by another party. **ILR (1953) Madh B. 393: AIR 1953 Madh B. 165 (169, 170) (Pt A) (Pr 8) (DB).**

——Art. 226 — Mandamus — Issue of — Civil servant officiating in higher post — Reversion to substantive post by way of penalty for certain period — No right to be promoted to higher post after expiry of period—Mandamus to direct promotion to Higher Grade cannot issue. See Ibid Art. 311. **AIR 1960 Madh Pra 216 (DB).**

——Arts. 226 and 19 (1) (g) — Mandamus — Writ can issue prohibiting authority to do certain thing — Infringement of fundamental right to carry on trade by stopping movement of foodgrains in absence of any notification — Mandamus may be issued. AIR 1956 Manipur 13 (16) (Prs 17, 18).

——Art. 226 — Mandamus — Failure to perform statutory obligation, under R. 96, Defence of India Rules — Mandamus will issue. AIR 1956 Manipur 1 (4) (Pt B) (Pr 15).

——Art. 226 — Mandamus — Refusal to make reference under S. 18, Land Acquisition Act — Mandamus can issue. See Land Acquisition Act (1894), S. 18. **AIR 1960 Mys 264 (DB).**

——Art. 226 — Exercise of powers — "For any other purpose" — Discretionary — When exercised.

A publisher of text books applied under Art. 226 for the issue of a writ of mandamus against the D. P. I. Orissa, to include a book published by her and the book included in the approved list for 1950-1951, should continue to be in the list for 1951-52 in accordance with the Education Code.

Held: The proper interpretation of Art. 226, would be that in enforcing a fundamental right guaranteed under the Constitution the Court is under a duty to exercise its power under the article, while it has discretion to exercise it "for any other purposes". No doubt the Article vests unlimited powers but it is not to be exercised arbitrarily, capriciously or indiscriminately. It is subject to sound judicial discretion and governed by well-established legal principles. A writ of mandamus will not be issued where there is no legal duty in the respondent to perform and a corresponding clear legal right in the petitioner to be enforced. (Case-law ref.)

(Per Das, C. J.) — Art. 226 cannot be construed to vest in the Courts unrestricted powers to administer, supposed equity not based on a justiciable foundation. (AIR 1944 Mad 187, Not foll).

Held: The petitioner had not proved any legal right in her that could be enforced against the authority who had exercised the discretion vested

in him according to the instructions of the Government. He was under no legal obligation to be bound by the rules of a defunct committee and recognise the text book of the petitioner particularly when the instructions in the matter notified in Gazette were not carried out by the petitioner. **ILR (1952) Cut 410: AIR 1952 Orissa 344 (347, 348, 349) (Pt A) (Prs 10, 11, 14) (DB).**

——Arts. 226 and 149 — Mandamus — Circumstances for.

The duties imposed on the Comptroller under the Audit Code which derives its authority under Art. 149 of the Constitution are obviously statutory and the powers given thereunder in regard to the payment of passage benefit have to be exercised as warranted. Thus, where the Accountant General, Bihar, at the first instance issued passage certificates to the wife and children of the petitioner who was a member of Indian Civil Service, but later on refused to pay the same and this act was found to be arbitrary and without any legal justification, and also that no other remedy equally effective was available to the petitioner:

Held, that it was a fit case in which the writ of mandamus could be issued. **1957 BLJR 299 (2): ILR 36 Pat 557: AIR 1957 Pat 515 (526) (Pt G) (Pr 17) (DB).**

——Art. 226 — Duty of Collector — Failure in — Mandamus. See Land Acquisition Act (1894), S 11. **AIR 1955 Pat 63 (DB).**

——Art. 226 — Industrial Disputes Act (1947) Ss. 10 (1) and 2 (k) — Strike notice containing several demands — Reference under S. 10 (1) in respect of only some is intra vires and legal — Mandamus directing State Government to refer remaining disputes cannot be issued. See Industrial Disputes Act (1947), S. 10 (1). **AIR 1952 Pat 210 (DB).**

——Art. 226 — Mandamus.

Where the petitioner submitted that a writ of mandamus be issued to the State directing them to implement the orders made by the Chief Minister and the Education Minister but the petitioner did not allege and prove that it was the duty of the Government to implement the orders in question, and further that he had approached the Government for the appropriate relief and they had refused to grant the same to him:

Held, that the petitioner did not make out any case for issue of a writ of mandamus. **ILR (1953) Patiala 639: AIR 1954 Pepsu 129 (131, 132) (Pt D) (Pr 7).**

——Art. 226 — Powers of High Court — Decision of appropriate Government not to refer a dispute to Tribunal — Nature of order — Interference — Report of Conciliation Officer under S. 12 (4) of Industrial Disputes Act, not considered — Reference declined on extraneous considerations — Government deciding on merits the matter sought to be referred — Government cannot usurp the function of tribunal or Industrial Court and refuse reference — Writ of mandamus Issued — Industrial Disputes Act (1947) Ss. 10 (1), 12 (5) — Refusal of reference by Government — Based on decision on merits of the case — Report of conciliation officer not considered — Refusal to refer based on extraneous consideration is illegal. 1965 Cur LJ 541: ILR (1965) 2 Punj 802: (1965-66) 29 FJR 155.

——Art. 226 — Mandamus — Application under S. 57 (8), Motor Vehicles Act, by Motor Service for increase in number of trips — Application calls for early disposal — Delay in disposal — Mandamus for disposal is justified. **AIR 1962 Punj 532 (534) (Pt C) (Pr 11).**

——Art. 226 — Mandamus — Right to apply for — Right must be clear and well defined — (Industrial Disputes Act (1947), S. 10 (1) (c)).

Mandamus is discretionary writ and will not be granted unless the rights of the petitioner are clear. He must show not only that he has a legal right to have the act performed but that the right is so clear and well-defined as to be free from any reasonable controversy. The writ cannot issue when the right is doubtful, or not complete, or is a qualified one, or where it depends upon an issue of fact to be determined by the respondent. Section 10 (1 (c), Industrial Disputes Act, 1947, confers no legal right on the employers, and imposes no duty on the State Government. Mandamus cannot issue to determine academic questions or empty and barren technical rights. **60 Punj LR 425: (1958-59) 15 FJR 49: (1959) 1 Lab LJ 274: ILR (1958) Punj 2061: AIR 1959 Punj 75 (78) (Pt B) (Pr 8) (DB).**

——Art. 226 — Retrenchment of employee in violation of provisions of S. 25, Industrial Disputes Act — Raising of dispute by Union of which he was member — Failing settlement during conciliation proceedings, Conciliation Officer referring matter to Government under S. 12 (4) — Government refusing without assigning reasons to refer dispute under S. 12 (5) — Application by Union for issue of writ of mandamus is maintainable. AIR 1960 All 738; AIR 1962 Mys 25 and AIR 1962 Cal 45, Disting. AIR 1960 SC 1223, Rel. on. **1964 Raj LW 37: ILR (1964) 14 Raj 201: (1965) 1 Lab LJ 229.**

——Art. 226 — Member of Legislative Assembly arrested and detained under due process of law — No privilege to be allowed to attend session of Assembly — Writ of mandamus will not issue directing State Government to enable him to attend Session of Legislative Assembly. See Ibid, Art. 194 (3). **AIR 1955 Trav-Co 154 (DB).**

——Art. 226 — Industrial Disputes Act (1947), S. 12 (5) — Scope — Statutory obligation under S. 12 (5) on Government — Writ of mandamus — See Industrial Disputes Act (1947), S. 12 (5). **AIR 1953 Trav-Co 286.**

237 (c). Private right.

——Art. 226 — Certiorari and mandamus — Nationalisation of bus transport services — R. T. A. offering alternative routes to displaced operators in lieu of compensation — Offer accepted — Offer and acceptance recorded in resolution by R. T. A. — Writ petition by existing operator on alternative route, for certiorari to quash resolution and for mandamus commanding R. T. A. not to permit displaced operators to operate on alternate route — Not maintainable — Prima facie loss in petitioner's earnings on account of increase in competition not sufficient for grant of mandamus. AIR 1961 All 214, **Reversed. ILR (1961) 1 All 52: AIR 1962 All 551 (552, 553, 561) (Pt A) (Prs 5, 6, 7, 61) (DB).**

——Art. 226 — Right to property — Infringement — Hereditary managing agency rights — Nature of — Issue of writ of mandamus. See Ibid, Art. 19 (1) (f). **AIR 1957 Mad 309 (DB).**

——Arts. 226 and 14 — Applicability — Mandamus can issue for enforcement of public duty — Enforcement of private right under mortgage does not involve public duty — Enforcement of right to sell mortgaged property without intervention of Court under S. 69 T. P. Act, in City of Madras — Such right not granted outside limits of city — Art. 14 has no application — (T. P. Act (1882), S. 69). See Ibid, Art. 14. **AIR 1954 NUC (Mad) 1828.**

——**Art. 226 — Writ of mandamus — Issue of, to enforce status — Right and status — Distinction.**

Per Ray C. J. — Right should not be confused with status. Status may be the result of a perfected right; but the facts that would constitute the status to be declared by certain public authority, when performed, create a title to the status. This title, if it is a recognisable one, creates a right though the same, until recognised, falls short of the status.

To illustrate, it may be compared to a right to sue for declaration of a status which is as good a right as the right involved in the status itself for the purpose of enforceability. Whatever can be legally enforced is a specific legal right for the protection whereof a writ of mandamus may lawfully issue. **ILR (1951) Cut 407: 17 Cut LT 320: AIR 1952 Orissa 1 (10, 11) (Pt C) (Pr 30) (DB).**

[Reversed on another point in AIR 1954 SC 217].

——**Art. 226 — Mandamus — Grant of writ — Jurisdiction — When to be exercised — Private dispute between parties — Apprehension of dispossession — Appropriate relief available by resort to ordinary Civil Court — Application for writ will not lie — Discretion.** AIR 1949 Bom 229, AIR 1946 Bom 216, AIR 1946 Bom 407; AIR 1928 Pat 49, Dist. **AIR 1951 Pat 231 (241) (Pts B, C) (Pr 26) (DB).**

238. Duty and liability, distinction.

See Note 237.

239. Educational authority, against.

——**Art. 226 — Question of fact.**

Matters of the internal administration of a College, involving disputed questions of fact are not proper matters for enquiry by the Court on an application under Art. 226. **62 Cal WN 259: ILR (1959) 1 Cal 28: AIR 1958 Cal 131 (134) (Pt A) (Pr 14) (DB).**

240. Election, mandamus to elect.

——**Art. 226 — Mandamus against Corporation to elect member to Standing Committee.**

Where the election of a member to the standing Committee of a Corporation presided over by a Mayor is invalid, a writ of mandamus can be effectively issued to the Corporation to compel it to elect a member even though the Mayor is not a party when the corporation is a party represented by the Commissioner and he can be directed to perform the statutory duty. **(1958) 1 An WR 22: ILR (1958) Andh Pra 17.**

——**Art. 226 — Assam Municipal Act (XV of 1957), S. 301 — Rules under — Rules for election of Commissioners of Municipal Boards, R. 11 — Non-compliance with rule — Writ of mandamus cannot issue after election.** AIR 1957 SC 304 and AIR 1955 Nag 49 (FB), Dist. **ILR (1963) 15 Assam 29: AIR 1963 Assam 168 (169, 170, 175) (Pt A) (Prs 7, 9, 23) (DB).**

——**Art. 226 (1) — Mandamus to restore, admit or elect to office.**

Mandamus to restore, admit or elect to office will not be granted unless the office is vacant. If the office in fact is full, the proceeding should be taken by way of quo waranto or election petition to oust the party in possession — Mandamus will go only on supposition that there is no one holding the office in question. Mandamus however will be issued commanding election to an office, when although there has been an election to the office in question yet such election is void or merely colourable. **AIR 1953 Assam 12 (13) (Pt B) (Pr 3) (DB).**

241. Errors, mandamus to correct.

(a) Illustrative cases.

See also Note 237.

241. Errors, mandamus to correct.

●——**Art. 226** — Mandamus — Industrial dispute —Refusal of appropriate Govt. to refer dispute — Propriety or correctness of reasons for refusal whether can be enquired into by Court in petition for mandamus. See Industrial Disputes Act (1947), S. 10 (1). **AIR 1964 SC 1617.**

——**Art. 226** — Mandamus — Writ of — Will not issue for correcting mere errors of law — Wrong construction of S. 30 of Sea Customs Act by Customs Officer. **(1960) 2 Andh WR 545: AIR 1961 Andh Pra 170 (172, 173) (Pt B) (Prs 17, 23) (DB).**

——**Art. 226** — Defects in statement of case and question formulated by Appellate Tribunal — Remedies open to party aggrieved — A party not satisfied by the statement of case of the Appellate Tribunal in a reference made under S. 66 I. T. Act, can get it amplified by moving High Court for a writ of mandamus. See Income-tax Act (1922) S. 66 (2). **AIR 1956 Cal 636 (DB).**

——**Art. 226 — Mandamus — Issue of writ — Shipping Master and Government Medical Officers not conducting medical examination of seamen in reasonable manner — Madamus will lie. AIR 1951 Cal 570 (572, 573) (Pt A) (Prs 10, 15).**

241 (a). Illustrative cases.

See also Note 237.

●——**Arts. 226, 234, 309** — Proviso — Mysore Munsiffs (Recruitment) Rules (1958), Rr. 6, 9, 12 — Persons selected by Public Service Commission for posts of Munsiffs — Unsuccessful candidates challenging validity of selection by writ petitions — High Court finding the list vitiated by irregularities but directing inclusion of petitioners therein and confirming it — Order which was in the nature of mandamus held not authorised by Art. 226 — Other alleged irregularity also held not substantiated — Decision in Writ Petns. Nos. 923, 1080, 1446, 1461, 1462 and 1528 of 1962 dated 19-12-1962 (Mys), **Reversed.** AIR 1963 Mys 292, Affirmed. State of Mysore v. Chandrasekhara. **1965 SCD 243: (1965) 1 SCJ 702: (1965) 1 Andh LT 333: AIR 1965 SC 532 (537, 538, 539) (Prs 10, 12, 13).**

——**Art. 226 — Motor Vehicles Act (1939),** Sections 48 and 64 — Civil P. C. (1908), O. 41, R. 33, Preamble—R. T. A. granting pucca stage carriage permit only to two applicants out of 70 — Appeal against order of R. T. A. only by 25 — Appellate authority remanding case for fresh disposal in accordance with law — On remand, R. T. A. issuing notices to all 70 applicants — Petition by one of appellants praying for issue of writ of prohibition directing R. T. A. to forbear from considering subject relating to grant of permits in pursuance of notices consequent on remand — Held, order of remand must mean and could only mean that direction was to consider 'case' of parties to 25 appeals before appellate authority — Though terms of one statute could not be interpreted with reference to another, by way of analogy, even applying principles of O. 41, R. 33, appeal against order of R. T. A. could not enure to benefit of anybody, except appellant, as each appeal was separate venture—Fact that appeals were considered in batch would make no difference to individuality of appeal—Though on remand, R. T. A. acted without jurisdiction there was no question of any lack of initial jurisdiction in him—Though, therefore, relief (writ of prohibition) could not be granted, petition would not fail for failure to ask appropriate relief—Proper relief would be writ of mandamus.

A I R 1954 Mad 848, Rel. on. I L R (1963) Andh Pra 1028.

——**Art. 226 — Mandamus — Refusal to make reference under S. 18, Land Acquisition Act.**

Person who was not present at time of passing award and to whom statutory notice under S. 12 (2), Land Acquisition Act remained unserved filing application for reference under S. 18 nearly 4 years after date of award but within six months from knowledge of award — Collector dismissing application as barred — Writ of Mandamus directing Collector to make reference issued as application was not barred by limitation under S. 18 (2), Land Acquisition Act. **1955 Andhra WR 912: 1955 Andh LT (Cri) 755: AIR 1957 Andh Pra 687 (688) (Pt B) (Pr 3).**

——**Art. 226** — Assam Land (Requisition and Acquisition) Act (1948), S. 8 (1) (b) — Collector's duty — A statutory duty is cast on the Collector to refer the question of compensation where land is requisitioned under the Act to the Court of the District Judge, if the question cannot be settled by agreement. When there was long delay in the performance of that duty the High Court directed the Collector to refer the question of compensation to the District Judge under S. 8 (1) (b) of the Act. See Assam Land (Requisition and Acquisition) Act (25 of 1948) S. 8 (1) (b). **AIR 1953 Assam 143.**

——**Art. 226** — Legal right of unobstructed user of footpath — Liability of municipal and Police authorities to maintain such right — Failure by these officers — High Court can issue writ of mandamus. See Municipalities — Calcutta Municipal Act (XXXIII of 1951), S. 353. **65 Cal WN 133.**

——**Art. 226 — Mandamus — Failure to perform duties by Land Acquisition Officer — Writ — Issue of — (Land Acquisition Act (1894), S. 11).**

Where the Land Acquisition Officer has failed in the performance of the duties cast by the statute upon him, a writ in the nature of mandamus would lie under Art. 226 of the Constitution commanding him to perform the statutory duty. AIR 1955 Pat 63, Foll. **('59) 63 Cal WN 851: ILR (1960) 2 Cal 103.**

——**Art. 226 — Mandamus — Failure to do public duty.**

The foundation for an application for a writ of mandamus is the failure to do some public duty. Where a proposed resolution relates to a matter 'connected with the Gujarat University' (as required by Statute 22) it becomes the bounden duty of the Vice-Chancellor, who normally presides over the meeting of the Senate, to permit and regulate discussion of the same, unless there is some legal impediment to that being done. A resolution by which the Senate requests the State Government and the State Legislature to take early steps to amend the proviso to S. 4 (27) of the Gujarat University Act so as to extend the time limit of ten years mentioned in it to twenty years is certainly one relating to a matter connected with the University. Where the Vice-Chancellor does not allow the Senate to entertain and discuss such a resolution he must be held to have failed in his duty and a writ of mandamus must issue. **(1960) 1 Guj HCR 60: (1960) 1 Guj LR 67: AIR 1960 Guj 14 (17, 18, 19) (Pt A) (Prs 11, 12, 13, 14, 15, 16, 17) (DB).**

——**Art. 226 — Mandamus — Grounds for — Failure to discharge duty—Proceedings under Land Acquisition Act — Officer acting arbitrarily — Refusal to make reference under S. 18 Land Acquisition Act — Writ of mandamus could be issued. 76 Mad LW 166: AIR 1963 Mad 109 (110) (Pr 4).**

——**Art. 226** — Land Acquisition Act (1894), S. 49 (1), Proviso — Application by owner claiming land to be part of house — Rejection of application by Collector — Validity — Reference of matter to Civil Court — Refusal to do so is without jurisdiction — Mandamus issued. See Land Acquisition Act (1894) S. 49 (1). **AIR 1956 Mad 583.**

——**Art. 226 — Issue of writ — Grounds.**

Refusal of Commissioner of Income-tax to entertain revision application on a wrong view as to limitation — Writ of mandamus can issue to direct him to entertain and dispose of the application according to law. See Income-Tax Act (XI of 1922), S. 33-A (2). **AIR 1951 Mad 204 (DB).**

——**Art. 226** — Mandamus — Assam Co-operative Societies Act, 1949 (I of 1950), Ss. 10, 11 — Duty of Registrar — Order of Registrar not in accordance with provisions of Act — No remedy under Act against the order — Petition under Art. 226, is maintainable. See Assam Co-operative Societies Act, 1949 (I of 1950), S. 10. **AIR 1965 Manipur 1.**

——**Arts. 226 and 227 — Making of interim payment of compensation — Collector failing to perform statutory duty — Writs can be issued — Tenancy Laws — Bihar Land Reforms Act (XXX of 1950), S. 33. 1960 BLJR 297.**

——**Art. 226** — Mandamus — Application for reference under S. 18 (1), Land Acquisition Act, wrongly rejected as barred by limitation — Mandamus issued to Collector to make reference, since he was bound to make reference in the circumstances. **1958 BLJR 350: AIR 1959 Pat 83 (86) (Pt C) (Pr 7) (DB).**

——**Art. 226** — Mandamus — Claim for compensation in respect of damage done to property during period of requisition — Failure of State Government to appoint arbitrator — Mandamus could be issued — (Public Safety — Bihar Maintenance of Public Order Act 1949 (III of 1950), S. 12 (3) (ii)). **1958 Pat LR 82.**

——**Arts. 226 and 227 — Mandamus — Writ of — Refusal by Government to refer industrial dispute to tribunal for adjudication — High Court cannot issue writ or direction — Industrial Disputes Act, S. 10. (1952) 2 Lab LJ 17: AIR 1952 Pat 447 (448, 449) (Prs 12, 13) (DB).**

——**Art. 226** — Eviction proceedings — Necessity of show cause notice — Provisions of S. 4 (2) (a) mandatory — Order passed without complying with said provisions illegal—Mandamus issued — Constitution of India, Art. 226 — Restoration of possession. See Houses and Rents — Punjab Premises and Land (Eviction and Rent Recovery) Act (XXXI of 1959), S. 24 (2) (a). **('62) 64 Punj LR 997.**

——**Art. 226 — Mandamus — Vice-Chairman of Municipal Committee failing to convene meeting — (Municipalities — Ajmer-Merwara Municipalities Regulation (VI of 1925), Ss. 13 (2), 48 and 50 (2) — Scope.**

At a meeting of the Municipal Committee the resignation of the Chairman was accepted and it was decided to call a fresh meeting within 10 days for election of a chairman. The Senior Vice-Chairman did not take any steps to call another meeting and failed to call a meeting till an application was filed for a writ of mandamus directing the Senior Vice-chairman to convene a meeting to elect a new chairman and the attempt of the Junior Vice-chairman to convene a meeting also failed.

Held, (i) that S. 13 (2) of the Regulation provides that a casual vacancy in the office of the Chairman shall be filled within fifteen days of the

occurrence of the vacancy. Section 48 provides that it shall be the duty of the Vice-Chairman present to perform, during the temporary absence of the Chairman or during a vacancy in the office of Chairman, the duties of the Chairman. It was the duty of petitioner No. 1 to perform the duties of Chairman in the temporary absence of the Senior Vice-Chairman. As the Senior Vice-Chairman had gone out of station the Junior Vice-Chairman had authority to call a meeting. The action of the Senior Vice-Chairman in cancelling the meeting was illegal. So was the action of the Collector in cancelling the meeting. (ii) Under S. 50 (2), the Senior Vice-Chairman had no valid excuse for not calling a meeting on that requisition. (iii) That the Senior Vice-Chairman should be directed to convene a meeting of the Committee. **ILR (1959) 9 Raj 303.**

——Art. 226 — Mandamus — When can issue —(Punjab Coal Control Order (1955), Paragraphs 10, 11).

A mandamus can issue only if the Court is satisfied that the petitioner has a specific legal right to the performance of the act sought to be enforced and that the respondent has a legal duty to perform the said act. The right must be so clear and certain as not to admit of any reasonable doubt and the duty must be a duty specially enjoined by law.

Where there was not the slightest suggestion that the petitioner had obtained his coal depot by false pretence or that he had contravened any of the provisions of Punjab Coal Control Order of 1955 and yet the Government cancelled his depot on the ground which was wholly unauthorised by law:

Held, that the State Government failed to perform the duty which had been imposed on it by law and the petitioner had a right to the enforcement of the said duty by the issue of a writ of mandamus. **59 Punj LR 647: ILR (1958) Punj 547.**

——Art. 226 — Mandamus — Panchayat officer not notifying result of election — Mandamus to Chief Panchayat Officer, will issue — (Panchayats — Rajasthan Panchayat Election Rules, Rr. 19 and 20). 1958 Raj LW 219: ILR (1958) 8 Raj 177.

242. Executive duty and ministerial act.

——Art. 226 — Mandamus — Writ of, against ministerial officers — Forest Act (1927) S. 82 — Punjab Land Revenue Act (XVII (17) of 1887) Ss. 70, 97, 98.

In ordering or making attachment of the petitioner's property on receipt of a precept from the Chief Conservator of Forests under section 82 of the Forest Act the Collector and the Assistant Collector are merely carrying out a duty imposed upon them by that section and section 70 of the Punjab Land Revenue Act.

It is not incumbent upon them, before ordering or making attachment, to go into the merits of the precept. Sections 70, 97 and 98 of the Land Revenue Act, do not enjoin duty upon the revenue authorities to enter into the merits of a precept under section 82 of the Forest Act before executing it. The Collector and the Assistant Collector who are concerned merely with execution of the precept under S. 82, Forest Act received from the Chief Conservator of Forests, are nothing but "ministerial officers" obeying the orders of a competent authority and a writ of mandamus cannot be granted against them.

Further, when the Himachal Pradesh Government through the Chief Conservator of Forests issued the attachment, and have it in their power to forbear from demanding the dues in question or enforcing their recovery from the petitioner, any mandamus or other writ issued to the Collector & the Assistant Collector that they be ordered to withdraw the attachment and to forbear from demanding the amount claimed against him or enforcing the recovery of the same as arrears of land revenue would be entirely futile in its result. Such a mandamus or other writ will be merely brutum fulmen, for they have no power lodged in them to obey it and for this reason also writ of mandamus cannot be granted. Case law rel. on. **AIR 1952 Him P. 16 (17, 18) (Pt A) (Prs 5, 6, 8).**

——Art. 226 — Travancore-Cochin Public Health Act (XVI of 1955), S. 42 — Prohibitory order under S. 42 by Health Inspector and Taluk Health Officer — District Collector and District Superintendent of Police not entitled to consider validity of such order and permit breach of prohibitory order under public protection — Issue of mandamus. See Travancore Cochin Public Health Act (XVI of 1955), Section 42. **1964 (1) Cri LJ 190: AIR 1964 Ker 29.**

——Art. 226 — Mandamus — Executive and Ministerial acts.

Where a matter is left to the absolute subjective discretion of the Executive, mandamus will not lie to question the decision of the Executive on such matter. Where a matter has to be decided by the Executive after considering pros and cons, mandamus will not lie to question the decision. **AIR 1956 Manipur 1 (4) (Pt C) (Pr 15).**

——Art. 226 — Mandamus — Issue of — Executive and ministerial act — Distinction pointed out. 60 Punj LR 425: (1958-59) 15 FJR 49: (1959) 1 Lab LJ 274: ILR (1958) Punj 2061: AIR 1959 Punj 75 (78) (Pt C) (Pr 9) (DB).

243. Futile writ.

See Note 53.

244. Government, against.

See Note 225.

245. Grounds of.

(a) Act impeached as ultra vires, duty under.

245. Grounds of

——Art. 226 — Mandamus — Grounds for issue — Anticipatory breach of right.

An anticipatory breach of the alleged rights of a citizen cannot be a ground for the issue of a writ of mandamus. **AIR 1958 Andh Pra 632 (635) (Pt E) (Pr 9) (DB).**

——Art. 226 — Mandamus — Issue of — Grounds — Madras Preservation of Private Forests Act (XXVII of 1949), S. 10 — Rules under, R. 7 — Order of District Collector directing District Forest Officer to issue Form II permit — Latter suspending permit — Issue of mandamus — Competency. See Andhra Preservation of Forests Act (XII of 1954), S. 3 (2). **1958 An. LT 639.**

——Art. 226 — Mandamus — Refusal to make reference under S. 18, Land Acquisition Act, on application by person who was not present at time of passing award and to whom statutory notice under S. 12 (2) of Land Acq. Act had remained unserved — Application for reference nearly 4 years after date of award but within 6 months from knowledge of award — Dismissal of application as barred — Mandamus issued. **1955 Andh WR 912: 1955 Andh LT (Civ) 755: AIR 1957 AP 687 (688) (Pt B) (Pr 3).**

——Art. 226 — Grounds for interference — (Life Insurance Corporation Act (1956), S. 11).

Sub-section (1) of S. 11 of Life Insurance Corporation Act, makes it clear that so far as a

worker is concerned who was employed by an insurer before he became employed by the Life Insurance Corporation, he was to receive and continue to receive remuneration at the rate that he was receiving before. Where the petitioners were not receiving dearness allowance previously and their entire claim was based on sub-S. (2) of S. 11, they can only claim dearness allowance if the same is made payable by orders of the Central Government made under this provision of the Act.

Where the criteria for fitting the existing Field Officers into that scale have still to be determined the High Court will not interfere in the matter and compel the Corporation to make payments in haphazard fashion. **AIR 1959 Cal 785 (785, 786) (Prs 1, 3).**

——Art. 226 — Mandamus — Premature application.

The applicant was served with a notice by the Collector of Customs to show cause why the Fluorescent Tubes and accessories and/or the sale proceeds thereof should not be confiscated under S. 167 (8) of the Sea Customs Act. The petitioner had already been prosecuted and acquitted of a charge under S. 420/120-B, Penal Code in respect of the fraudulent misrepresentation in obtaining the licence. In a petition against the Collector for issuing a writ in the nature of mandamus directing him to recall the notice:

Held, at the present only a notice had been given to show cause and that was not a statutory notice required by the Sea Customs Act. It was a notice given because rules of natural justice required that the person whose goods were to be confiscated or upon whom a penalty was to be imposed, should be afforded an opportunity to defend his case. Such a notice should not be construed like a statutory notice. There was no reason why the Court should interfere at that stage. If the authorities after investigating the matter made an order not in accordance with law or followed a procedure not known to law then the petitioners might ask for relief at the proper stage. **1957 Cri. LJ 1116: AIR 1957 Cal 606 (613) (Pt D) (Prs 17, 18).**

——Art. 226 — Mandamus — Industrial Disputes Act (1947), S. 12 (3) — Conciliation proceedings — Workers requesting their Union to convene general body meeting on failure to arrive at settlement — But workers themselves directly arriving at settlement before any such meeting was convened on ground that office bearers of Union had been removed — Settlement fully implemented on respondent Labour Officer and Conciliation Officer affixing signature thereto — Petition by Secretary of Union for prohibiting respondent to give effect to settlement or for declaring it nullity — Ground that failure by respondent to examine locus standi of workers to arrive at settlement resulted in failure to exercise functions under S. 12 — Petition challenged on ground that petitioner was not workman and had no locus standi to maintain petition — **Held** on facts that petitioner had locus standi to maintain petition — However he could not claim relief of mandamus or declaration. 1959-1 LLJ 520 and 1961-1 LLJ 303 Rel. on. Industrial Disputes Act (1947), S. 12 (3). **1965 Ker LJ 1077.**

——Art. 226 — Mandamus — Issue of — Rules under S. 26, Trav. Abkari Act, R. 12 — Rule does not vest arbitrary power with Board of Revenue — Board not acting under rule nor declining to act — No mandamus can be issued against Board — (Travancore Abkari Act (IV of 1073), S. 26). **1959 Ker LT 1278: 1959 Ker LJ 1390: ILR (1959) Ker 1212: AIR 1960 Ker 164 (167) (Pt B) (Pr 16) (DB).**

245 (a). Act impeached as ultra vires, duty under.

——Art. 226 — Issue of show-cause notice on petitioner for his removal from office of mutwallifship — Petitioner challenging vires of Act under which notice is issued — Petition is not premature. AIR 1955 SC 661 and AIR 1961 SC 372, Rel. on. AIR 1965 All 333 (336, 337) (Pt A) (Prs 9, 10).

——Art. 226 — Mandamus — Examination held by Government — Condition that candidate must have put in more than one year of continuous service on specified date — Petitioner not permitted to appear at examination as condition alleged to be not fulfilled — Validity of order.

To appear at Special Lower Division Secretariat Examination, one condition imposed by a Government circular was that an assistant who was employed on a temporary basis must have put in more than one year of continuous service as Lower Division Assistant. The petitioner was not permitted to appear at the examination as there was no continuous period of service for one year. But it appeared that the order was not actually communicated to the petitioner.

Held, that, in the circumstances, the order refusing to give permission to the petitioner to appear at the examination was ultra vires. **Held,** further that a writ in the nature of mandamus should be issued commanding the respondents to publish the result of the examination so far as the petitioner was concerned. **AIR 1957 Pat 393 (395) (Prs 5, 6) (DB).**

——Art. 226—Mandamus when to be issued — Order of Cloth Controller under constitutionally invalid provisions of Bihar Cotton Cloth and Yarn (Control) Order (1948), refusing to renew license — Mandamus will issue against authority commanding them not to give effect to order. See Bihar Cotton Cloth and Yarn (Control) Order (1948), Cl. 5 (1) and (2). **AIR 1954 Pat 325 (DB).**

246. History of.

See Note 234.

247. Individual officer, against.

See Note 225

248. Interim relief.

See Note 63.

249. Judicial and quasi-judicial authorities.

See also Notes in Part D (Notes 224 to 275) relating to particular authorities.

——Art. 226 — Mandamus — Issue of writ to Judicial and quasi-judicial authorities — (U. P. Cement Control Order (1955), Cl. 5).

No mandamus directing the Cement Controller to decide an appeal under the U. P. Cement Control Order, 1955 'immediately' will be issued. The word 'immediately' is not capable of any precise meaning. The Cement Controller's duties are multifarious and he alone is the best judge of the priorities of the various duties he has to perform. Hence the time of decision of an appeal should safely be left to his own consciousness and devotion to duty. **1959 All WR (HC) 166.**

——Art. 226 — Mandamus — Orders without jurisdiction affecting rights of petitioners — Mandamus could be issued to officers concerned to withdraw orders. **AIR 1955 All 165 (166, 167) (Pt B) (Pr 4) (DB).**

——Art. 226 — U. P. Industrial Disputes Act (1947) S. 3 — General order of Government referring dispute to Tribunal — Clause in order empowering Tribunal to direct employers to pay

travelling expenses and leave pay of representatives of workers, representing their case — Such direction must be included in costs in award — Amount can be recovered as arrears of land revenue — Writ of mandamus prohibiting its recovery held could not issue. See U. P. Industrial Disputes Act (28 of 1947), S. 3. **AIR 1955 NUC (All) 2026.**

——**Art. 226** — Small Cause suit for recovery of rent — Application by tenant for fixation of rent — Maintainability — Writ of mandamus against Rent Controller directing him to fix rent — If lies — See Houses and Rents — U. P. Temporary Control of Rent and Eviction Act (3 of 1947), S. 3A. **AIR 1951 All 710 (DB).**

——**Art. 226 — Jurisdiction of High Court — Mandamus when may be issued — Order of Income-tax Officer in clear violation of directions given by Appellate Tribunal — No injustice to petitioner — No writ will be issued. AIR 1956 Bhopal 18 (20, 21, 22) (Prs 9, 12, 13, 15, 18).**

[Reversed in AIR 1961 SC 182].

——**Art. 226 (1) — Writ of certiorari — Issue of to correct error of law.**

Ordinarily the Court issues a writ of certiorari to correct the decisions of subordinate Courts and Tribunals when those decisions are given in excess of jurisdiction, or in the irregular exercise of jurisdiction, or when in the exercise of jurisdiction rules of natural justice are violated. The Court has the jurisdiction to issue a writ of certiorari even to correct an error of law provided that error is apparent on the face of the record. The error of law which can be considered to be apparent on the face of the record is not error which can be pointed out to the superior Court after a long and elaborate argument. The error of law contemplated is an error so patent, so manifest, that the superior Court will not permit the subordinate Court to come to a decision in the face of a clear ignorance or disregard of a provision of law. If a section of a Statute is clearly misconstrued, or if a provision of the law is overlooked or not applied, and that appears from the judgment of the lower Court itself, then the superior Court may interfere by a writ of certiorari. **53 Bom LR 1009: ILR (1952) Bom 995: AIR 1952 Bom 235 (240, 241) (Pt C) (Pr 9) (DB).**

——**Art. 226** — Powers of High Court — High Court can issue direction to subordinate Tribunal to take further evidence and determine question. AIR 1952 Bom 443, Dissented from. **ILR (1961) 1 Cal 938: AIR 1961 Cal 95 (97) (Pt B) (Pr 7) (DB).**

——**Art. 226 — Mandamus and certiorari — Issue of writs — Matters for consideration — Quasi-judicial and administrative proceedings — Order of Collector cancelling license under S. 42, Bengal Excise Act and order of Excise Commissioner on appeal — Interference by High Court.**

If an application for a writ of mandamus or certiorari is made, the High Court has to consider, where the proceedings are to be considered as judicial or quasi-judicial, whether they were conducted in accordance with those accepted principles in which a judicial proceeding or a quasi-judicial proceeding should be conducted. In such a proceeding, a party must have the amplest opportunity of testing any evidence given against him and must be given an opportunity of being heard at every stage and no evidence should be taken in his absence. If, however, the proceedings are purely administrative, the High Court can only interfere if a public officer does something which he has no jurisdiction to do or fails to do something which is incumbent upon him to do. The acts of commission or omission must relate to some provision of law. In other words, if a public officer is not required by any law or by anything which has the force of law to do or to refrain from doing any particular act then the High Court is powerless to direct him to do that act or refrain from doing it. It is not possible for the High Court to interfere on grounds of expediency alone. If something is left entirely to the discretion of an administrative officer, the High Court cannot interfere unless it is shown that the actual exercise of such discretion has been mala fide or done in bad faith.

There is nothing in the Bengal Excise Act or the rules which says that the Collector has to proceed in any particular manner or that he must follow a judicial approach for the purpose of cancellation of a license under S. 42 of the Act. Therefore, the proceedings before him culminating in his order cancelling a license is not quasi-judicial but purely administrative. If the Collector thinks in his discretion that a license should be cancelled on the admitted breaches of its terms, no exception can be taken to his order. An appeal under the provisions of the Act and the Rules to the Commissioner of Excise from the order of the Collector does however require a judicial approach and therefore is a quasi-judicial proceeding. Since no particular procedure has been laid down for the conduct of such a proceeding all that is necessary to do is to follow the rules of natural justice. The rules of natural justice are not followed if the Commissioner of Excise in declining to interfere with the Collector's order consults the Superintendent who is in the position of an accuser behind the back of the appellant and without giving him any opportunity of meeting any particular statement that the officer might have made. The High Court may set aside the order of the Commissioner on this point alone, but it will not do to so if that order is capable of being upheld on the evidence even after excluding the evidence of the Superintendent. It is a well established principle that a writ of certiorari or mandamus should not be issued when they would be useless. **AIR 1952 Cal 808 (811 to 815) (Prs 13, 18, 19, 20, 21, 22, 23, 24, 25).**

——**Art. 226 — Mandamus to quasi-judicial authorities — M. B. Public Demands Recovery Act (XXIV of 1954) Ss. 8 and 9 — Demand of recovery — Objections by defaulter not heard and execution not stayed — Mandamus to direct Collector to hear defaulter and decide objections will be issued. 1956 Madh BLJ 726: Madh BLR 1956 Civil 573: AIR 1956 Madh B 221 (224) (Prs 18, 21) (DB).**

——**Art. 226 — Rejection of nomination paper — Power to issue writ of mandamus.**

The Returning Officer has a judicial duty to perform at the scrutiny. It is his duty to decide whether or not a nomination paper should be accepted; and if he rejects the nomination paper, even though improperly, he acts with jurisdiction and discharges a judicial and not a ministerial function and in such a case the High Court has no power to interfere with the decision by a mandamus or any other appropriate writ. (1902) 86 LT at p. 590, (1923) ILR 51 Cal 279, Rel. on. **('52) 31 Pat 145: AIR 1953 Pat 47 (50) (Pt C) (Pr 16) (DB).**

——**Art. 226** — Applicability — Establishment of Panchayats under S. 3, Rajasthan Panchayats Act, 1953 — Subsequent minor changes made in formerly grouped areas — Action taken, if under

S. 3 or S. 86 — Non-compliance with provisions of S. 86 — Issue of mandamus — See Panchayats — Rajasthan Panchayat Act (21 of 1953), S. 86. **ILR (1956) 6 Raj 834.**

——**Art. 226 — Powers under — Writ of mandamus will issue to Dt. Judge conducting enquiry under S. 22 of the Bombay District Municipal Act, when his acts are ultra vires. AIR 1951 Sau 15 (15, 16) (Prs 3, 4) (DB).**

——**Art. 226** — Mandamus — Disposal of articles seized — Applicability of S. 523 Cr. P. C. — No proceedings for 4 months under S. 23, Foreign Exchange Regulation Act (1947) — Order by Magistrate handing over possession of seized articles to Director of Enforcement — Validity — Functions of Magistrate under S. 19 (3) of the Act — Nature of — Order handing over possession, if can be quashed under Art. 226. See Criminal P. C. (1898), S. 90. **1962 (2) Cr LJ 794: AIR 1962 Tripura 50.**

250. Laches.

See Note 35.

251. Legal duty.

See Note 237.

252. Legislature, against.

See Note 5.

253. Meaning of.

See Note 233.

254. Ministerial act and executive duty.

See Note 242.

255. Moral duty.

——**Art. 226** — Annual grant of money as pension — Amount calculated on basis of one-fourth of revenue of pargana — Refusal by Government to pay grant after coming into force of Act — Right of pensioner to grant — Enforcement by writ of mandamus — See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 4. **AIR 1956 All 564.**

256. Office, mandamus to restore to.

——**Art. 226** — Mandamus, writ of — Election to office — One of contestants elected and accepting office — No writ can be issued against him he having accepted office and opposite party having acquiesced in the election proceedings and further successful party not being party to the proceedings under Art. 226. AIR 1957 SC 529 and AIR 1962 Cal 857. Rel. on. **AIR 1963 All 447 (447, 448) (Prs 2, 3) (DB).**

——**Art. 226 — Mandamus — Wrongful dismissal of municipal servant — Writ for reinstatement — (Municipalities — U. P. Municipalities Act (II of 1916), S. 76).**

Even where the municipal board did not terminate its employees' services in accordance with the law, the employees would not be entitled to get the relief of reinstatement but only damages. **1958 All LJ 363: AIR 1958 All 841 (844) (Pt D) (Pr 10).**

——**Arts. 226, 310 (1), 311 (1) & (2) — Scope — Petition for writ of mandamus directing State Government to reinstate petitioner in service — Competency.**

The principle embodied in Art. 310 (1) that Government servants hold office during the pleasure of the President or the Governor, as the case may be, is qualified by the 'provisions of Art. 311' which give protection to Government servants. Under Art. 311 (1) the punishment of dismissal or removal cannot be inflicted by an authority subordinate to that by which the servant was appointed; and under Art. 311 (2) the punishment of dismissal, removal and reduction in rank cannot be meted out to the Government servant without giving him a reasonable opportunity to defend himself.

The petitioner was holding a substantive appointment in a permanent post in the Hyderabad Municipal Corporation before his services were transferred to the Government. He was entitled to hold a lien on that post. The termination of the petitioner's services attracts the provisions of Art. 311 of the Constitution. The right of the petitioner to the permanent post in the Municipal Corporation could not be taken away. The petitioner's reinstatement in his former service should carry with it all the benefits he would have earned but for the deviation from the parent department, viz., the Hyderabad Municipal Corporation. **(1960) 1 Andh WR 256: (1960) 2 Lab LJ 391.**

——**Art. 226 (1)** — Mandamus to restore, admit or elect to office — Mandamus to restore, admit or elect to office will not be granted unless the office is vacant. If the office is, in fact full, the proceedings should be taken by way of quo warranto or election petition to oust the party in possession. Mandamus will go only on supposition that there is no one holding the office in question. Mandamus, however, will be issued commanding election to an office, when although there has been an election to the office in question, yet such election is void or colourable. **AIR 1953 Assam 12 (13) (Pt B) (Pr 3) (DB).**

——**Art. 226** — Mandamus — Order by Government promoting junior over the head of senior in violation of Constitution — Court can quash order and direct Government to consider case of senior — It cannot except in case of hardship to petitioner, order the Government to promote him: Writ Petn. No. 654/62, dated 16th January, 1963 (Mys) Distinguished. **(1964) 1 Mys LJ 212: AIR 1964 Mys 229 (232) (Pt B) (Pr 23) (DB).**

——**Art. 226** — Mandamus is not available to person unless he has a clear legal right to performance of particular act — Mandamus to restore an officer to a post from which he was removed will not be granted if he had no legal right to hold it — A person who is occupying higher post in an officiating capacity has no such right and can be deprived of it by competent superior officer without charges or hearing. He can be reverted to his substantive post. See Ibid, Art. 311. **AIR 1956 Punj 207.**

——**Art. 226 — Person wrongfully dispossessed of public office — Writ of mandamus lies.**

Writ of mandamus lies to compel the restoration of a person to an office of which he has been wrongfully dispossessed, provided such office is of a public nature. **53 Pun LR 443: AIR 1952 Punj 176 (177) (Pt B) (Pr 10) (DB).**

——**Art. 226 — Mandamus — Writ of — Writ can issue to compel restoration of person to office from which he has been wrongfully removed or compel public official to perform public duty. 53 Punj LR 268: ILR (1951) Punj 421: AIR 1952 Punj 58 (59) (Pt A) (Pr 8) (DB).**

257. Order that can be passed.

——**Art. 226 — Mandamus — Nature of order that can be passed — Illegal auction-sale of fishery rights — Refusal to accept highest bid — Fresh auction-sale directed.**

The petitioner under Art. 226 was the highest bidder at an auction-sale of fishery rights, but the District Magistrate had refused to accept his bid and had accepted instead the higher bid made by one of the respondents by a tender submitted subsequently. The sale in respect of the fisheries was held to be illegal and the question was as to the proper form of relief to be granted to the petitioner.

Held, that in the circumstances the High Court could not make out a new contract for the parties in proceedings under Art. 226 nor could it issue a mandamus to the petitioner directing the respondents to accept the petitioner's bid. The proper order to be passed in the circumstances was to direct a fresh auction to be held within a reasonable time. **1957 AWR (HC) 756: 1957 ALJ 763: AIR 1957 All 487 (490) (Pt C) (Pr 11).**

——Art. 226 — Nature of duties that can be enforced by mandamus.

The High Court can only direct in mandamus a public officer to act according to law. But it cannot order a public officer to do a particular thing. It is not within the competence of the Registrar of the Co-operative Societies to restore the employee of a Branch Union of a Co-operative Society. It would be the Executive Committee of the Co-operative Union who can do it. Besides the Honorary Secretary, Co-operative Union, will not be a public officer and it would be doubtful whether any writ of mandamus can be issued against him. **(1956) 1 Lab LJ 242: AIR 1956 All 43 (46) (Pt F) (Pr 11).**

——Art. 226 — Writs of mandamus or prohibition in pending appeal.

The scope of a writ of mandamus never has embraced in its ambit a direction to an inferior Tribunal to decide any cause before it in any particular manner, though that writ may be used to direct a subordinate judicial authority to exercise a jurisdiction vested in it. So also a writ of prohibition cannot be issued so as to interfere in the matter pending before an inferior Tribunal and direct it to decide the appeal in a particular manner. AIR 1952 Mad 613. Disting. **1955 All LJ 211: AIR 1955 All 422 (425) (Pt A) (Pr 6) (DB).**

——Art. 226 — Writ of mandamus — Nature of direction that can be given.

Under Art. 226 the High Court has no power to give a direction to the opposite party by a writ of mandamus as to the manner in which the petitioner's petition presented to the opposite party should be decided by the opposite party. AIR 1951 All 257 (FB). Rel. on. **1954 All LJ 264: AIR 1954 All 522 (523) (Pt B) (Pr 3).**

——Art. 226 — Mandamus — Alternative writ of.

Where there is a dispute of fact requiring further investigation upon further materials, the Court should direct the issue of a writ of mandamus in the alternative in order that the dispute may be determined on the return to the writ. Witnesses can if necessary be examined and advantage taken of the provisions of the Code of Civil Procedure for discovery and inspection. **ILR (1954) 1 All 582: AIR 1954 All 393 (401, 402) (Pt J) (Prs 35, 36, 38) (DB).**

——Art. 226 — Writ of mandamus — Order complained against quashed — Mandamus directing authority not to give effect to it not necessary. **1953 ALJ 183: 1953 All WR (HC) 248: 1953 Cri LJ 1078: AIR 1953 All 476 (477) (Pt B) (Pr 7) (DB).**

——Art. 226 — Power to order restitution.

Civil P. C. (1908), Ss. 144 and 151 — Inherent power of High Court to grant restitution — Person receiving payments under wrong interim order passed during pendency of writ proceedings — Power of High Court to direct repayment with interest. See Civil P. C. (1908), S. 144. **(1960) 2 Lab LJ 281 (Andh Pra).**

——Art. 226 — Mandamus, writ of — Jurisdiction of High Court to direct Income-tax authorities to refund tax paid — Income-tax Appellate Tribunal refusing to pass orders in conformity with judgment of High Court — Power of High Court to compel Tribunal to perform its duty — Income Tax Act (1922), S. 66 (1) and (2) — Hyderabad Income Tax Act (VIII of 1357), S. 82 (1) and (2)).

In conformity with the judgment of the High Court under S. 66 (1) and (2) of the Indian Income-tax Act if any amounts have to be refunded it is for the Tribunal to pass such orders or to give directions to the Income Tax Officer relating thereto. If the Tribunal refuses to discharge its functions or refuses to revise or alter the figures or give necessary directions in conformity with the judgment of the High Court, it can be compelled to perform its duty by the issue of a writ of mandamus. The High Court however, cannot direct the Income-tax Authorities to refund any amounts of tax paid. AIR 1936 P. C. 269. Rel. on. **ILR (1958) Andh Pra 65: (1958) 1 Andh WR 16 and 538: (1959) 36 ITR 337: AIR 1959 A. P. 263 (264, 265) (Pt A) (Prs 8, 9) (DB).**

——Art. 226 — Mandamus — Writ against public body.

The petitioner filed a petition under Art. 226 on the allegation that the land in dispute was leased out to her predecessor-in-interest by the Government of Assam, that she had been in continuous possession after the death of her mother by exercise of rights of ownership, that the respondent District Council had issued a prohibitory order upon her not to cut any trees from the forest land.

Held, that to give proper relief to the petitioner it was not necessary to go into the question of title to the land. On the allegations in the petition the petitioner had sufficient interest to invoke the jurisdiction of the High Court under Art. 226 of the Constitution. Where an authority exercising such a right is a public body and in the exercise of its right as such issues a prohibitory order interfering with the possessory right of a citizen, the public body has to show the authority of law under which such order has been issued. On its failure to show any such authority, the High Court can issue a writ of mandamus directing the public authority to forbear from giving effect to any such order. **ILR (1959) 11 Assam 213: AIR 1960 Assam 131 (131, 132) (Pt A) (Pr 2) (DB).**

——Art. 226 — West Bengal Foodgrains (Intensive Procurement) Order (1952), Paras 3 (3) (b) and 3 (5) — Direction under, to supply certain quantity of paddy — Application under Art. 226 — Rule issued to show cause why petitioner should not be directed not to give effect to directive — Rule discharged — Appeal — Appellate Court directing petitioner to supply certain quantity of paddy — Direction complied with — Order for further supply withdrawn — Order to be passed in appeal.

Held, on facts that though it could not be contended that if a producer, served with a directive to sell and deliver a quantity of paddy, is compelled to carry out the direction during the pendency of the appeal, because he fails to obtain a stay order, he must for that reason alone be kept out of the benefit of his appeal, the position in the present case was different and the difference had been created by the appellant himself. The directive had exhausted itself and there was nothing which the respondents could be directed to forbear from;

(2) that having regard to the structure of the Rule as also the fact that the directive was no longer sought to be enforced, it had become impossible to make any effective order in the appeal

even if it were held on the merits that the appeal ought to succeed. AIR 1954 SC 307 Distinguished. **('56) 60 Cal WN 273.**

—— Art. 226 — Mandamus — Relief to be granted must be specific and qua the petitioner.

The petitioners who were members of an association of licensed sugar dealers, challenged the order of the Collector, a licensing authority, to entrust the wholesale distribution of sugar to co-operative societies. The order was attacked on the ground that the Collector had no authority to issue such directions except when the State Government laid down such policy in accordance with S. 3 (2) (d) and S. 3 (5) of the Essential Commodities Act. By a petition under Art. 226, the petitioners contended that they were entitled to a direction to the State Government that in the matter of putting resrictions on the petitioner's right to carry on business as dealers in sugar, the State Government should act only in accordance with the provisions of law and not in the manner in which it had done:

Held that a writ of mandamus could not issue in such a general form and that any relief to be granted by the Court must be specific and must be qua the petitioner. It was only when any right of the petitioners was infringed by an action of the State which was not in accordance with law, that the petitioners could ask the Court to issue an appropriate writ against the State. The petitioners would equally have no right to have the sugar distributed through the association of which the petitioners were some of the members since no order regulating wholesale distribution of sugar had been made by the State Government under S. 3 (2) (d) and in that event the petitioners could not complain of any infraction of their right so as to entitle them to relief under Art. 226 of the Constitution. **(1961) 2 Guj LR 38: AIR 1961 Guj 38 (43) (Pt A) (Pr 8) (DB).**

——Art. 226 — Mandamus — Orders that can be passed in writ proceedings — Writ against executive.

Where the petitioner was dispossessed in a highhanded manner on account of certain orders of the executive he can be restored possession in writ petition for mandamus. AIR 1955 Pepsu 60 and AIR 1952 Hyd 36, Rel. on. **AIR 1956 Tripura 9 (17) (Pt I) (Pr 40).**

258. Order affecting legal right.

See also Note 237.

——Art. 226 — Landlord's preferential right to occupy — Duty of Rent Control and Eviction Officer — Rent Control Officer not considering landlord's bona fide needs — Mandamus will issue. See Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Rules, 1949, S. 6. **1956 All LJ 694.**

——Art. 226 — Mandamus — Person as rate-payer has no right of franchise under S. 23, Bengal Municipal Act — Petition for mandamus not alleging that rate-payer's property right was affected — Petition is not maintainable.

The right of franchise is neither a civil right, nor a common-law right nor a fundamental right: AIR 1952 SC 64, Rel. on.

Under the provision of S. 23 of the Bengal Municipal Act, as it stood prior to the amendment in 1962, a person was entitled to be a voter if he attained the age of 21 years, was a citizen of India, had for a period of not less that 12 months preceding the application been a resident within the limits of the municipality, or had for the said period been in occupation of a holding and carrying on any trade or profession within the limits of the municipality and either had during the financial year immediately preceding the year in which such election was held, paid municipal rates specified in clauses (a), (b), (c) or (d) of sub-s. (1) of S. 23, or paid in respect of municipal fees and taxes for such financial year an aggregate amount not less than the sum prescribed by the State Government in this behalf as a minimum for the municipality. There was provision also for being entitled to vote at the first general election held under the said Act and a person who paid rates or had been assessed to income-tax or had certain educational qualification mentioned therein could become a voter. By the amendment of 1962 these qualifications have been changed and there is to be universal adult franchise, and the only two qualifications are that a person should be in the rolls of the corresponding Legislative Assembly and be a resident within the municipal area. Therefore, payments of rates and taxes or fees are not to be regarded as qualifications for obtaining the franchise. Therefore, a person who has no franchise right and whose franchise right has been expressly excluded by the law as it now stands, cannot claim that there is any invasion of his right.

Undoubtedly, a rate-payer contributes to the municipal funds. If it can be shown that the said fund was being misapplied a cause of action may arise. In the case, the petition does not mention the existence of any such fund nor is there any allegation that such fund is about to be misapplied. AIR 1957 Andh Pra 833 and AIR 1949 Bom 229, Disting.

After all, a writ of mandamus must be based on an invasion of a legal right. That legal right must be specifically formulated in the petition and the invasion clearly set out. Since it is nowhere stated in the petition that the petitioner's property right was being affected or any allegation that any fund to which he contributed was being misapplied, the petitioner is not entitled to maintain the application at all. **AIR 1965 Cal 380 (383, 384, 385) (Pt B) (Prs 7, 9).**

259. Other remedy open.

See Note 7.

260. Principle applicable.

See Note 223.

261. Private individual, writ against.

See Note 225.

262. Private right, enforcement of.

See Note 237.

263. Prohibition and mandamus compared.

——Art. 226 — Writs of mandamus and prohibition — Distinction.

Mandamus is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty and specially affects the rights of an individual, provided there is no more appropriate remedy. The person or authority to whom it is issued must be either under a statutory or legal duty to do something, or not to do something, the duty itself being of an imperative nature.

The writ of prohibition on the other hand can only lie against a body exercising public functions of a judicial or quasi-judicial character and cannot in the very nature of things be utilised to restrain legislative powers. **('51) 1951 ALJ 246: ILR (1951) 2 All 505: AIR 1951 All 228 (230) (Pt B) (Prs 8, 9, 10) (DB).**

——Art. 226 — Mandamus or prohibition petitions — Contents.

When petitions of the nature of mandamus or prohibition are filed the petitioner should state

precisely the nature of the relief which he asks for. For example in the case of an externment order under W. B. Security Act, 1950 made by the District Magistrate of Dinajpur, West Bengal, the relief claimed should be an order in the nature of a mandamus upon the District Magistrate of West Dinajpur calling upon him to refrain from giving effect to the order alleged to be invalidly made. **55 Cal WN 53: AIR 1951 Cal 3 (7) (Pt D) (Pr 35) (DB).**

——Art. 226 — Mandamus and prohibition — Writs of.

The grant of an order or the issue of a writ of mandamus is as a general rule a matter for the discretion of the Court. Some of the essential conditions for the issue of such a writ are: (i) The person applying must show that he has a real and special interest in the subject-matter and a specific legal right to enforce; (ii) he must show that there resides in him a legal right to the performance of the legal duty by the party against whom such a writ is sought; and (iii) that there is no other equally effective, convenient and beneficial remedy.

Prohibition on the other hand is a writ which used to be issued by the King's Bench Division primarily to prevent a Court or Tribunal or a quasi-tribunal from exceeding the jurisdiction or acting contrary to rules of natural justice. It is well-settled that the writ of prohibition can only be against a body exercising public functions of a judicial or quasi-judicial character and cannot in the very nature of things be utilised to restrain legislative powers. **ILR (1952) Hyd 791: AIR 1953 Hyd 79 (92, 93) (Pt M) (Prs 85, 86, 90) (DB).**

[Reversed on another point in AIR 1956 SC 319.]

——Arts. 226, 32 — Mandamus and prohibition — When to issue — Anticipatory mandamus.

Where the law is good on its face and there is no unconstitutionality in the law it is essential for the petitioner who applies for the writs of mandamus and prohibition to satisfy the Court that he has been discriminated against. A mere threat of or possibility of unequal treatment is not sufficient to give him relief. AIR 1953 SC 156 Rel. on. Rehman Shagoo v. State of J. & K., **1958 Cr LJ 885: AIR 1958 J and K 29 (37) (Pt J) (Pr 42) (FB).**

——Art. 226 — Prohibition and mandamus — Writs of — Nature of, explained — Sales Tax authority — Assessment orders and demand for tax, after orders had become final, issued by sales tax officer ignoring finding of Appellate Tribunal in the matter of applying administrative G. O. — Relief to which assessees are entitled under Art. 226 — Mandamus and not prohibition — Madras General Sales Tax Act (XI of 1939), Section 8-B (2) — Madras G. O. Ms. No. 2386, Revenue, dated 13-6-1956. 75 Mad LW 732: ILR (1963) Mad 51: (1963) 14 STC 94: AIR 1964 Mad 166 (170, 171) (Pt D) (Prs 12 to 18) (DB).

——Art. 226 — Prohibition and mandamus, when can issue — Writ in anticipation of breach of legal obligation — Direction under S. 43-A (2), Motor Vehicles Act — Writ against Regional Transport Authority — (Motor Vehicles Act (1939), Ss. 43-A (2) and 48 (a).

Where after a direction is given under S. 43-A (2), Motor Vehicles Act by the Government to extend an existing route restricting the extension to a specified number of buses, a transport concern, operating on the existing route, makes an application to the Regional Transport Authority for the variation of the conditions of permits for its buses, the authority has jurisdiction to consider that application. The petitioner, another transport concern operating on a portion of the extended route, has a right to make representations and raise objections when the authority takes up for consideration that application. Writ of prohibition cannot issue to the Regional Transport authority to provide for any anticipated breach of its legal obligations. Nor can a writ of mandamus issue, in anticipation of a refusal by the Regional Transport authority to consider the objections preferred by the petitioner to the grant of variation. **1957 Mad WN 302: (1957) 2 Mad LJ 76: 70 Mad LW 616: 1957 MLJ (Cr.) 344: ILR (1957) Mad 908: AIR 1957 Mad 536 (540, 541) (Pt E) (Prs 23, 27, 29).**

——Art. 226 — Writs of prohibition and mandamus — Distinction.

Prohibition is the converse of mandamus in that prohibition is used to prevent a Court or Tribunal from doing something which it has not the power to do while mandamus is used to require it to do something which it is required to do. **22 Com Cas (Ins) 33: ILR (1952) Punj 11: AIR 1952 Punj 9 (19) (Pt K) (Pr 68) (DB).**

264. Quasi-public authority, writ against.

See Note 225.

265. Question of title.

——Art. 226 — Dispute about title — Writ of mandamus — Practice.

Where a dispute exists about the title to a property which requires investigation of facts and recording of evidence, that can only be done appropriately by the Civil Court in a regular suit. The High Court will in such a case refuse to issue any writ of mandamus. For, it ordinarily decides applications for issue of writs under Art. 226 of the Constitution on the basis of affidavits only and, in such cases, the applications have to be decided only on admitted facts. **ILR (1954) 1 All 158: 1953 All LJ 455: 1953 All WR (HC) 465: AIR 1953 All 678 (681) (Pt C) (Pr 7) (DB).**

——Art. 226 — Mandamus — Question of title — (Electricity Act (1910), Ss. 12, 21).

A question of title cannot be tried in mandamus proceeding. Such question should properly form the subject-matter of a suit. It is clear from Section 12 (2) of the Electricity Act and the conditions of supply stated in para. 1 (b) in the rate book of 1940 that the consent of the owner is necessary before an electric installation can be made on the premises in respect of which supply is asked for. So the question as to who is the owner is a material question which has to be decided before the licensee can be directed to supply electrical energy to the premises in question. Where there is a dispute as to the title of the petitioner he can have recourse to civil suit for the purpose of determination as to the question of title. Until that is decided, the licensee is really helpless in the matter. 33 Cal 553, Rel. on. **AIR 1955 Cal 249 (250, 251) (Pr 5).**

——Art. 226 — Mandamus proceedings — Questions of title to property and complicated questions of fact will not be decided. 38 Cal 553, 41 Cal 518, Rel. on. **('51) 55 Cal WN 443: AIR 1953 Cal 172 (176) (Pt A) (Pr 17).**

——Art. 226 — Mandamus proceeding — Scope of — Trial of title to property.

It is a sound and salutary principle that the title to property will not be tried in mandamus proceedings, and the writ will not issue when it is necessary to try or decide complicated questions

of fact. 38 C 553 and 41 C 518. Ref. to. **55 CWN 443: AIR 1953 Cal 172 (176) (Pt B) (Pr 17).**

——**Art. 226 — Mandamus — Question of title.**

Where the land claimed by the petitioner is ascertainable and there is not any serious dispute about material facts and it is established from undisputed documents in the case that the petitioner had got a title to the land in dispute and he was dispossessed therefrom and his fundamental rights under Art. 19 (1) (f) had thereby been infringed, a petition under Art. 226 for mandamus against State authorities is maintainable. **AIR 1956 Tripura 9 (16, 17) (Pt H) (Pr 39).**

266. Revenue matters.

——**Art. 226** — Stamp Act (1899), Section 57 (1) — Chief Controlling Revenue Authority — Has obligation to refer intricate question of law in respect of construction of document — If the Authority omits to do so High Court can direct Authority to discharge its duty. See Stamp Act (1899), Section 57 (1). **AIR 1955 NUC (All) 3561.**

——**Art. 226** — M. P. Land Revenue Code (1959), Section 146 — Proceedings for recovery of arrears as land revenue without issue of notice of demand are vitiated — Absence of notice of demand goes to the root of the matter — Point can be raised even in High Court — 1964 MPLJ 32, Foll. **1965 MPLJ (Notes) 1.**

——**Art. 226 — Mandamus to Board of Revenue to make a reference under Section 57, Stamp Act — It can issue in appropriate cases. 76 Mad LW 443: (1963) 2 Mad LJ 409: ILR (1964) 1 Mad 75: AIR 1964 Mad 128 (129, 130) (Pt B) (Prs 4, 10).**

——**Art. 226 — Mandamus — High Court's power to issue writ to direct reference under Section 57 (1), Stamp Act — (Stamp Act (1899), Sections 56 (1) and 57 (1)).**

Whatever might have been the position before the Constitution, by virtue of Art. 226 the High Court's power to issue an appropriate writ to direct a reference under Section 57 (1) of the Act does not depend upon the pendency of a case before the Chief Controlling Revenue Authority. While the Chief Controlling Revenue Authority may not have power to refer the matter under Section 57 (1) in a case where there is no matter pending before it, the matter would be different when the High Court is approached under Art. 226 of the Constitution for the issue of a writ of certiorari to quash the final order of the inferior Tribunal, or to issue a writ of mandamus to direct the Chief Controlling Revenue Authority to refer the case. AIR 1950 SC 218, Followed. **72 MLW 531: 1959 Mad WN 532: (1959) 2 MLJ 339: ILR (1959) Mad 1086: AIR 1960 Mad 21 (22, 23, 24) (Pt B) (Prs 4, 5, 6).**

——**Art. 226 — Writ of mandamus — Court having discretion — Stamp Act (1899), S. 57.**

No writ of mandamus can be issued to require the Board of Revenue to refer the question of the liability of a document to stamp duty to the High Court under Section 57, Stamp Act, as the Board has discretion in the matter. **63 Mad LW 829: 1950-2 MLJ 399: AIR 1951 Mad 276 (277, 278) (Pt B) (Pr 2) (DB).**

[Impliedly **Overruled** by AIR 1950 SC 218 — Ed.]

——**Art. 226** — Decision of Collector as to proper Stamp Duty, is final and cannot be upset under Art. 226 — (Travancore-Cochin Stamp Act, Section 35) — (Stamp Act (1899), Section 40). **AIR 1955 NUC (Trav-Co.) 1658.**

267. Specific Relief Act (1877), S. 45, powers under.

See Note 223.

268. Statutory body of fluctuating nature.

See Note 225.

269. Stranger, application by.

See Note 6.

270. Successive applications.

See Note 114.

271. To deliver or to allow inspection of accounts or documents.

——**Art. 226** — Income-tax Act (1922), Section 37 (2) Proviso — Recording of reasons for impounding books of account — Provision is mandatory — Income-tax Officer in possession of account books without complying with provision — Writ of mandamus will issue. See Income-tax Act (1922), Section 37 (2) Proviso. **AIR 1959 All 705.**

272. University, against.

See Note 225.

273. When may be issued.

See Note 223.

274. Who can apply.

(a) Exclusive right, applicant whether must have.

274. Who can apply.

——**Art. 226 — Mandamus — Who can apply.**

An application for a writ of mandamus is not maintainable unless the right of the person filing it is said to have been directly affected. **AIR 1956 Ajmer 25 (27) (Pt A) (Pr 5).**

——**Art. 226 — Right to apply under—Landlord nominating person as tenant — Rent Controller allotting to another person in contravention of rules — Landlord's nominee has right to apply for mandamus — (Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Rules (1949), Rule 4). 1957 All LJ 791: 1957 All WR (HC) 763: AIR 1958 All 153 (154) (Pr 4) (DB).**

——**Art. 226 — Who can apply.**

An application for a writ in the nature of mandamus or such like order or direction is not maintainable unless it has been filed by a person whose right is said to have been directly affected. The relief as claimed must have relation to the rights of the petitioner. AIR 1951 All 1 (FB), Rel. on. **1954 Cr LJ 691: ILR (1955) 1 All 25: AIR 1954 All 319 (322) (Pt B) (Pr 2) (DB).**

——**Art. 226** — Provident Funds Act (19 of 1925), Sections 3 (2) and 4 (1) (a) — Railway provident fund — Fund vesting in dependant on death of subscriber — Administrator General has no right to receive fund — His remedy is not by writ of mandamus but in a regular Court. See Provident Funds Act (1925), Section 3 (2). **AIR 1951 All 815 (DB).**

——**Art. 226 — Writ of mandamus — Who can apply — Municipalities — Madras District Municipalities Act (Mad. Act V of 1920), Sec. 303 — Rules framed under — Rules relating to Receipts and Expenditure of Municipal Council, Rule 12 (1) (f) — Lease of municipal theatre — Such lease to be by public auction as required by Rule 12 (1) (f) — Power to relax Rule 12 (1) (f) — Government has no such power — Order relaxing rule can be nullified by writ of mandamus — Person paying municipal rates and also interested in getting lease of theatre can apply under Art. 226 of Constitution.** AIR 1949 Bom 229, Rel. on; AIR 1953 Mad 94, Disting. **(1963) 1 Andh LT 149: (1963) 1 Andh WR 151: AIR 1963 Andh Pra 212 (215, 216) (Prs 21, 23, 24).**

——**Art. 226 — Mandamus — Right to apply for — Existence of specific legal right is necessary — Rate-payers and electors of municipality — Locus standi to apply.**

It is no doubt true that for the issue of a writ of mandamus the existence of a specific legal right is a qualification in the applicants but it is not necessary that the right must reside in the individual applicant and in no one else. If other rate payers had an equal interest with the applicants to see that the law was obeyed, that, by itself, would be no bar to the grant of relief to the applicants who seek the protection of the Court to enforce their right which is infringed. AIR 1918 Mad 763: 31 Mad LJ 634: AIR 1949 Bom 229, Rel. on.

An application for the issue of a writ of mandamus directing the authorities not to hold municipal elections is maintainable at the instance of rate-payers and electors of the Municipality. A violation of the statutory rules of election affects the applicants who are voters in the wards. The applicants have a right to prevent the municipal authorities to which they pay rates, from spending municipal funds on unauthorised and illegal elections. As rate-payers, the applicants have a specific legal interest which entitles them to come to Court for the protection of that interest and in order to prevent the misapplication of municipal funds on elections held contrary to law. AIR 1949 Bom 229, Foll. **1956 Andhra WR 711: ILR (1956) Andh Pra 480: AIR 1957 AP 833 (836) (Pt E) (Prs 9, 10) (DB).**

——**Art. 226 — Mandamus — Who can apply — Right in property adversely affected by order of public officer passed without jurisdiction — Person aggrieved entitled to file petition for mandamus.** AIR 1952 SC 12 and AIR 1958 SC 289 and AIR 1953 Assam 155, Dist. **AIR 1963 Assam 15 (17, 18) (Pt A) (Pr 7) (DB).**

——**Art. 226** — Mandamus cannot be claimed unless the authority on whom the duty is cast has been approached to discharge its obligation. **ILR (1963) 15 Assam 332: AIR 1963 Assam 162 (163, 164) (Pt B) (Pr 4) (DB).**

——**Art. 226 — Mandamus — Who can apply — Temporary appointment of petitioner as Daloi by Executive Committee of District Council — Order terminating service impugned — Petitioner has no locus standi — Order held could not be said to be in excess of jurisdiction — (Assam Autonomous Districts (Constitution of District Councils) Rules (1951). Rules 28 and 29 (1) and (2) (c) and (f). AIR 1955 Assam 238 (239) (Pt A) (Pr 5) (DB).**

——**Art. 226 — Disobedience of orders.**

If the petitioners are in default and have not obeyed orders which the Deputy Commissioner was authorised to issue under the rules, under Assam Forest Regulation (1891) they would be out of Court on that ground alone. Mandamus may be refused when to grant it would accomplish a wrong. **AIR 1953 Assam 168 (170) (Pt B) (Pr 8) (DB).**

——**Art. 226 — Mandamus — Right to apply for.**

Where a person in the forces of a native State, after its merger, expressed his unwillingness to continue in the Indian army, the question of his being placed in the same position as he was before the merger does not arise. Nor has he any right to project his army career into the civil department of the Government. The Government cannot therefore be compelled to grant any benefits when he was not legally entitled to them. **AIR 1957 Cal 576 (578) (Pt A) (Pr 3).**

——**Art. 226 — Mandamus — Right to apply for — Application for, by association interested in provision of road transport facilities — (Motor Vehicles Act (1939), Section 47).**

Section 47, Motor Vehicles Act, confers a statutory right of representation upon an association interested in the provision of road transport facilities. The right of representation implies that the association is affected by the grant of the permit and if it is a person affected by the grant of a permit, then like any other member of the public it has a legal right to see that the provisions of law relating to the grant of a permit are observed. A writ of mandamus can, therefore, be granted, where such association applies for the same, directing the transport authorities to forbear from giving effect to their illegal orders. **61 Cal WN 217: AIR 1957 Cal 444 (446) (Pt D) (Pr 11).**

——**Art. 226 — Mandamus — Writ of — Who can apply for — Illegal appointment of Vice-Chancellor under Jabalpur University Act — Members of Executive Council and Academic Council can apply.** LR (1910) 2 KB 601 and (1933) 1 KB 668, Rel. on. **ILR (1962) Madh Pra 360: 1962 MPC 785: 1961 MPLJ 1326: 1962 Jab LJ 335: AIR 1962 Madh Pra 180 (189, 190) (Pt B) (Prs 17, 18) (DB).**

——**Art. 226 — Action of Mayor of Corporation — Validity of — Rate payer is competent to challenge — Municipalities — M. B. Municipal Corporation Act (XXIII of 1956), S. 25 (2).** AIR 1925 Cal 48, Diss.; AIR 1949 Bom 229 and **AIR** 1960 Cal 102, Foll. **1961 Jab LJ 1254.**

——**Art. 226 — Writ of mandamus — Who can apply for.**

Even though no person has any inherent right to sell liquor, still it is open to the petitioner under Art. 226 to approach the High Court for a 'mandamus' if the officers concerned have conducted themselves not in accordance with law or if they have acted in excess of their jurisdiction. AIR 1954 SC 220: 1954 SCJ 246, Rel. on. **ILR (1956) Punj 390: AIR 1956 Punj 97 (99) (Pt F) (Pr 8) (DB).**

[**Reversed** on facts in AIR 1959 SC 65].

——**Art. 226 — Writ of mandamus.**

Issue of — Writ cannot be issued for enforcement of rights claimed in general and in several alternatives. **1951 Ker L Tim 385: AIR 1952 Trav-Co. 7 (11) (Pt E) (Pr 8).**

274 (a). Exclusive right, applicant whether must have.

——**Art. 226 — Mandamus.**

One of the conditions precedent to the issue of a writ of mandamus is that the party applying for it must have a right to enforce. Unless the applicant proves the existence of such a right he cannot succeed. AIR 1952 SC 12, Rel. on. **AIR 1953 Cal 653 (656, 657) (Pt C) (Prs 31, 32) (DB).**

275. Writ of discretion.

See Note 236.

PART E.

(Notes 276 to 291).

PROHIBITION, WRIT OF.

276. Against whom can be issued.

(a) Against private body.

276. Against whom can be issued.

——**Art. 226 — Writ of prohibition — Notice of confiscation of goods issued against importer — Notice if found to be one without any statutory basis, writ of prohibition can be issued against Collector of Customs.**

A writ of prohibition is an order directed to an inferior Tribunal forbidding it from continuing with a proceeding therein on the ground that

the proceeding is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise. (1881) 6 AC 424, Foll.

Per Majority:— Where a Collector of Customs proposes to take action under Section 167 (8) of the Sea Customs Act, read with Section 3 (2) of the Imports and Exports (Control) Act, 1947, the proceedings under the said sections being quasi-judicial in nature, whether a statute provides for a notice or not, it is incumbent upon the Collector to issue notice to the importer disclosing the circumstances under which proceedings are sought to be initiated against him. Any proceedings taken without such notice would be against the principles of natural justice. And if on a reading of the said notice, it is manifest that on the assumption that the facts alleged or allegations made therein were true, none of the conditions laid down in the specified sections was contravened, the Collector would have no jurisdiction to initiate proceedings pursuant to that notice. In such a case the Collector can be prohibited from proceeding with the same.

Per Sarkar, J. (Contra.):— The Collector has jurisdiction to decide whether the goods were liable to confiscation. If he has this jurisdiction he has also the jurisdiction to decide whether the importer is liable to have a further pecuniary penalty imposed on him under Section 167 (8) of the Sea Customs Act. If so, then the importer is not entitled to the writ. East India Commercial Co. Ltd., Calcutta v. Collector of Customs, **(1963) 3 SCR 338: (1963) 1 SCA 622: AIR 1962 SC 1893 (1898, 1903) (Pt B) (Prs 15, 26, 27).**

——Art. 226 — Prohibition against corporation — Power of High Court to issue.

There is no provision in the Constitution debarring issue of writs of prohibition against a corporation (such as a Municipality) and the High Court is empowered to issue such a writ or order in the nature thereof against authorities other than tribunals. **AIR 1956 Ajmer 73 (75, 76) (Pt C) (Prs 14, 20).**

——Art. 226 — U. P. Kshettra Samitis (Election of Pramukhs, Up-Pramukhs and Settlement of Election Disputes) Rules (1962), Rule 35 — Civil Court can entertain an election petition — No writ of prohibition can issue against that Court. See U. P. Kshettra Samitis (Election of Pramukhs, Up-Pramukhs and Settlement of Election Disputes) Rules (1962), Rule 35. **1964 All LJ 180.**

——Art. 226 — Quasi-judicial proceedings — Writ of prohibition does not issue.

In cases of quasi-judicial proceedings generally a writ of prohibition does not issue. It is issued only against a Court or a judicial body which though may not be called a Court but has been created specifically under a statute. **AIR 1962 All 166 (174) (Pt E) (Pr 32).**

——Art. 226 — Powers of High Court — Order of Collector under Rule 115, U. P. Zamindari Abolition and Land Reforms Rules, 1952 — Proceedings are quasi judicial — High Court could issue a writ of prohibition. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Rules (1952), Rule 115. **AIR 1958 All 97.**

——Art. 226 — Writ of prohibition — Trial not pending before Magistrate — Writ of prohibition cannot be issued restraining him from delivering judgment. **AIR 1955 All 705 (706) (Pt B) (Prs 6, 7).**

——Art. 226 — Power to issue writ of prohibition against Government from giving consent to acquisition or issuing notice under S. 6, Land Acquisition Act (1894). See Land Acquisition Act (1894), Section 40. **AIR 1954 All 700.**

——Art. 226 — Issue of writ of prohibition.

A writ of prohibition only issues against a judicial or quasi-judicial tribunal in order to restrain it from exercising jurisdiction not vested in it. **1953 All LJ 455: 1953 All WR (HC) 465: ILR (1954) 1 All 158: AIR 1953 All 678 (680) (Pt B) (Pr 4) (DB).**

——Art. 226 — Income-tax Officer restarting proceedings under S. 34 of Income-tax Act in pursuance of order of remand by Appellate Tribunal — Writ of prohibition against Income-tax Officer can be issued in absence of appellate Tribunal as party respondent. M/s. Tansukhrai Bodulal v. Income-tax Officer, Nowgong. **(1962) 46 ITR 325: AIR 1961 Assam 35 (38) (Pt D) (Pr 4) (FB).**

——Art. 226 — Expenditure of public money for defence of Government servants in Criminal prosecution — Prohibition — No writ can be issued. See Ibid, Art. 282. **AIR 1961 Bom 167 (DB).**

——Art. 226 — Prohibition, writ of.

A writ of prohibition cannot lie against a registered Trade Union which is not an inferior Court or Tribunal. **58 Cal WN 457: ILR (1956) 1 Cal 247: AIR 1955 Cal 189 (192) (Pt C) (Pr 18).**

——Art. 226 — Prohibition — Issue of writ — Reference under S. 10 (1), (c), Industrial Disputes Act — Question whether there is relationship of employer and employee between parties — Workers not parties to dispute — Prohibition, writ of, if can issue. See Industrial Disputes Act (1947), Section 10. **AIR 1958 Ker 217.**

——Art. 226 — Prohibition, writ of — Cannot issue to tribunal which is branch of High Court, for quashing its proceedings — If can issue only to restrain inferior Courts. **Madh BLJ 1955 HCR 138: AIR 1955 Madh Bha 69 (69) (Pr 3) (DB).**

——Art. 226 — Prohibition, writ of.

Canteen run for use and benefit of collectorate staff by Recreation Club — Canteen neither a partnership nor a registered body — Its transaction of sales not assessable to sales tax — Assessment of sales tax against canteen represented by its secretary — Proceeding for recovery of arrears of sales tax cannot be started under S. 24 (2) (b) against the secretary personally the liability being that of the canteen — Proper direction against State is to issue writ of prohibition. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 24 (2) (b). **(1963) 14 STC 972 (Mad).**

——Art. 226 — Prohibition — Writ of — Administrative order — Order of Transport Commissioner under S. 44 (3) (c), Motor Vehicles Act, is administrative — Order cannot be challenged indirectly by writ petition for prohibition against Regional Transport Authority restraining it from dealing with application for variation of bus permit on basis of such order. AIR 1957 Mad 536, Foll. (Motor Vehicles Act (1939), S. 44 (3) (c)). **73 Mad LW 161: (1960) 1 Mad LJ 396: ILR (1960) Mad 642: AIR 1960 Mad 365 (365) (Pt B) (Pr 3) (DB).**

——Art. 226 — Prohibition — Writ of — Chairman of Legislative Council acting under S. 35 (3) of States Reorganisation Act (1956) — Writ of prohibition lies — (States Reorganisation Act (1956), S. 35 (3)). (1956-57) 12 Ele. LR 345 (Mad).

——Art. 226 — Quo-warranto and Prohibition when to be issued — Fact finding Committee — Issue of writ — If justified.

A writ of quo-warranto is issued in cases where a person usurps a public office or is otherwise unfit to hold it. The writ of Prohibition (in spite of its name) issues to judicial bodies or quasi-judicial bodies. The inquiry by Niyogi

Committee could not be described to be a judicial or a even quasi-judicial one; it was fact-finding committee. That it was dealing with a matter which affected a section of the public did not mean that it had any power. No doubt, the selection of the personnel of a Committee is subject to public opinion but it is not subject to the mandates of a Court. It was not a fit case for issue of a writ of prohibition or a writ of quo-warranto. **(1957) MPLJ 1 (Nag).**

——Art. 226 — Writ of prohibition can issue against executive acts.

The power of the Court under Art. 226 is not restricted by any of the technical limitations governing the issues of the well-known writs under the common law. The Court is empowered under Art. 226 to issue, apart from the well-known writs, orders or directions for the enforcement of fundamental rights or for any other purpose. When a right of a citizen is infringed or his liberty or property is put in peril by the executive in disregard of the law, for the Court to refuse redress to the citizen under Art. 226 merely on the ground that the order or direction is sought against an executive act is to render the power under that article largely otiose. Case law Ref. **ILR (1952) Nag 156: AIR 1952 Nag 139 (144) (Pt H) (Pr 42) (DB).**

——Art. 226 — Writ of prohibition —Issue of against Income-tax Officer proceeding under S. 34, I. T. Act — (Income-tax Act (1922), S. 34).

The High Court cannot issue a writ of prohibition against the Income-tax Officer where he proceeds under S. 34 against an assessee who objects to his jurisdiction. The Income-tax Officer has to determine the facts and the law to get jurisdiction to proceed with the case and if he goes wrong then the remedy provided in the Act should be availed of by the assessee. AIR 1951 Simla 1, Foll. AIR 1954 SC 403, Disting. **(1956) 29 ITR 507: AIR 1956 Punj 71 (72) (Pt A) (Pr 4).**

——Art. 226 — Writ of prohibition — Order of appellate authority under Motor Vehicles Act.

Where a person having no right of appeal appeals to the appellate authority under the Motor Vehicles Act and that authority passes an order of stay as the order of the appellate authority could only be brought before the High Court in a writ of certiorari the High Court will issue a writ of prohibition, the effect of which would be to render orders of the appellate authority of no force and effect. **1956 Raj LW 182: ILR (1956) 6 Raj 110: AIR 1956 Raj 65 (67) (Pt F) (Pr 9) (DB).**

——Art. 226 — Prohibition — Issue of writ to Union of India — Notice by Income-tax Officer to petitioner.

A notice by the Income-tax Officer, who is acting on behalf of the Government of India, is a judicial act by the latter in respect of which a writ of prohibition may be issued to the Union of India. **1951 Raj LW 56: ILR (1951) 1 Raj 96: (1951) 20 ITR 214: AIR 1951 Raj 94 (2) (105) (Pt J) (Pr 28) (DB).**

[Overruled on another point in AIR 1954 SC 158].

——Art. 226 — Writ of prohibition — Issue on taxing authority.

A writ of prohibition cannot be issued on a taxing authority pure and simple. **AIR 1952 Vindh P. 35 (36) (Pt B) (Pr 5).**

276 (a). Against private body.

——Art. 226 — Certiorari and Prohibition — Writs to private persons — Arbitrations under U. P. Co-operative Societies Rules, 1936 — High Court has no power to issue writ to quash award — Co-operative Societies Act (1912), S. 43 — Arbitration Act (1940), S. 46. AIR 1943 Cal 255 and AIR 1955 Hyd 238 and AIR 1946 Mad 504 and AIR 1955 Mad 694, Dist. **1962 All LJ 876: 1962 All WR (HC) 904: AIR 1963 All 113 (115, 116) (Pt A) (Prs 3, 5, 6, 9).**

——Art. 226 — Prohibition — Writ of, cannot be issued to private individual or to authority which is not judicial or quasi-judicial — Prohibition and certiorari — Distinction pointed out. AIR 1960 J. and K. 12 (14) (Pt C) (Pr 11).

277. Application for, stage at which may be made.

(a) Pre-mature.

277. Application for, stage at which may be made.

——Art. 226 — Laches — Writ of prohibition — Assessee attempting to have proceeding quashed by Income-tax Officer but failing — Petition filed thereafter is not barred by laches. (1965) 1 ITJ 580: (1965) 58 ITR 828 (All).

——Art. 226 — Writ of prohibition — Trial not pending before Magistrate — Writ of prohibition cannot be issued restraining him from delivering Judgment. AIR 1955 All 705 (706) (Pt B) (Prs 6, 7).

——Art. 226 — Writs of prohibition and certiorari — When lie — Lack of jurisdiction in Lower tribunal — Writ of prohibition lies at initial stage. **AIR 1963 Andh Pra 148 (150, 151) (Pt A) (Pr 9).**

——Art. 226 — Writ of prohibition against private party from enforcing industrial award — Cannot be granted. (1951-52) 3 FJR 81: 53 Bom LR 381: AIR 1951 Bom 158 (158, 159, 160) (Prs 5, 6, 11, 12).

——Art. 226 — Proceeding started without jurisdiction — Person seeking assistance under Art. 226 — Writ proceedings are not premature — Sea Customs Act (1878), S. 190-A.

Where the issue of notice under S. 190-A of Sea Customs Act was intended to be a definite step in aid of the proceedings to revise an earlier order under S. 39 of the Act and the proceedings were without jurisdiction as the notice was not issued within the period prescribed by S. 39, the person affected has a right to seek the Court's assistance for the purpose of stopping a proceeding which is bound to be infructuous and abortive and, therefore, the objection that the application under Art. 226 is premature has no substance. **66 Cal WN 501: AIR 1962 Cal 258 (262, 263) (Pt B) (Pr 23) (DB).**

——Arts. 226, 311 (2) — Prohibition, writ of — When can issue at interim stage — Issue of second show cause notice under Art. 311 (2) by compelent authority — No absence of or usurpation or excess of jurisdiction — Prohibition will not issue on ground that findings in preliminary enquiry were not supported by evidence. Petitioner must show that there is no jurisdiction vested in the authority regard to the second show cause notice or that he is exceeding the same and that such absence or excess of jurisdiction is patent on the record. **(1966) 7 Guj LR 56: (1965) 2 Lab LJ 645: (1966) 13 Fac LR 45.**

——Art. 226 — Prohibition — Writ of — Departmental enquiry against Civil servant pending — Writ to restrain Government.

Held, that the prayer of the petitioner to issue a writ of prohibition against Government not to pass any order on the departmental enquiry con-

ducted against the petitioner could not be granted. The Government has an inherent right to carry on an enquiry against the servants for their alleged acts of omissions and commissions. No case had been at all made out for stopping the Government from passing an order on the enquiry, which was still pending. **1957 MPC 796: 1957 Jab LJ 1115: 1958 MPLJ 377: AIR 1958 Madh Pra 135 (140) (Pt E) (Pr 25) (DB).**

277 (a). Pre-mature.

——**Art. 226** — Premature application — Quashing of proceeding — Petitioner has right to approach High Court instead of submitting to Government which has no jurisdiction to proceed against him — Writ can be issued not only to quash the wrong decisions after they have been arrived at but also to prevent proceedings being started by an authority having no jurisdiction to start it. — U. P. Municipalities Act (2 of 1916), S. 48 (2) (b) (vi)). **AIR 1955 NUC (All) 2297.**

——**Art. 226** — Breach of privilege of legislature — Matter referred to Privilege Committee for investigation and report — Committee issuing show cause notice to editors — Writ petition against notice — Held Court had no jurisdiction to interfere at that stage. See Ibid, Art. 194. **AIR 1965 Assam 74 (DB).**

——**Art. 226** — Mandamus and Prohibition — Stage at which petition may be filed — Order by Government Labour Officer to implement award by re-instating workmen, failing which petitioner threatened with prosecution under S. 29 of Industrial Disputes Act — Petition praying for writs of mandamus and prohibition on ground that award was not binding on him — Held no writ could be issued at that stage. **(1965-66) 27 FJR 424: (1964) 9 Fac LR 211: (AIR 1965 Cal 280 (281) (Prs 6, 7).**

●——**Arts. 32 and 226 — Writs of mandamus and prohibition — When to issue.**

Where the law is good on its face and there is no unconstitutionality in the law, it is essential for the petitioner who applies for the writs of mandamus and prohibition to satisfy the court that he has been discriminated against. A mere threat of or possibility of unequal treatment is not sufficient to give him relief. AIR 1953 SC 156, Rel. on. Rehman Shagoo v. The State of J and K. **1958 Cri LJ 885: AIR 1958 J. and K. 29 (37) (Pt J) (Pr 42) (FB).**

——**Art. 226 — Prohibition, writ of — Premature application.**

The question whether the appeal under the Motor Vehicles Act is tenable is entirely a matter for the appellate authority to decide. Where the appellate authority has not finally decided the question, it is not open to the High Court to decide the question in writ proceedings. AIR 1952 SC 319 and AIR 1954 SC 73, Rel. on. **1960 MPLJ 68: ILR (1959) Madh Pra 357: 1960 Jab LJ 633.**

——**Art. 226 — Prohibition and mandamus, when can issue — Writ in anticipation of breach of legal obligation — Direction under S. 43-A (2), Motor Vehicles Act — Writ against Regional Transport Authority — (Motor Vehicles Act (1939), Ss. 43-A (2) and 48 (a)).**

Where after a direction is given under S. 43-A (2), Motor Vehicles Act, by the Government to extend an existing route restricting the extension to a specified number of buses, a transport concern, operating on the existing route, makes an application to the Regional Transport Authority for the variation of the conditions of permits for its buses, the authority has jurisdiction to consider that application. The petitioner, another transport concern operating on a portion of the extended route, has a right to make representations and raise objections when the authority takes up for consideration that application. Writ of prohibition cannot issue to the Regional Transport Authority to provide for any anticipated breach of its legal obligations. Nor can a writ of mandamus issue, in anticipation of a refusal by the Regional Transport Authority to consider the objections preferred by the petitioner to the grant of variations. **1957 Mad WN 302: (1957) 2 Mad LJ 76: 70 Mad LW 616: 1957 Mad LJ (Cr) 344: ILR (1957) Mad 908: AIR 1957 Mad 536 (540, 541) (Pt E) (Prs 23, 27, 29).**

——**Art. 226 — Premature writ.**

Where the petitioner applied for a writ against the Inquiry Committee appointed by the Government:

Held, that the Court could not issue a writ since there was no action yet taken, and because without any action affecting the petitioner a writ from the Court must be regarded as premature. **(1957) MPLJ 1 (Nag).**

——**Art. 226** — C. P. and Berar Sales Tax Act (1947), S. 2 (g) — Prohibition — Petitioner not filing return for relevant period — Premature application. **Held** writ could not be issued in such circumstances. **(1952) 3 STC 448 (Nag).**

[**Reversed** in AIR 1954 SC 403].

——**Art. 226** — Mere show cause notice, why license of petitioner should not be suspended — No final orders passed — Writ petition is premature. Punjab Agricultural Produce Markets Act (1961), S. 10 (2) **('65) 67 Punj LR 66.**

278. Certiorari and prohibition.

See Note 183.

279. Discretionary remedy.

——**Art. 226** — Writ of prohibition — Defect of jurisdiction not patent — Writ does not lie as a matter of course. **AIR 1962 All 166 (174) (Pt F) (Pr 32).**

——**Art. 226 — Writ of prohibition — When issued.**

If the defect of jurisdiction is apparent on the face of the proceedings, then only can the order of prohibition go as of right: where the defect is not apparent, the discretion lies with the Court to grant or not to grant the relief. **1958 All LJ 894.**

——**Art. 226 — Prohibition — Writ of — Discretion of Court — Defect or absence of jurisdiction apparent on face of proceedings.**

The granting of all writs under Art. 226 of the Constitution including the writ of prohibition is always discretionary though of course different considerations may prevail in cases of different writs. In a case where the State Government has usurped jurisdition and authority by issuing a show cause notice under S. 26 (1), Bombay Local Boards Act which it does not possess and the absence of jurisdiction is apparent on the face of the show cause notice itself, the High Court in the exercise of its discretion should grant relief, by issuing a writ of prohibition unless there is some very strong case made out for withholding the same. The High Court is bound to act with discretion and when it appears that there has been usurpation of jurisdiction, it is that discretion itself that requires that the High Court should act and not refuse to act in the matter. The issuance of the writ, though not of right nor of course, would almost be as a matter of course. AIR 1956 Bom 530, Foll. **(1960) 1 Guj LR 260: (1961) 2 Guj HCR 1: AIR 1961 Guj 27 (30) (Pt C) (Pr 11) (DB).**

——**Art. 226 — Writ of prohibition — Issue of — Principle — Application for variation of route under Motor Vehicles Act (IV of 1939) as amended by Madras Act (III of 1964) — Authority under that Act has jurisdiction to deal with application — Writ of prohibition cannot issue on ground that proposed variation is not one permitted under Motor Vehicles Act — Motor Vehicles Act (IV of 1939) as amended by Madras Act (III of 1964), Ss. 48 and 57 — Application for variation of permit — Death of applicant — Successor-in-interest can continue application — Transport operator who came into existence subsequent to notification of above application under section 57 (3) and (4) is not precluded from being heard.** (1965) 2 Mad LJ 453: 78 Mad LW 394: ILR (1965) 2 Mad 461: AIR 1966 Mad 8 (11, 12) (Pt A) (Prs 10, 11) (DB).

——**Art. 226 — Assessee deliberately evading tax by suppressing facts — Order for rectification of assessment by taxing authority — Assessee is not entitled to relief under Art. 226 on ground that rectification order was unauthorised — Writ of prohibition prohibiting authority to collect tax on rectified assessment will not issue — Mysore Agricultural Income-tax Act (IV of 1955), S. 36 (1).** ILR (1962) Mys 741: (1963) 47 ITR 884: AIR 1963 Mys 186 (188, 189, 190) (Prs 5, 7, 11, 13, 18) (DB).

280. Erroneous decision as to jurisdiction.

●——**Art. 226 — Imports and Exports (Control) Act (1947), Sections 3 and 5 — Sea Customs Act (1878), Sections 19, 167 (8) and 182 — Licence to import goods — Licence issued subject to condition not to sell goods imported — Goods received and delivery taken after paying customs duty — Subsequently breach of condition detected — Notice issued to licence-holder to show cause against confiscation of goods — Writ of pohibition filed against notice — Held (per Majority, Sarkar, J., contra) that writ application was competent as breach of condition in licence was not breach of order under Act and issue of notice was without jurisdiction. A. F. O. O. No. 54 of 1957, D/- 5-1-1959 Cal., Reversed.** East India Commercial Co., Ltd., Calcutta v. Collector of Customs, Calcutta. **(1963) 3 SCR 338: (1963) 1 SCA 622: AIR 1962 SC 1893 (1898, 1899, 1900, 1903, 1904, 1905, 1906, 1907, 1908) (Pt A) (Prs 14, 15, 20, 21, 27, 29, 30, 31, 34, 35, 36, 38).**

●——**Art. 226 — Prohibition — Issue of — (Sea Customs Act (1878), Section 183).**

Where proceedings in an inferior Court or tribunal are partly within and partly without its jurisdiction, prohibition will lie against doing what is in excess of jurisdiction. Where, therefore, the Collector of Customs has imposed invalid conditions for release of gold on payment of the fine in lieu of confiscation, the High Court can issue a writ of prohibition prohibiting the Customs Authorities from enforcing the invalid conditions. Sewpujanrai Indrasanrai, Ltd. v. Collector of Customs. **1958 Cri LJ 1355: (1958) SCJ 1199: (1958) Mad LJ (Cr) 929: 1959 SCR 821: AIR 1958 SC 845 (855, 856) (Pt H) (Prs 22, 23).**

——**Art. 226** — Prohibition, writ of — Suit under Section 73, Trade Marks Act, filed in Court of Additional Civil Judge — Objection to jurisdiction disallowed by Civil Judge but allowed by High Court in writ proceedings against that decision — Writ of prohibition to Court of Civil Judge not to proceed with trial of suit — Power of Civil Judge to return plaint under Order 7, Rule 10, Civil P. C. See C. P. Code (1908), Order 7, Rule 10. **AIR 1963 All 448.**

——**Art. 226** — Prohibition, writ of against Government — Case under U. P. Municipalities Act (2 of 1916), Section 40 — Conditions under which power can be exercised under Section 40, indicated — No foundation for exercising power under Section 40 — High Court will issue writ prohibiting State from proceeding further in the matter. See Municipalities — U. P. Municipalities Act (2 of 1956), Section 40 (3). **1958 All WR (HC) 56.**

——**Art. 226** — Writ of prohibition — When can issue. A writ of prohibition issues only when a judicial or quasi-judicial tribunal exceeds its jurisdiction or tries to exercise jurisdiction not vested in it. **AIR 1955 All 106 (108, 109) (Pt B) (Pr 5).**

——**Art. 226 — U. P. Medical Act (3 of 1917), Sections 25, 26 — Erasing of name from register of Medical Practitioners.**

Section 25 does not enable the Council to remove the name of a person simply because he has been struck off the register of graduates of the body which originally granted the degree. In so doing, the Council acts without jurisdiction and it is a proper case in which a writ of prohibition should issue restraining the Council from proceeding further with any steps to erase the name of the person from the register of medical practitioners. There is no question of infamous or disgraceful conduct in a 'professional respect' in such a case and Section 26 does not apply. (1887) 19 QBD 467; (1894) 1 QB 750, Rel. on. **1953 All LJ 518: AIR 1953 All 580 (584) (Pt A) (Pars 13, 16).**

●——**Art. 226 — Prohibition — Writ of — Presiding officer having personal interest.**

If the Presiding Officer of a judicial tribunal has a personal interest in any dispute or clearly acts mala fide, he will have no jurisdiction to deal with the proceedings before him and a writ of prohibition would issue to remove those proceedings from his cognizance. Asiatic Engineering Co. v. Achhru Ram. **1951 RD (HC) 241: 1951 All LJ 576: ILR (1952) 2 All 838: AIR 1951 All 746 (767) (Pt E) (Pr 50) (FB).**

——**Art. 226** — Prohibition, writ of — Labour Court entertaining reference under Section 10 (1) (c) — Industrial Disputes Act, without jurisdiction — Writ of prohibition can be issued — Industrial Disputes Act (1947), Section 10 (1) (c). **(1964) 1 Lab LJ 622 (Andh Pra).**

——**Art. 226** – Motor Vehicles Act (1939), Ss. 48 and 64 — Civil P. C. (1908), O. 41, R. 33, Preamble — R. T. A. granting pucca stage carriage permit only to two applicants out of 70 — Appeal against order of R. T. A. only by 25—Appellate authority remanding case for fresh disposal in accordance with law — On remand, R. T. A. issuing notices to all 70 applicants —Petition by one of appellants praying for issue of writ of prohibition directing R. T. A. to forbear from considering subject relating to grant of permits in pursuance of notices consequent on remand — **Held**, order of remand must mean and could only mean that direction was to consider 'case' of parties to 25 appeals before appellate authority — Though terms of one statute could not be interpreted with reference to another, by way of analogy, even applying principles of O. 41, R. 33, appeal against order of R. T. A. could not ensure to benefit of anybody, except appellant, as each appeal was separate venture —Fact that appeals were considered in batch would make no difference to individuality of appeal — Though on remand, R. T. A. acted without jurisdiction there was no question of any lack of initial jurisdiction in him — Though, therefore, relief (writ of prohibition) could not be granted, petition would not fail for failure to ask appropriate relief— Proper relief would be writ of mandamus AIR 1954 Mad 848, Rel. on. ILR (1963) Andh Pra 1028.

——Art. 226 — Writs of prohibition and certiorari — When lie — Lack of jurisdiction in lower tribunal — Writ of prohibition lies at initial stage.

Both writs of prohibition and certiorari have for their object the restraining of inferior Courts from exceeding their jurisdiction. A writ of prohibition will lie when the proceedings are to any extent pending and a writ of certiorari will be an appropriate remedy after the proceedings have terminated in a final decision. In a case, therefore, where the petitioner challenges the lack of jurisdiction of the Tribunal to hear the matter pending before it, the aggrieved party can ask for a writ of prohibition. It is no answer to that claim to say that the petitioner can as well put forward his defence before the Tribunal, and then if the decision is adverse to him, seek a writ of certiorari. If there is a clear want of jurisdiction, it is open to the party to seek to interdict the proceedings by applying at the earliest stage for a writ of prohibition. AIR 1955 SC 233, Rel. on. **(1962) 2 Andh WR 103: AIR 1963 Andh Pra 148 (150, 151) (Pt A) (Pr 9).**

——Art. 226 — Prohibition — Scope of writ.

A petitioner for a writ of prohibition has to make out that the proceedings impugned are manifestly beyond the scope of the jurisdiction of the respondent or clearly opposed to any law or statutory provision. **(1960) 11 STC 581: AIR 1960 Andh Pra 451 (452) (Pt A) (Pr 4).**

——Art. 226 — Writ of prohibition — Question of limitation or laches.

As long as there is something to be acted upon, the writ of prohibition runs and there is no question of limitation or laches. The obvious reason for this exception is that the threatened action being challenged on the ground of want of jurisdiction or illegality, can be prohibited if it can be shown that the order is prima facie illegal and unwarranted and there is still something upon which the order can act. AIR 1957 Andh Pra 1027 (FB); (1937) 3 All ELR 324; (1927) KB 491, Rel. on. AIR 1958 Andh Pra 205, Disting. **1958 Andh LT 129.**

——Art. 226 — Jurisdiction — Power of High Court to issue writ of prohibition.

Under Art. 226 the Andhra High Court is empowered to issue a writ of prohibition against any authority in the Andhra State. To enable the High Court to exercise jurisdiction, the only question to be considered is whether a tribunal, functioning within the terriorial limits of its jurisdiction, has jurisdiction to proceed with an enquiry, or, whether it is exercising jurisdiction in excess of that conferred on it. If the tribunal is illegally constituted, the fact that the constituting authority is in Delhi cannot make the tribunal any the less an illegal body. The High Court is only concerned with a tribunal functioning within its jurisdiction. If it was illegally constituted, the said tribunal would be acting without jurisdiction and therefore, it would be within the reach of the writ of prohibition. **1956 Andh WR 431: ILR (1956) Andh Pra 786: AIR 1957 Andh Pra 1007 (1009) (Pt A) (Prs 5, 6) (DB).**

——Art. 226 — Prohibition, when can be issued — Discretion.

Where the High Court is satisfied that an inferior Court or authority has exceeded its jurisdiction and that absence of jurisdiction is patent a writ of prohibition will issue. But where the defect is not apparent, the Court, in its discretion, may refuse the writ. **(1957) Andh WR 13: AIR 1957 Andh Pra 777 (779) (Pt B) (Pr 6).**

——Art. 226 — Reference to Industrial Tribunal — Reference void — Tribunal has no jurisdiction to act on such reference — Order of prohibition issued. See Industrial Disputes Act (1947), S. 2 (k). **AIR 1954 Bhopal 17.**

——Art. 226 — Prohibition — Order of reference to Industrial Tribunal without jurisdiction — Interference.

The decision in AIR 1958 Ker 217 is not an authority for the position that a writ of prohibition cannot be issued even if the order of reference is ex facie without jurisdiction and when such absence of jurisdiction can be seen without considering disputed questions of fact, it would be proper for the Court to interfere even before the Tribunal decides the question. The question whether the Court should interfere or not depends on the facts of each case and the test appears to be whether the question can be decided without investigation of disputed facts. If it involves such investigation, the Court should not interfere. AIR 1958 Ker 217 and AIR 1958 SC 1018, Rel. on. **1959 Ker LJ 1449: 1960 Ker LT 90: (1960) 1 Lab LJ 323: ILR (1960) Ker 222: AIR 1960 Ker 190 (193) (Pt B) (Pr 7) (DB).**

——Art. 226 — Prohibition, writs of — Industrial Tribunal — Issue of jurisdiction not depending upon question of law but upon collateral questions of fact requiring evidence — Writs, when can be issued.

A prohibition does not lie on a wrong decision on the merits of proceedings. Where the Judge of an inferior court has given himself jurisdiction by an erroneous conclusion on a point of law, prohibition will lie, but where the judge, for the purpose of ascertaining whether he has or has not jurisdiction, has decided a question of fact, on conflicting evidence, the Court will not interfere except on very strong grounds.

A Labour Court or an Industrial Tribunal has every jurisdiction to enquire into existence of certain facts upon which its jurisdiction to adjudicate on the dispute depends. The preliminary jurisdiction of the Labour Court extends, and must be permitted to extend, to that point of time when, upon adequate material adduced, it is able to come to a definite conclusion, whether the Institution is an "industry" as defined in the Act, and it hence possesses jurisdiction or otherwise. But if the material on record is inconclusive and insufficient, the Labour Court can be directed to arrive at a proper decision after recording further evidence. AIR 1961 Mad 239, **Reversed. (1962) 2 Lab LJ 472: 1963 Mad WN 35: 75 Mad LW 668: (1962-63) 23 FJR 93: ILR (1963) Mad 125: AIR 1963 Mad 89 (91) (Pt A) (Prs 7, 8) (DB).**

——Art. 226 — Prohibition — When can issue — — Industrial dispute — Reference to Industrial Tribunal — Power of High Court to prohibit Industrial Tribunal from assuming jurisdiction — Industrial Disputes Act (1947), Ss. 10 (1), (d); 2 (k); 2 (1).

An Industrial Tribunal is a judicial authority subject to the supervisory jurisdiction of the High Court and if the Tribunal exceeded its jurisdiction or is about to do so, the High Court can always, restrain or correct. If a dispute is not an 'industrial dispute' the Tribunal would not acquire jurisdiction merely because the Government have made a reference to it. AIR 1956 Mad 113 and AIR 1958 Mad 578 and AIR 1958 Mad 108; AIR 1956 Mad 636 and AIR 1960 Mad 82, Rel. on.

The High Court has no doubt jurisdiction to interfere by issuing a writ of prohibition even prior to the assumption of jurisdiction by the industrial tribunal or the commencement of the inquiry by the industrial tribunal. But this must be a case where the absence of jurisdiction of the tribunal is

so patent ab initio, that it would be an abuse of power, or an injustice, to permit it to proceed further. AIR 1960 Mad 82 and AIR 1958 Mad 108; AIR 1956 Mad 636, Rel. on. Where the circumstances and grounds relied upon are not decisive to hold that the employer is effecting a closure of his business and in the interests of justice further inquiry and evidence appear inevitable, the industrial tribunal should be permitted to function and no writ of prohibition should be issued so as to preclude the tribunal from proceeding into the preliminary issue of its own jurisdiction. **(1960) 1 Lab LJ 351: AIR 1961 Mad 331 (334, 335, 336, 337) (Pt A) (Prs 8, 10, 12, 15, 17, 21) (DB).**

——Art. 226 — Prohibition — When can issue.

A writ of prohibition can issue to an inferior tribunal only when it is proceeding with a matter which is beyond the jurisdiction of that Tribunal. ILR (1960) Mad 642: 73 Mad LW 161: (1960) 1 Mad LJ 396: AIR 1960 Mad 365 (365) (Pt A) (Pr 2) (DB).

——Art. 226 — Prohibition — Writ of — Issue of — Reference under S. 10 (1) (c), Industrial Disputes Act — Plea that there is no industrial dispute — Power of Tribunal to decide — Issue of writ of prohibition at that stage — If an industrial tribunal wrongly decides the jurisdictional issue and comes to the conclusion that the dispute is an industrial dispute when it is not, the aggrieved party can ask for the writ of prohibition. See Industrial Disputes Act (1947), S. 10 (1), (c). **AIR 1958 Mad 108.**

——Art. 226 — Prohibition — Writ of, against Industrial Tribunal — (Industrial Disputes Act (1947), Ss. 10 (1) (c) and 15).

A writ of prohibition can issue against the Industrial Tribunal if it is established that the Tribunal had no jurisdiction to proceed with the adjudication of the dispute referred to. Absence of an Industrial dispute would obviously be sufficient to negative jurisdiction. The validity of the order of reference is open to examination by the High Court to decide whether the Tribunal had jurisdiction. (1955-56) 9 FJR 125: 1955 Mad WN 897: (1956) 1 Lab LJ 221: (1956) 1 MLJ 280: AIR 1956 Mad 113 (114, 115) (Pt B) (Prs 5, 8).

——Art. 226 — Prohibition — Issue of.

Where the Regional Transport Authority had no right under S. 62, Motor Vehicles Act, to entertain an application for a temporary permit when applications for new permits were still pending, the grant of temporary permits in those circumstances was beyond the ambit of the power conferred upon the Regional Transport Authority and a writ of prohibition prohibiting the R. T. A. from proceeding with the application for temporary permit should go: (1948) 1 All ER 72 and (1951) 2 All ER 728, Rel. on. **1959 BLJR 68: ILR 38 Pat 281: AIR 1959 Pat 248 (249, 250) (Pt B) (Pr 5) (DB).**

——Art. 226— Prohibition — Writ of — Issue of.

Although the issuance of prohibition is discretionary with the High Court, where there is patent lack of jurisdiction a writ will be granted, unless an irresistible case for withholding the writ is made out. **61 Punj LR 785: ILR (1959) Punj 1518: AIR 1959 Punj 460 (461) (Pt A) (Pr 3) (DB).**

——Art. 226 — Prohibition — Issue of writ — Principles.

It is a recognised practice of Courts that when a person challenges the jurisdiction of a tribunal, the Court declines to examine the question until the question has been examined and pronounced upon by the tribunal itself (AIR 1957 Mad 700, Rel. on). The superior Court should not proceed on the assumption that the tribunal will go beyond its jurisdiction and should therefore refrain from interfering, by a writ of prohibition before the inferior tribunal has had an opportunity of considering whether any of the matters in controversy between the parties falls within its jurisdiction. (1959) 1 Lab LJ 274: ILR (1958) Punj 2061: 60 Punj LR 425: (1958-59) 15 FJR 49: AIR 1959 Punj 75 (81) (Pt H) (Pr 19) (DB).

——Art. 226 — Prohibition — When issued — Wrong order.

It is one thing to exercise a jurisdiction not vested in a particular body and it is quite another for that body to pass a wrong order in exercise of its jurisdiction. No writ of prohibition can be issued where the grievance of the petitioner is in fact not against illegal exercise of jurisdiction by the respondent, but his allegation is that he has committed a mistake in exercise of his jurisdiction. ILR (1959) 9 Raj 1255: 1960 Raj LW 306: AIR 1960 Raj 86 (89, 90) (Pt D) (Pr 9).

——Art. 226 — Writ of prohibition — Inferior tribunals having no semblance of jurisdiction — Petitioner for writ unwillingly submitting due to circumstances — Prohibition can issue at his instance — (Municipalities — Jodhpur Municipal Act (1943), S. 27). AIR 1937 Cal 427: (1894) 1 QB 552, Rel. on. 1952 Raj LW 199: ILR (1952) 2 Raj 18: AIR 1952 Raj 104 (106) (Pt C) (Prs 11, 12) (DB).

●——Art. 226 — Writ of prohibition — Scope of inquiry by Central Commission in cases referred to it — Attempt to enlarge scope — Writ of prohibition. See Trav-co. Taxation on Income (Investigation Commission) Act (XIV of 1124), S. 5. AIR 1954 Trav-Co. 131 (FB).

——Art. 226 — Writ of Prohibition — Change in timings of buses — Appeal does not lie to Tribunal under S. 64 — Writ prohibiting Transport Appellate Tribunal from proceeding with appeal can be issued. See Motor Vehicles Act (1939), S. 47. **AIR 1956 Vin Pra 44.**

281. Grounds.

——Art. 226 — Income-tax Officer issuing notice on 31-1-1958 of re-assessment to a 'factory', through firm K whose individual members constituted the factory — K filing writ petition challenging validity of notice — High Court, with consent of petitioner's counsel, staying recovery of provisionally assessed tax and penalty till completion of proceedings under S. 34/44, Income-tax Act — K filing another writ petition on 7-1-1963 again challenging validity of notice, dated 31-1-1958 — Held, K had no cause of action to file writ petition and no writ of prohibition could be issued as there was nothing to justify that Income-tax Officer had no jurisdiction to initiate proceedings under S. 34, Income-tax Act (1922). See Income-tax Act (1922), S. 34. **(1965) 1 ITJ 375: (1965) 57 ITR 765 (All).**

——Art. 226 — Writ of prohibition — It cannot be issued for limited purpose.

A Court cannot issue a writ of prohibition for a limited purpose such as prohibiting the Tribunal from looking into a particular paper recording recommendations or relying upon a particular piece of evidence. **AIR 1962 All 117 (122) (Pt F) (Pr 17).**

——Art. 226 — U. P. Agricultural Income-tax Act (1948), Section 22 — Powers of Board — Application under S. 22 made after very great delay — Board is entitled to entertain application — Writ of prohibition cannot issue. See U. P. Agricultural Income-tax Act (1948), S. 22. **AIR 1958 All 528.**

——Art. 226 — Prohibition — Issue of writ — Notice under S. 7 (1), Administration of Evacuee Property Act defective — If ground for.

Where a notice under S. 7 (1), Administration of Evacuee Property Act, is issued to a person, it is open to him to object to the validity of the notice before the Custodian on the ground that the notice is defective and it is open to him to pass any orders according to law: but that is not a ground on which a petition for issue of a writ of prohibition can be allowed to be supported. **AIR 1958 All 104 (105) (Pt C) (Pr 4).**

——**Art. 226 — Writ of prohibition in pending appeal.**

A writ of prohibition cannot be issued so as to interfere in the matter pending before an inferior Tribunal and direct it to decide the appeal in a particular manner. **1955 All LJ 211: AIR 1955 All 422 (425) (Pt A) (Pr 16) (DB).**

——**Art. 226 — Writ of prohibition against State Government — Government proposing to take action against a municipal member under S. 40 (3), U. P. Municipalities Act and giving him show cause notice under S. 40 (4) — Writ if can be issued — (U. P. Municipalities Act (II of 1916), S. 40 (3), (4) and (5)). AIR 1955 All 106 (108, 109) (Pt C) (Pr 5).**

——**Art. 226 — Prohibition, writ of.**

A notice was issued by the Sales Tax Officer calling upon the assessee to file the returns of his turnover for the year 1952-53 and at the same time to appear and produce the account books before him on the 30th December, 1953. The assessee in reply to this notice sent an application to the Sales Tax Officer asking to be relieved from the order directing him to file the account books. This application was rejected by the Sales Tax Officer and consequently the assessee filed a petition under Art. 226 praying for issue of a writ of prohibition directing the Sales Tax Officer not to proceed with the assessment.

Held, that the application was not maintainable as it was competent for the Sales Tax Officer to call for the account books to verify the correctness of the turnover. No assumption could be made that the Sales Tax Officer would not correctly apply the law as laid down in AIR 1952 All 764. **1954 All WR (HC) 174: 1954 All LJ 228: AIR 1954 All 448 (449) (Pr 2).**

——**Art. 226** — U. P. Medical Act (3 of 1917), Ss. 25, 26 — Erasing of names from the Register of Medical Practitioners — Writ of prohibition — If can issue. See U. P. Medical Act (3 of 1917), S. 25. **AIR 1953 All 580.**

——**Art. 226** — Requisition of premises under R. 75-A, D. I. Rules — Subsequent order directing restoration to applicant owner passed prior to Act of 1947 — Appointment of arbitrator under S. 6 of the Act — Legality — Writ of prohibition issued — See Requisitioned Land (Continuance of Powers) Act (1947), S. 6. **AIR 1952 All 959 (DB).**

——Art. 226 — Prohibition — Writ of — Grounds for, and object of, issue. See Expenditure Tax Act Ss. 3 and 13 (2). **AIR 1961 Andh Pra 374.**

——Art. 226 — Prohibition — Writ of — Writ of when issued. Office of the writ of prohibition is primarily supervisory having for its object, confinement of Courts and tribunals of peculiar, limited or inferior jurisdiction within their bounds. Usurpation of powers will be restrained by it. **1961-2 Andh WR 9: (1961) 43 ITR 239: 1961 Andh LT 554: AIR 1961 Andh Pra 374 (378) (Pt C) (Pr 26).**

——**Art. 226 — Writ of prohibition.**

Normally, a writ of prohibition is issued in cases to correct apparent errors. **1960 Andh LT 126: (1960) 1 Andh WR 181: ILR (1960) 1 Andh Pra 339.**

——**Art. 226 — Appropriate relief — Writ of prohibition.**

Where the gist of the petitioner's complaint was that the States Reorganisation Act was ultra vires of the Constitution and, on that ground, he asked the Court to issue an appropriate writ restraining the respondents, i.e., the State of Andhra Pradesh and the Chief Minister of the State, from functioning under the Act:

Held, that the relief claimed was neither misconceived nor inappropriate and if the petitioner had succeeded on the merits, he would certainly be entitled to a writ of prohibition restraining the respondents from functioning under the Act. **(1957) 2 An WR 43: ILR (1957) AP 345: AIR 1957 Andh Pra 734 (739) (Pt D) (Pr 17) (DB).**

——**Art. 226 — Prohibition — Writ of — Grounds — Discretion.**

The petitioner was a vendor of sweets and miscellaneous articles on a railway platform. He having fallen into arrears of Income-tax, the Income-tax Officer addressed a letter to the petitioner calling upon him to pay the tax immediately and also threatening that if he failed to pay the tax in time, he would be constrained to write to the railway authorities to withdraw forthwith the Government patronage extended to him. The petitioner filed a petition under Art. 226 for the issue of a writ of prohibition prohibiting the Income-tax Officer from taking any action in the collection of arrears of tax.

Held, that the fact that the Income-tax Officer warned the petitioner that he would write to the railway authorities about his default did not afford him a right to approach the High Court to issue any writ or direction. Moreover the threat of the Income-tax Officer to write to the railway authorities could not be a ground for staying the collection of arrears of tax, altogether. **(1957) 31 ITR 788: (1957) Andhra LT 255.**

——Art. 226 — Prohibition — Writ of — Suspension of permit of bus — Stay orders by appellate authority and High Court — Effect — Issue of writ of prohibition. See Motor Vehicles Act (1939), S. 60. **AIR 1957 Ker 142.**

——**Art. 226** — Income-tax Act (1922), Sections 34 and 46 — Proceedings under S. 34 — Limitation — Certificate issued under S. 46 (2) — Recovery of higher sum from assessee than what is actually due — Writ of prohibition — Issue of. See Income-tax Act (1922), S. 46 (2). **42 ITR 715: (1961) 2 Mad LJ 564.**

——**Art. 226 — Prohibition — When can issue.**

A writ of prohibition can issue to an inferior tribunal only when it is proceeding with a matter which is beyond the jurisdiction of that Tribunal. **73 Mad LW 161: (1960) 1 Mad LJ 396: ILR (1960) Mad 642: AIR 1960 Mad 365 (365) (Pt A) (Pr 2) (DB).**

——Art. 226 — Prohibition — Issue of writ — Statutory body — Decision of Election Tribunal — Refusal to dismiss election petition in limine under S. 90 (3), Representation of People Act, 1951 — Application for writ of prohibition — Maintainability. **71 Mad LW 25: ILR (1958) Mad 257: (1958) 1 Mad LJ 110: AIR 1958 Mad 187 (196) (Pt C) (Prs 24, 25, 26) (DB).**

——Art. 226 — Prohibition — Inspector of Police C. I. D., having jurisdiction to investigate charges against accused — No writ of prohibition can issue — (Criminal Procedure Code (1898), S. 157 (1)). **1956 Mad WN 866: 1957 Cr LJ 205: (1957) 27 Com Cas 97: (1957) MLJ (Cr) 27: AIR 1957 Mad 65 (66) (Pt A) (Pr 10).**

——**Art. 226 — Dispute whether factory comes under S. 1 (3), Employees' Provident Funds Act, not**

decided — Writ prohibiting Regional Provident Fund Commissioner from enforcing demands for contributions granted — (Employees Provident Funds Act (1952), Ss. 1 (3) and 19-A).

Where there is a dispute as to whether a factory owner's factory is a factory in which 50 or more persons are employed and if so it comes within the scope of S. 1 (3), Employees Provident Funds Act, and that dispute has yet to be decided under S. 19-A of the Act, the factory owner is entitled to a writ prohibiting the Regional Provident Fund Commissioner from enforcing demands for contributions under the Act till the dispute is decided under S. 19-A of the Act. **(1955) 2 MLJ 271: (S) AIR 1955 Mad 387 (389, 391) (Pt C) (Prs 9, 25).**

[**Overruled** on another point in AIR 1964 Mad 371].

——Art. 226 — Bombay District Municipal Act (3 of 1901), S. 26 (2) — Request by Councillors to hold special general meeting for passing resolution for removal of Chairmen of Committees — Charge of incompetence, misuse of power and neglect of duty — Matter for discussion relates to general business of municipality — President cannot refuse to convene meeting — Writ prohibiting holding of meeting cannot be issued. See Municipalities — Bombay District Municipal Act (3 of 1901), S. 26 (2). **('62) 40 Mys LJ 827 (DB).**

——Art. 226 — **Prohibition — Party questioning vires of Act — Remedy.**

The proper course for a petitioner who desires to challenge the vires of an Act is to move for a writ of prohibition straightway before he joins issue on the merits of the case. Otherwise, unwarranted adjudications involving much time and expense if the Act is subsequently held to be invalid, would already have taken place resulting in nothing. **ILR (1956) Nag 569.**

282. Mandamus and prohibition, compared.

See Note 263.

283. Nature and object of writ of prohibition.

——Art. 226 — Prohibition — Grounds for and object of issue. See Expenditure Tax Act, Ss. 3 & 13 (2). **(1961) 2 Andh WR 9: AIR 1961 Andh Pra 374.**

——Art. 226 — **Writ of prohibition — Question of limitation or laches.**

As long as there is something to be acted upon, the writ of prohibition runs and there is no question of limitation or laches. The obvious reason for this exception is that the threatened action being challenged on the ground of want of jurisdiction or illegality, can be prohibited if it can be shown that the order is prima facie illegal and unwarranted and there is still something upon which the order can act. AIR 1957 Andh Pra 1027 (FB), Relied on. AIR 1958 Andh Pra 205, Disting. **1958 Andh LT 129.**

——Art. 226 — **Writ of prohibition — Object and nature of.**

The purpose of issuing a writ of prohibition is to prevent a person or a body of persons having legal authority to determine questions affecting the rights of a subject judicially from acting in excess of their legal authority and the writ goes ex debito justitiae. It is preventive in its character and not remedial. Hence, the contention that if the Court were to interfere before the final order is passed officers against whom departmental inquiries were going on, would all of them at any stage of the inquiry rush to the Court asking for writs of prohibition, was not tenable. **56 Bom LR 350: ILR (1954) Bom 1271: AIR 1954 Bom 361 (363, 364) (Pt B) (Pr 11).**

——Arts. 32, 226 — **Prohibition — Writ of — Nature, object and scope of — Jurisdiction to issue.**

Normally a writ of prohibition can issue only for the purpose of prohibiting an inferior tribunal from continuing proceedings instituted in that tribunal on proof that the tribunal had either no jurisdiction to entertain the proceedings or to continue the proceedings. Where there is no such proceeding pending which could be restrained by a writ of prohibition issued to the inferior tribunal, a petition for such a writ is not maintainable. The writ is not a remedial writ but is preventive. **(1951-52) 3 FJR 81: 53 Bom LR 381: AIR 1951 Bom 158 (158 to 160) (Prs 5, 6, 11, 12).**

——Art. 226 — **Prohibition — Purpose for which writ can issue.**

A writ in the nature of prohibition does not command anyone to refrain from usurping jurisdiction in respect of executive acts. It goes only to inferior tribunals to control judicial or quasi-judicial action and is not intended to control executive acts or administrative action aimed at collection of revenue. **(1958) 33 ITR 866: (1957-58) 12 FJR 324: AIR 1957 Cal 514 (Pt F) (Prs 12, 23) (DB).**

——**Art. 226 — Writ of prohibition.**

The writ of prohibition is a writ which is issued primarily to prevent a Court or tribunal, judicial or quasi-judicial, from exceeding jurisdiction or acting contrary to rules of natural justice. **ILR (1953) Hyd 311: AIR 1953 Hyd 222 (224) (Pt E) (Pr 9) (DB).**

——Art. 226 — **Prohibition — Writ of — Nature and scope.**

A writ of prohibition commands the Court or tribunal to whom it is issued to refrain from doing something which it is about to do. It prevents a tribunal possessing judicial or quasi-judicial powers from assuming or threatening to assume jurisdiction which it does not possess. **59 Punj LR 272: ILR (1957) Punj 1521: AIR 1958 Punj 168 (170) (Pt B) (Pr 7) (DB).**

——Art. 226 — **Prohibition, when to issue.**

There can be no question of a writ of prohibition being issued in a case, where it has not been alleged or proved that there has been any wrongful adjudication by an unauthorised body. **58 Punj LR 512: ILR (1957) Punj 198: AIR 1957 Punj 42 (43) (Pt B) (Pr 5) (DB).**

[**Overruled** on another point in AIR 1958 SC 36].

——Art. 226 — **Prohibition.**

The principles under which a writ of prohibition lies are practically the same as those under which a writ of mandamus lies. Where there is authority to do the act, but the manner of doing it is improper, the writ will not lie. In other words, whatever power is conferred may be exercised and if it be exercised injudiciously, erroneously or irregularly, it amounts to error merely and not to an usurpation or excess of jurisdiction. In such a case, however gross the error, irregularity or mistake, the writ does not lie, not because there exist other adequate remedies, or such remedies are inhibited, but for the reason that there has been no usurpation or abuse of power. **55 Punj LR 304: ILR (1953) Punj 225: AIR 1953 Punj 225 (226) (Pt B) (Pr 4) (DB).**

——Art. 226 — Prohibition, writ of — There must be a statutory or a legal provision prohibiting a certain thing before a writ of prohibition can be issued. ('52) **54 Punj LR 236: AIR 1952 Punj 351 (353) (Pt B) (Pr 8) (DB).**

——Art. 226 — **Writ of prohibition.**

From the point of view of convenience it is certainly desirable that objection relating to juris-

diction should first be taken before the original Court or tribunal, and it should be enabled to express its opinion on this question. If such an objection is raised before the inferior Courts and their decision is taken thereon, in some cases it may be that the parties might be satisfied with that decision, and may not increase the work of the High Court by rushing to it without enabling the inferior Courts to pronounce their decision on the question. A practice had developed in almost all the High Courts that applications for revision against an order of a Magistrate are not entertained unless the party aggrieved has first gone in revision to the Sessions Court and obtained its decision. Such practice is very desirable in cases of prohibition under Art. 226 of the Constitution. At present, however, there is no such practice. Of course in cases where a right of appeal or revision to the High Court has been given by a statute against order or decrees of an inferior Court, a writ of prohibition shall not be allowed because the question can be brought before the High Court in appeal or revision.

Held, that if the objections raised by the petitioners were valid, the absence of jurisdiction was patent and therefore legally the petition under Art. 226 could not be thrown off on the ground that the question of jurisdiction was not raised before the lower tribunal. **1955 Raj LW 170: ILR (1954) 4 Raj 577: AIR 1954 Raj 185 (188, 189) (Pt E) (Pr 13) (DB).**

284. New point.

See Note 98.

285. Non-compliance with order.

●——Arts. 226, 215 — Income-tax proceedings — Documents and books of assessee seized — Application by assessee against seizure order made to High Court under Art. 226 — Prohibitory order passed by High Court not to give effect to seizure order and directing release of documents and books — No personal service of such prohibitory order on Income-tax Commissioner held was necessary — Refusal of Income-tax Commissioner to release books etc., held amounted to contempt of Court. See Ibid, Art. 215. **AIR 1964 Assam 92 (FB).**

286. Other remedy open.

See Note 7.

287. Premature application.

See Note 277.

288. Private body, against.

See Note 276.

289. Submission to jurisdiction.

——Art. 226 — Writ of prohibition — Delay — — Lack of jurisdiction — Delay is immaterial.

In cases of patent lack of jurisdiction the writ of prohibition can be claimed as of right and the writ cannot be refused on the ground of delay or omission to raise the point before the inferior tribunal. If, therefore, lack of jurisdiction in the Compensation Officer under the U. P. Act I of 1951 is established the aggrieved party is entitled to urge the High Court to issue a writ of prohibition even at the late stage. If there is complete want of jurisdiction, the fact that the application for restoration had been pending for sometime before the Compensation Officer and is being contested on other grounds is immaterial and a writ of prohibition can be issued even after a delay of two years. If the entire proceedings are without jurisdiction and cannot be carried on interlocutory orders must fall along with them. **1962 All LJ 501: 1962 All WR (SC) 475: AIR 1962 All 590 (603, 604) (Pt K) (Prs 52, 53, 54) (DB).**

[Reversed on another point in AIR 1966 SC 1164].

●——Art. 226 — Alternative remedy — Delay and acquiescence of petitioner — If and when bar to writ of prohibition.

The existence of an alternative remedy is not an absolute bar to grant a relief by the High Court under Art. 226 of the Constitution. If the defect of jurisdiction is apparent on the face of the record, i. e., patent, the High Court will not refuse relief to the petitioner even on the ground of acquiescence. In cases where the defect of jurisdiction is latent, namely it can be discovered after enquiry, the ground of laches and misconduct may be valid ground to refuse the relief of prohibition. AIR 1956 Bom 530, Foll. M/s. Tansukhrai Bodulal v. Income-tax, Officer, Nowgong, **(1962) 46 ITR 325: AIR 1961 Assam 35 (45, 46, 47) (Pt C) (Prs 22, 26) (FB).**

——Art. 226 — Writ of prohibition — Want of jurisdiction — Notice under Land Acquisition Act — Objection raised protesting against acquisition proceedings — If amounts to submission to jurisdiction — (Land Acquisition Act (1894), S. 5-A).

Where want of jurisdiction is patent, the grant of a writ of prohibition follows as a matter of course. (1894) 1 QB 552, Rel. on.

If the Land Acquisition Officer has no jurisdiction to take proceedings under the provisions either of the Land Acquisition Act or the Hyderabad Sanitary Powers' A'in, the mere fact that the petitioner once in answer to the notice given by the Tahsildar, who under Land Acquisition Act, was not authorised to give such a notice, had submitted his objections protesting against the acquisition proceedings does not either amount to a submission to the jurisdiction or make the proceedings valid. **ILR (1955) Hyd 494: AIR 1955 Hyd 203 (206, 207) (Pt B) (Pr 17) (DB).**

290. Who can apply for.

——Art. 226 — Prohibition — Issue of Writ — Stage Carriage permit — Change of timings whether variation of condition of permit — Person aggrieved is the holder of permit — No other person has a right of appeal — See Motor Vehicles Act (1939), S. 64 (b). **AIR 1965 AP 115.**

——Art. 226 — Right to apply — Rate-payer of municipal corporation — Application by to restrain corporation from moving and deliberating a resolution which is beyond the scope of municipal affairs, is maintainable. **ILR (1960) 2 Cal 572: 64 Cal WN 134: AIR 1960 Cal 102 (111, 112) (Pt C) (Pr 23).**

——Art. 226 — Prohibition — Right to apply for.

The purchasers of stones from the quarry-men are entitled to file a writ petition when even though the charge by way of royalty is to be made from the quarry-men, the contractor is authorised to collect the royalty from the quarry-holder or from persons taking stones from such quarry-holders. **1958 Raj LW 155: ILR (1956) 6 Raj 712: AIR 1956 Raj 161 (162) (Pt A) (Pr 7) (DB).**

291. Writ of right.

See Note 279.

PART F

QUO WARRANTO.

(Notes 292 to 305).

292. Advocate General or Government Pleader, validity of appointment.

——Art. 226 — Quo warranto, writ of — When will issue — Public office — Government Pleader in Madras holds public office.

Quo warranto is generally regarded as an appropriate and adequate remedy to determine the right or title to a public office and to oust an incumbent who has unlawfully usurped or intruded into such office or is unlawfully holding the same. A proceeding in quo warranto against a public officer is for the purpose of determining whether he is entitled to hold the office and discharge its function. Quo warranto, unless enlarged by statute to cover private offices, is confined to testing the right or title to public office of a civil character.

The duties of the Government Pleader, Madras, are duties of a public nature. Besides, the public are genuinely concerned with the manner in which a Government Pleader discharges his duties. The State Prosecutor in the City and Public Prosecutors in the mofussil are holders of public offices. The Government Pleader in the City of Madras is the counterpart on the civil side of the State Prosecutor (in the City) and the Public Prosecutors (in the districts) on the criminal side of judicial administration. **ILR (1961) Mad 553: AIR 1961 Mad 450 (460, 461, 463, 464, 471, 472, 475) (Pt B) (Prs. 45, 46, 48, 67, 72, 74, 103, 104, 116, 118) (DB).**

——Art. 226 — Quo warranto — Government Pleader Madras — Appointment of — Rules as to — Appointment held not bona fide — Rules held had no statutory force — High Court declined to issue writ of quo warranto. **ILR (1961) Mad 553: AIR 1961 Mad 450 (460, 461, 463, 464, 465, 471, 472, 475) (Pt B) (Prs 43, 45, 46, 67, 72, 74, 103, 104, 116, 118) (DB).**

——Arts. 226 and 165 — Quo Warranto — Issue of writ — Appointment of Advocate-General by Governor.

What the Court has to consider in an application for a writ of quo warranto is whether there has been usurpation of an office of a public nature and an office substantive in character, i. e., an office independent of title. An application for the issue of a quo warranto for testing the validity of the appointment of an Advocate-General under Art. 165 of the Constitution by the Governor is maintainable, although the Governor is not amenable to the process of the Court by virtue of the provisions of Art. 361 of the Constitution. The immunity afforded by this Article is personal to the Governor and it does not place the actions of the Governor purporting to be done in pursuance of the Constitution beyond the scrutiny of the Courts. The validity of the appointment of an Advocate-General can be considered and decided in the absence of the Governor who made the appointment. It is not the rule that relief cannot be granted in proceedings for a writ of qua warranto in the absence of the authority making the appointment. Whatever order the Court makes in proceedings for a writ of quo warranto, would be an order binding on the incumbent of the office in question. The judgment of the Court would be a judgment of ouster affecting the person holding the office. The writ can issue although the office of the Advocate-General is one held during the pleasure by the Governor. There is no precedent for refusal by the Court of an information where the appointment to an office held during pleasure would be illegal. By refusing remedy in such a case the Court would be perpetuating the illegality. **ILR (1952) Nag 409: AIR 1952 Nag 330 (334, 335) (Pt G) (Prs 14, 18, 19, 21) (DB).**

293. Against whom can be issued.

——Art. 226 — Quo Warranto and Prohibition — **Issue of, against fact finding committee.**

A writ of quo warranto is issued in cases where a person usurps a public office or is otherwise unfit to hold it. Prohibition issues to judicial or quasi-judicial bodies. The inquiry by Niyogi committee could not be described to a judicial or even quasi-judicial one, it was fact finding. It was not a fit case for issue of a writ of prohibition or of quo warranto. **(1957) MPLJ 1 (Nag).**

294. Bar to, by statutory provision.

——Art. 226 — Quo warranto — Bar by statutory provision — Writ to set aside election in municipal town in Pepsu — Objection relating to delimitation — Maintainability — (Election — Punjab Municipal Act (III of 1911), S. 240 — Rules under, Pepsu Municipal Election Rules (1949), Rr. 8, 10, 51, 52 and 63) — (Municipalities).

Undoubtedly a statutory remedy displaces a writ in the nature of quo warranto, but it is not so displaced if the objection taken falls outside the scope of the statutory remedy. Further, an election petition may be maintained by a defeated candidate or by five voters in enforcement of their right under the Pepsu Election Rules, but a quo warranto can also be involved by the people in their sovereign capacity as an inherent right.

Where in proceedings in the nature of quo warranto challenging the elections held in a municipal town in Pepsu, the objection of the petitioners was not to the inclusion of a particular name in the electoral roll but to the right of including the residents, etc., of a particular area in a particular ward, the objection lies outside the scope of Pepsu Municipal Election Rr. 8 and 10. Similarly, the objection lay outside the purview of Rr. 53 and 63. Rule 51, therefore, could not be invoked as a bar to the petition. **AIR 1958 Punj 128 (131, 132) (Pt E) (Prs 11, 12).**

295. Discretion.

See Notes 39 and 298.

296. Elective office.

See Note 299.

297. Futile writ.

See Note 53.

298. General principles.

——Art. 226 — Quo warranto, writ of — **Nature of writ — Conditions to be satisfied for issue of writ.**

Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the Courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without

legal authority and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not. University of Mysore v. C. D. Govinda Rao, **(1964) 1 SCWR 44: AIR 1965 SC** 491 (494) (Pt A) (Pr 7).

——Arts. 226 and 227 — Writ of quo warranto — **Burden — Person claiming legal right in office has to support his claim.**

In a petition for a writ of quo warranto those who claim a legal right to the office they occupied have to justify their right. It is the duty of the Court to find out if that person had such a legal right to occupy that office. The burden does not lie on the petitioner. Relief cannot be denied to the petitioner on the ground that there was some delay in complaining about the absence of the right claimed. **1965 Mah LJ (Notes) 40.**

——**Art. 226 — Quo warranto.**

It is the duty of the Court, as soon as its attention is drawn to the fact that a person who is not qualified is holding a public office, to declare that he is not entitled to that office and to prevent him from acting as such. **55 Bom LR 758: ILR 1954 Bom 290: AIR 1954 Bom 41 (43) (Pt C) (Pr 5) (DB).**

——**Art. 226** — Quo warranto — Applicability — Courts are reluctant to interfere with elections except on clearest and strongest grounds — Democracy cannot be expected to indulge in elections too frequently — Courts are loath to interfere with the decision of the people merely because some technicality has not been observed or some irregularity has been committed. But if the irregularity has resulted in the people not being able to express their views properly or if there was any corrupt practice which materially affected the results of the election or if the election itself was held without any authority of law, the matter would be different. Once it is conceded that the collector had the authority to fix the date of the general election and the general election took place according to law, any irregularity committed in the course of the election cannot be a ground for the issue of a writ of quo warranto. See Municipalities — Bombay Municipal Boroughs Act (XVIII of 1925), S. 4 (4). **55 Bom LR 882: ILR (1954) Bom 104: AIR 1954 Bom 116 (DB).**

——**Art. 226 — Quo warranto — Procedure — Form of prayer — In application for that writ in Calcutta High Court, rule nisi should be prayed for. 68 Cal WN 958: AIR 1964 Cal 500 (501) (Pt E) (Pr 5).**

——**Art. 226 — Order restraining person acting in an office.**

(Per Dixit J.) Quite apart from the principles of English Law governing the issue of a writ of quo warranto, it is clear from the wide scope of Art. 226 that the High Court has the power to issue an order restraining any person acting in an office in which he is not entitled to act and also, if the case so requires declaring the office vacant, where the office said to be usurped, has been created by the Constitution itself with certain functions and duties attached to it. AIR 1951 Madhya B. 121, Rel. on. **ILR (1952) Madh B 145: AIR 1952 Madh B 31 (45) (Pt T) (Pr 47) (DB).**

[**Overruled** on another point in AIR 1959 SC 395].

——**Art. 226** — Quo warranto — Writ of — Rules under S. 116, M. B. Panchayat Act, Rules 29 (1), 30 — Appointment of returning officer — Petitioner acquiescing in appointment and submitting nomination form — Cannot challenge election on ground that Returning Officer was not validly appointed and ask for issue of writ of quo warranto. See Panchayats — Madhya Bharat Panchayat Vidhan (SM. 2006), S. 116. **1959 MPLJ 807.**

——**Art. 226 — Quo warranto — Writ of — Prayers appropriate to such writ as distinguished from certiorari. (1963) 2 Mys LJ 383: AIR 1964 Mys 159 (163, 164) (Pt B) (Pr 8) (DB).**

——**Art. 226** — Quo warranto — Application when to be made — An application for the removal of a person occupying a public office by quo warranto has to be made with utmost expedition, since the very object of the application is to remove a person who is masquerading as one who has the authority and qualification to hold a public office without possessing the same. **ILR (1961) Mys 1064.**

——**Art. 226 — "Any other purpose" — Interpretation.**

The words "for any other purpose" in Art. 226 of the Constitution must receive their plain and natural meaning, namely, for any other object which the Court considers appropriate and calls for the exercise of the powers conferred upon it. Though the power of the High Court under this article is ordinarily exercisable for enforcement of right or performance of duty it cannot necessarily be limited to only such cases. Such a limitation cannot be reconciled with the power to issue a writ in the nature of quo warranto which power has been expressly conferred on the Court. In proceedings for a writ of quo warranto the applicant does not seek to enforce any right of his as such nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from the office. **ILR (1952) Nag 409: AIR 1952 Nag 330 (334, 335) (Pt G) (Prs 14, 18, 19, 21) (DB).**

——**Art. 226 — Quo warranto — Nature of information.**

To find out the true nature of the information, Courts have to look to the petition as a whole. **ILR (1958) Punj 1938: AIR 1959 Punj 83 (87) (Pt B) (Pr 14) (DB).**

——**Art. 226** — Quo warranto — It is not a writ which the petitioners are entitled as a matter of right. **AIR 1958 Punj 128 (132) (Pt F) (Pr 13).**

——**Art. 226** — Quo warranto cannot be claimed as of right — University Ordinance not followed — High Court will not interfere — University of Rajputana Act (1946), Section 30 — University Ordinance No. 63. **1961 Raj LW 326: ILR (1961) 11 Raj 206.**

299. Office in respect of which writ lies.

(a) Elective office.

299. Office in respect of which writ lies.

● ——**Art. 226 — Quo warranto, writ of.**

Per Full Bench :— The Court will not grant a quo warranto in a case where a mere irregularity can be cured. (1872) 25 LT 459 and (1916) 1 KB 585, Ref.

Hence where the petitioner challenged the Constitution of the Election tribunal on ground that one of the members was not qualified to act as such member at the date of his appointment but at the date of hearing of the petition he had become so qualified and there was nothing to bar his reappointment, the High Court refused to entertain an application under Art. 226, Constitution of India. Hari Shankar Prasad Gupta v. Sukhdeo Prasad, **ILR (1954) 1 All 447: 1953 All WR (HC) 684: 1953 All LJ 678: AIR 1954 All 227 (228, 230,** 231) (Pt C) (Prs 4, 16, 18) (FB).

——**Art. 226** — Municipalities — U. P. Municipalities Act (1916), Section 38 — Membership of

Board is an office — Application for writ of quo warranto in respect of membership is maintainable — See Municipalities — U. P. Municipalities Act (2 of 1916), S. 38. **AIR 1953 All 193.**

——Art. 226 — Writ of quo warranto — Offices of members of Managing Committee of school — **Writ does not lie in respect of such offices. ('52) 56 Cal WN 449: AIR 1953 Cal 114 (115) (Pt A) (Pr 5).**

——Art. 226 — Quo warranto and writ of mandamus — Wrongful claims to office — Endorsement of unfitness on certificate of service — Unjust practice — Merchant Shipping Act (1923), S. S.

If a wrongful claim is made to an office which does not exist or if a new office is set up an information in the nature of a quo warranto may lie. And where Government officials have been constituted agents for carrying out particular duties in relation to subjects so that they are under a legal obligation towards such subjects, a writ of mandamus will lie for enforcement of such duties.

Thus, where a shipping Master and a Government Medical Officer are carrying out inter alia the public duties of holding pre-entry medical examination of seamen they are under a legal obligation to conduct the examination of seamen in a reasonable manner and to certify the result of their examination in a reasonable manner and not to put unreasonable impediments in the matter of their fundamental right of carrying on freely their occupation of seamen as citizens of the Indian Union. The principles of natural justice also require that they should act in a reasonable manner. But the practice of endorsement of "permanent unfitness" on the Certificates of Service as a result of medical examination does not appear to be consonant to justice. In such a case, the High Court has, under Art. 226, ample power to issue necessary directions so as to restrain the officers from acting unjustly. 48 Cal WN 766, Rel. on. **AIR 1951 Cal 570 (572, 573) (Pt A) (Prs 10, 15).**

——Art. 226 — 'State' in Art. 16, Constitution of India includes municipal corporation — Creation of new post by Municipality — Person already employed in Municipality on different post appointed to new post — Post not regularly advertised by inviting applications from persons qualified — Art. 16 violated — Madhya Bharat Municipal Corporation Act (XXIII of 1956), Ss. 58 and 442 (2) — Appointment not made with consultation of State Public Service Commission as required by S. 58(2) — Appointment illegal — Writ of quo warranto and mandamus — Issue of. See Ibid, Art. 16. **AIR 1963 Madh Pra 17 (DB).**

——Art. 226 — Quo warranto — Writ of — Nature of office in respect of which writ will lie — Professors and Readers in Mysore University — Not holders of public office — Writ cannot issue. (1963) 2 Mys LJ 383: **AIR 1964 Mys 159 (164, 165, 166) (Pt D) (Prs 11, 14) (DB).**

——Art. 226 — Quo warranto against members of private association.

A writ of quo warranto only applies to offices of a public and substantive nature which are created by a statute. But the members of the working committee of an association or society such as the Bihar Rajya Arya Pratinidhi Sabha do not hold an office of public character. Therefore, a writ of quo warranto cannot be issued to test the validity of their election. (1946) 8 QBD 946: (1863) 8 LT 458, Rel. on. **33 Pat 157: AIR 1954 Pat 297 (299) (Pt B) (Pr 9) (DB).**

299 (a). Elective office.

——Art. 226 — Person not a member of Legislative Assembly appointed as Chief Minister pending his election to that House within six months — Person appointed commanding the support of the assembly — Appointment is neither prohibited by the Constitution nor does it violate the basic principle of parliamentary Government — Whether such a stop-gap arrangement is politically desirable or not is not a matter for the Court to consider. See Ibid, Art. 164. **AIR 1962 All 301.**

——Art. 226 — Writ of quo warranto — When to issue — Test — Writ to issue when there is usurpation of office — Competent persons elected as chairman and vice-chairman of Zila Parishad under Act 35 of 1959 before proper Constitution of Parishad — **Held** there was no usurpation. **1960 Andh LT 489: (1960) 2 Andh WR 69: ILR (1961) 1 Andh Pra 198: AIR 1961 Andh Pra 250 (252, 253) (Pt C) (Prs 13, 15, 17) (DB).**

——Art. 226 — Quo warranto — Writ in respect of elective office — Elected councillor not in possession of office — Issue of Writ — (Elections).

A petition for a writ of quo warranto against a councillor elected to a municipal corporation and a direction restraining him from acting as a councillor does not lie where the councillor has not assumed office. **1958 Nag LJ 427: ILR (1959) Bom 283: AIR 1959 Bom 2 (6) (Pt B) (Pr 14) (DB).**

——Art. 226 — Quo warranto, when issued — Elections — (Municipalities — Bombay Municipal Boroughs Act (XVIII of 1925), S. 15).

It is well settled that where there are statutory provisions dealing with the conduct of an election the writ of quo warranto is displaced. An election then can only be challenged in the manner laid down by the statute.

Person elected by councillors of Municipality as President — Such person discharging functions under Bombay Boroughs Municipal Rules, 1950, in conducting election though not authorised in law to do so, his election itself being not valid and proper — Election conducted by him cannot be set aside under S. 15 (5), conduct of election at best being an irregularity. It cannot also be set aside by quo warranto. **55 Bom LR 882: ILR (1954) Bom 104: AIR 1954 Bom 116 (120, 121) (Pt C) (Pr 8) (DB).**

——Art. 226 — Quo warranto — Writ in respect of elective office — Reluctance of High Court to issue writ against successful candidate. AIR 1954 Bom 116 and AIR 1961 Punj 429 (FB), Foll. **AIR 1962 Him Pra 19 (23) (Pt C) (Pr 23).**

——Art. 226 — Information in the nature of quo warranto — Office of speaker. (Per Shinde J.) Information in the nature of quo warranto can be issued in respect of the office of the speaker of Legislative Assembly as that office satisfies the requisite conditions. **ILR (1952) Madh. B. 145: AIR 1952 Madh B. 31 (37) (Pt J) (Pr 20) (DB).**

[**Overruled** on another point in AIR 1959 SC 395.]

——Art. 226 — Quo warranto — Delay — Effect — Writ refused.

Where the election of the Mayor of a Municipal Corporation was challenged 10 months after the election and when only a few hours were left before he would vacate his office and make his exit, no quo warranto writ will be issued. Delay on the part of the petitioner would constitute a good ground for refusing a writ. **1957 MPC 777: 1957 Jab LJ 1037: 1958 MPLJ 101: AIR 1958 Madh Pra 32 (33) (Prs 5, 6).**

——Art. 226 — Quo warranto — [Evidence Act (1872), S. 115].

An information in the nature of quo warranto is not issued as a matter of course and when a relator applies for an information it is in the discretion of the Court to refuse or grant it according to the

facts and circumstances of the case. A relator will not be entitled to information in the nature of a quo warranto if it can be shown that he acquiesced in the election to which he objects or that he is raising an objection which might have been put forward against himself at a previous election or that while cognizant of the objection he voluntarily so acted as to enable the respondent to exercise the office. AIR 1953 Nag 81, Rel. on. (1954) 1 MLJ 102: ILR (1954) Mad 908: AIR 1954 Mad 563 (568) (Pt E) (Prs 24, 25) (DB).

——**Art. 226** — Quo warranto — Mysore General Clauses Act (3 of 1899), S. 21 — Mysore Town Municipalities Election Rules (1951), R. 73 — Returning Officer publishing election calendars with respect to same election in same Gazette — Second calendar subsequently withdrawn and cancelled — Election taking place according to first calendar— S. 21, Mysore General Clauses Act held was controlled by R. 73 of Election Rules according to which Deputy Commissioner had power to alter dates in Calendar — Election according to first calendar was above reproach and elected members could not be regarded as usurpers — Application for their removal by quo warranto held must fail. **ILR (1961) Mys 1064.**

——**Art. 226 — Writ of quo warranto — Election to University Fellowship — Decision of Chancellor (S. 5, Utkal University Act) — Challenge of — Grounds — Relator not interested — Maintainability.**

Where the question of election of Fellows of the University of Utkal had been decided by the Chancellor under S. 5 as a domestic tribunal it was sought to be challenged in a petition under Article 226.

Held (Per Panigrahi, J.).— Under S. 5 of the Utkal University Act any dispute relating to the election of any person to the Senate is to be referred to the Chancellor and his decision is final. Where the dispute had been so referred and decided it is not for the Court to say if that decision is correct or no unless the order is attacked on the grounds of bona fides or vires.

Per Das. C. J.— The jurisdiction of the High Court cannot be taken away except to the extent a competent Legislative Authority takes it away or limits it by a statute. The relevant statutes of the University cannot have such an effect and in fact they do not take away the power of the High Court in the case of dispute in question. The exclusion cannot be implied by the provision for final adjudication by the Chancellor. But the High Court will not ordinarily interfere and issue a writ regarding an election dispute of the University which has been adequately provided for except for grave and compelling reasons.

The petitioner being a Fellow could maintain the petition even though not personally interested in the dispute; he has sufficient interest in the Senate of which he is a Fellow though nominated. But the issue of writ on the application of such a person is discretionary and considering none of the persons affected had come forward impugning the act it is a circumstance to be taken into consideration in passing final orders. AIR 1952 Orissa 359 **(370 to 373) (Pt D) (Prs 24 to 28) (DB).**

——Art. 226 — Quo warranto — Election to university fellowship — Dispute relating to, decided by Chancellor — Court of law cannot question **decision, unless it is on ground of vires, or bona fides** — (Utkal University Act (Orissa Act XIII of 1943), S. 5). AIR 1952 Orissa 359 (383, 384) **(Pr 65) (DB)**

——**Art. 226 — Quo warranto — Delay — Rejection of nomination paper of one of candidates to election — Other candidates acquiescing in order and taking part in election — Declaration of result of election — Defeated candidate applying for writ of quo warranto — Discretion to issue writ refused — Punjab Agricultural Produce Markets Act (1961), S. 10 — Punjab Agricultural Produce Markets (Election to Market Committee) Rules (1961), R. 9.** ILR (1958) Bom 113 Distinguished. **('64) 66 Pun LR 1000.**

——Art. 226 — Elections held on basis of defective electoral rolls — Rules not providing for election petition — High Court has power to issue writ. ('60) 62 Punj LR 679.

[Overruled in AIR 1961 Punj 429 (FB)].

——Art. 226 — Quo warranto — **Election of municipal member on basis of defective electoral roll — Writ can be issued — (Election). AIR 1961 Punj 105 (109) (Pt B) (Pr 6).**

[Overruled in AIR 1961 Punj 429 (FB)].

——Art. 226 — A petition for issuance of a writ of quo warranto against all the elected members of a municipality on the ground that the electoral rolls had not been prepared in accordance with the mandatory and essential provisions of law is maintainable. **('60) 62 Punj LR 377: ILR (1960) 2 Punj 192.**

[Overruled in AIR 1961 Punj 429 (FB). It was however, held in AIR 1965 Punj 361, that AIR 1961 Punj 429 (FB) did not overrule ('60) ILR (1960) 2 Punj 192 — Ed.]

——**Art. 226 — Quo warranto — (T. C. Hindu Religious Institutions Act (XV of 1950), S. 66).**

The writ of quo warranto is a common law process of great antiquity; a writ of right for the King against one who claimed or usurped any office, franchise, or liberty, to inquire by what authority he asserted a right thereto in order that it might be determined. An information in the nature of quo warranto is its modern form and there is no doubt that it is a remedy given by law at the discretion of the Court and not issued as a matter of course.

As regards "office" English Law originally confined it to cases of usurpation upon the Crown directly. But later on the remedy was held to apply equally to an office of a permanent character held at pleasure provided it was of a public and substantive character. (1872) 25 LT 459, Referred to. AIR 1954 All 227 (FB), Commented on.

Thus a Chairman of a municipality being an office-holder of a local authority within the meaning of S. 66 (iii), T. C. Hindu Religious Institutions Act, 1950, his election to the Devaswom Board should be declared void, where he was such an office-holder on the crucial date namely the date of his nomination and election, on the ground of disqualification where it is impossible to hold that the voters were conscious of the disqualification and still voted for him. There is no authority for refusing the writ of quo warranto on the ground that though there was such disqualification on the crucial date it had ceased to exist by the time the writ was sought. 1954 Ker LT 723: ILR (1954) TC 1295: **AIR 1955 Trav-Co 42 (45, 46) (Pt D)** (Prs 12, 14, 15, 16, 17) (DB).

300. Other remedy open.

See Note 7.

301. Parties to proceeding.

——**Art. 226 — Quo warranto — Person wrongfully usurping public office — Proper writ — Parties to proceeding.**

The writ that can suitably be issued against a person who has wrongfully usurped or taken charge of a public office such as the office of the Chairman Local Board is a writ in the nature of quo warranto. No such order of writ can issue to a person unless he is made a party to the proceeding. He is to be heard before a writ of an extraordinary nature is issued. If others are joined, the misjoinder may not be fatal to the petition but he is undoubtedly a necessary party. Besides, whatever may be the nature of the writ that may have to be issued, no order can be passed against him in his absence and without any notice to him. Such a course would be opposed to the principle of natural justice. It cannot be said that a person because he happens to be acquainted with the facts of the case, automatically becomes a party to the proceeding by merely putting in an affidavit. By authorising the advocate to represent the Board in the proceedings the Chairman acts in the discharge of his function as Chairman no doubt, but he could not include himself as a party to the proceeding by any act of his own. He could be included as a party to the proceeding only by an order of the Court. ILR (1952) 4 Assam 217: AIR 1952 Assam 119 (122, 123) (Pt C) (Prs 12, 14) (DB).

——**Art. 226 — Quo warranto — Writ cannot be issued against managing committee of private school — Validity of approval of such committee by University challenged — University not made party — Application is not maintainable — Revised School Code, R. 6. 56 CWN 449: AIR 1953 Cal 114 (115) (Pts A, B) (Prs 5, 7).**

——Art. 226 — Balloting out of University fellows under S. 12, Utkal University Act, irregular — Persons affected directly not making complaint — Irregularity not producing any material consequences to the interest of the University, or any tangible repurcussion on proper functioning of University as democratic body — Petition for writ by relator, held would be rejected — (Utkal University Act (Orissa Act XIII of 1943), S. 12). **AIR 1952 Orissa 359 (374, 375) (Pt I) (Pr 34) (DB).**

302. Possession of office, defendant must be in.

——**Art. 226—Quo warranto — Its origin, indicated — Writ in respect of elective office — Election of** councillor of Municipality — **Writ does not lie until he assumes office.** AIR 1959 Bom 2, Foll. **AIR 1962 Him Pra 19 (22) (Pt A) (Pr 18).**

303. Resignation from office.

——Art. 226 — Premature petition — Application for writ of quo warranto against member of legislature on basis that he has tendered his resignation — Resignation under rules of procedure of House was to become effective only when Speaker had determined its genuineness — Writ petition before decision of Speaker is premature. **AIR 1965 All 536** (542) (Pt D) (Pr 23).

304. Title to office.

——Arts. 226 and 171 — Quo warranto — Nomination of person to legislative council — Petitioner not showing that the person was disqualified or that the Governor had no power to nominate him but merely showing that nomination was made for political reasons — Held that was not sufficient to issue a writ of quo warranto. **1961 All LJ 927:** AIR 1962 All 301 (305) (Pt E) (Pr 23).

——Art. 226 (1) — Quo warranto — Title to corporate office in question — Issue of writ. AIR **1953 Assam 12 (13, 14) (Pt C) (Prs 5, 7) (DB).**

——**Art. 226 — Quo warranto — When issued.**

A writ in the nature of quo warranto is not issued as a matter of course. The Court has a discretion to grant or to refuse the writ. The Court will not allow an information in the nature of a quo warranto to be filed to try the title to an office, merely because there has been an irregularity in the election to the office, in the absence of bad faith, and where the result of the election has not been affected. ('59) **63 Cal WN 590.**

——Art. 226 — Date of commencement of M. B. Vikram University Act not appointed — Effect on operation of Act — S. 1 (2) and S. 45 of the Act — Held operative — No illegal assumption of office by Chancellor. See M. B. Vikram University Act (18 of 1955), S. 1 (2). **AIR 1957 Madh Pra 60.**

——**Art. 226 — Quo warranto — Issue of — Grounds — Usurpation of public office sufficient.**

A writ of quo warranto lies where there is in substance a usurpation though the name of the office may not have been assumed by the respondent. 48 Cal WN 766, Rel. on. **1957 Jab LJ 170: ILR (1957) Madh Pra 188: 1962 MPLJ (Notes) 5: 1957 MPC 177: AIR 1957 Madh** Pra 60 (66) (Pt E) (Pr 51).

305. Who can apply.

——Art. 226 — Quo warranto — **Right to apply** for writ.

The petition for a writ of quo warranto could be maintained by any person. Where by an application the petitioner made it clear that he had filed the application for and on behalf of another person any misdescription in the title of the petition is of no importance. **AIR 1956** Ajmer 70 (71) **(Pt B)** (Pr 3).

——**Art. 226 — Quo warranto — Procedure for making application — (High Court Rules (All.) 1952), Chap. 22, Rr. 1 and 7).**

A motion for a writ of quo warranto can be made at the instance of a private individual without the intervention of the Government or any public authority. Under Rules 1 and 7 of Chap. 22 of the Rules of the Allahabad High Court, 1952, an application for the issue of a writ of this nature has to be made to a Division Bench and by an advocate and not by the party personally. **1952 RD** (HC) 388: 1953 All WR (HC) 35: **1953 All LJ 81:** AIR 1953 All 193 (193) (Pt A) (Pr 2) (DB).

——Art. 226 — Writ of quo warranto — Who can apply for — Relator having no personal interest in a matter can apply for issue of such writ. 1960 Andh LT 489: (1960) 2 Andh WR 69: **ILR** (1961) 1 Andh Pra 198: **AIR 1961 AP 250 (252)** (Pt B) (Prs 10, 12) (DB).

——**Art. 226 — Quo warranto — Writ of — Who can apply.**

It is incorrect to say that unless a person's personal right is infringed or unless he has suffered a legal injury, he cannot maintain an application for quo warranto. An application for a writ of quo warranto challenging the validity of appointment to an office of a public or substantive nature is maintainable at the instance of any private person even though he is not seeking enforcement of any fundamental right under the Constitution or any legal right of his or of any legal duty towards him. (1916) 1 KB 595, Ref. ('52) 56 Cal WN **651: AIR 1952 Cal 799 (803, 804) (Pt F) (Pr 20).**

——Art. 226 — Writ of quo warranto — Relator need not have direct and personal interest in the matter. AIR 1953 Mad 96, Dissented from. AIR 1952 Cal 799; AIR 1952 Orissa 359 and AIR 1952 Nag 330, Rel. on. AIR 1951 SC 41 and AIR 1953 Mad 94, Distinguished. **ILR (1955) Hyd 292: AIR 1955 Hyd 36 (38) (Pt A) (Pr 7) (DB).**

——Art. 226 — Writ of quo warranto — When issued — Relator need have no special interest. AIR 1952 Nag 330 and AIR 1955 Hyd 36, Rel. on. 1957 Jab LJ 170: ILR (1957) Madh Pra 188: 1962 MPLJ (Notes) 5: 1957 MPC 177: AIR 1957 Madh Pra 60 (62) (Pt A) (Prs 16, 19).

——Art. 226 — Quo warranto — Who can apply. Though a writ of quo warranto is not a writ of right, in the sense that the Court is bound to grant the relief prayed for, still if the validity of an appointment or a claim to an office by a person is challenged by an applicant for a writ notwithstanding that he does not have a personal interest in the matter, and the Court is satisfied that the petition has been filed bona fide, it has a right to investigate the matter and decide on the validity of the appointment. (1946) 1 KB 595, Rel. on: AIR 1953 Mad 96, held not correct. 69 Mad LW 713: (1956) 2 MLJ 460: 1956 Mad WN 685: ILR (1957) Mad 158: AIR 1957 Mad 17 (17) (Pt A) (Pr 4) (DB).

——Art. 226 — Writ of quo warranto — Petitioner not interested in the subject-matter — Writ cannot be issued. Decision in W. P. No. 244 of 1952 (Mad), Rel. on: Case-law ref. (1952) 2 MLJ 779: AIR 1953 Mad 96 (98) (Pt A) (Pr 11).

[Overruled in AIR 1957 Mad 17].

——Art. 226 — Scope — Writ of quo warranto — Right to apply for issue of — Locus standi.

Unless there is an infraction of a personal right a person has no right to maintain an application for the issue of a writ of quo warranto under Article 226 of the Constitution of India (1950). (1952) 2 MLJ 671 and (1951) SCJ 29; (1950) SCR 869, Relied on.

The words "and for any public purpose" in the article cannot be interpreted to mean a purpose other than the protection of the legal rights of a person. The jurisdiction under Art. 226 can be invoked only by or at the instance of a person who has suffered a legal injury at the hands of the executive Government of the State or some tribunal and the rights under the article are personal and direct. It cannot be said that member of the Legislative Council is aggrieved by the nomination of certain members to the Legislative Council by His Excellency the Governor of Madras, so as to entitle him to maintain an application under Article 226 for the issue of a writ of quo warranto. (1952) 2 MLJ 779: AIR 1953 Mad 96 (98) (Pt A) (Pr 11).

——Art. 226 — Quo warranto — Mysore Co-operative Societies Act (11 of 1959), S. 70—Scope — Dispute regarding election of office bearers of Co-operative Society — Any party to such dispute is entitled to make reference — See Co-operative Societies — Mysore Co-operative Societies Act (11 of 1959), S. 70. (1963) 1 Mys LJ 204.

——Art. 226 — Quo warranto — Who can apply for.

Any person though not personally interested in the result of election can apply for a writ of quo warranto. ILR (1956) Mys 274: AIR 1957 Mys 16 (18) (Pt E) (Pr 10) (DB).

——Art. 226 — Writ of quo warranto when will not be granted.

Before granting a writ of quo warranto it is necessary to see that the relator is a fit person to be entrusted with this writ. The Court will not listen to a candidate who has acquiesced or perhaps concurred in the very act which he afterwards comes to complain of when it suits his purpose. It will not issue a writ of quo warranto at the instance of the candidate for an election who did not object to the nomination of another candidate for the same constituency at the proper time. AIR 1950 Pat 387 (FB), Rel. on. ILR (1953) Nag 267: 1953 Nag LJ 503: AIR 1953 Nag 81 (85, 86) (Pt F) (Pr 21) (DB).

——Art. 226 — Quo warranto — Who can apply — Petitioners though entitled to apply, not being in any way prejudiced could not obtain writ. See Utkal University Act (XIII of 1943), S. 8 (3) (iv). AIR 1957 Orissa 159 (DB).

——Art. 226 — Quo warranto — University — Elections of Fellows — Balloting out — Quo warranto petition by relator a Fellow of University — Persons affected not parties — No personal rights of relator affected — Relator held had sufficient interest to maintain petition — Issue of writ on such application however held was discretionary — Fact that none of persons affected by impugned balloting and by consequential election have come forward is a circumstance for consideration in granting or refusing writ — (Utkal University Act (Orissa Act XIII of 1943), S. 12). AIR 1952 Orissa 359 (373) (Pt H) (Pr 31) (DB).

——Art. 226 — Quo warranto — Writ of — Person not connected with Legislature can challenge validity of nominations to State Legislative Council. AIR 1965 Pat 321 (327, 328) (Pt D) (Pr 7) (DB).

——Art. 226 — Quo warranto — Who can apply — Election to Municipal Committee on basis of electoral roll prepared in accordance with delimitation of wards—Delimitation proved illegal — Petitioner not residing in ward affected by delimitation — Still he can apply — Elections. AIR 1961 Punj 105, Rel. on. 1965 Cur LJ 279: 67 Punj LR 452: ILR (1965) 2 Punj 174.

——Art. 226 — Challenging Municipal election — Objection common to all — Private relator if can apply for quo warranto.

The normal rule is that a petition under Art. 226 can only be made by a person who has some right and whose right has been infringed. This rule, however, is not an inflexible or an absolute one. In proceedings for a writ of quo warranto, the applicant does not seek to enforce any right of his as such, nor does he complain of non-performance of any duty towards him. What is in question is the right of the non-applicant to hold the office. It is enough for its issue that the relator is a member of the public and acts bona fide. In India, the High Court's power to do justice in such cases is further clarified by the insertion of the words "for any other purpose" in Art. 226. To question the title to a municipal corporate office or public corporation or any unit of Government, the petitioner need not be a member of the Municipal Council or other governing body but need only be a resident of the area under the Government or control of that body. A private relator can in effect assail the whole corporation, and the information will not be refused. AIR 1952 Nag 330 and AIR 1957 Madh Pra 60 and AIR 1952 Cal 799, Relied on. ILR (1958) Punj 1938: AIR 1959 Punj 83 (85, 86, 87) (Pt A) (Prs 5, 7, 12, 13, 14) (DB).

——Art. 226 — Quo warranto — Who can apply for — Order under S. 12 (5) of Rajasthan Town Municipalities Act (XXIII of 1951) — Application by members of Municipal Board is maintainable — (Municipalities — Rajasthan Municipalities Act (XXIII of 1951), S. 12 (5)). 1958 Raj LW 190: ILR (1957) 7 Raj 241: AIR 1957 Raj 75 (76) (Pt A) (Pr 5) (DB).

ARTICLE 227

SYNOPSIS

(Constitution of India (1950), Art. 227.)

1. Scope of applicability.
2. This Article and Article 226.
3. Nature and scope of power.
   (a) Difference between power of High Court under Government of India Act, 1935 and this Article.
   (b) Power is both judicial and administrative.
   (c) Power, a discretionary one.
   (d) Interference only when error or defect has caused substantial miscarriage of justice.
   (e) Power cannot be used to correct mere errors in decision on question of law or fact.
      (i) Mistakes of law.
      (ii) Findings of fact.
      (iii) High Court's power to re-appreciate evidence.
   (f) Power to be exercised to keep Courts and Tribunals within limits of their authority.
   (g) Lower Court acting without jurisdiction.
      (i) Instances of orders without jurisdiction.
      (ii) Orders which are not without jurisdiction.
   (h) Illegal exercise of jurisdiction.
   (i) Refusal or failure by lower Court to exercise jurisdiction or to do its duty.
   (j) Refusal or failure to proceed with case.
   (ja) Bias.
   (k) Conflict of jurisdiction.
   (l) Illegal orders.
   (m) Patently erroneous decisions.
      (i) Patent errors — Test of.
      (ii) Errors of law apparent on record.
      (iii) Patent error of fact.
   (n) Contravention of principles of natural justice.
      (i) Administrative orders.
      (ii) Orders of contractual domestic tribunals.
      (iii) Orders made in departmental enquiry.
      (iv) Proceedings under Sea Customs Act.
      (v) Disciplinary proceedings of University.
      (vi) Proceedings under Motor Vehicles Act.
   (o) Cases where the High Court may not interfere.
   (p) Interlocutory orders.
   (q) Discretionary matters.
      (i) Discovery and inspection.
      (ii) Stay of proceedings.
      (iii) Amendment of pleadings.
      (iv) Other cases of discretionary orders.
   (r) Subsequent events.
   (s) Nature of orders that can be passed by the High Court.
4. Power, whether includes power to transfer.
5. High Court.

   See also Ibid, Art. 228.

6. "All Courts and tribunals".
   (a) "Courts."
   (b) "Tribunals."
   (c) All tribunals exercising judicial or quasi-judicial functions are amenable to supervisory jurisdiction.
   (d) Custodian of evacuee property.
   (e) Authorities under Rent Control Acts.
   (f) Revenue Courts and Tribunals.
   (g) Election Tribunal.
   (h) Authority under Motor Vehicles Act.
   (i) Authority under Payment of Wages Act.
   (j) Industrial Tribunals and Labour Courts.
   (k) Decision of authority under Minimum Wages Act.
   (l) Nyaya Panchayats.
   (m) Collector acting under Land Acquisition Act.
7. Revision and power of superintendence.
8. Power conferred is not an appellate power.
9. Other remedy open.
   (a) Jurisdiction under Article not barred by existence of another remedy.
   (b) Impugned order open to revision.
   (c) Relief obtainable by suit.
   (d) Availability of remedy under Art. 226.
10. Laches.
11. Limitation.
12. Statutory bar.
13. Election disputes.
14. Contempt of Court.
15. Retrospective application.
16. Territorial jurisdiction.
17. Application under Article.
   (a) Person entitled to apply.
   (b) Parties.
   (c) Duty to make full disclosure of material facts.
18. Suo motu exercise of power.
19. Procedure.
20. New plea.
21. Appeal.
22. Rules of High Court.
23. Exemption of Military Courts and Tribunals.

1. Scope and applicability.

● ——Arts. 227, 226 and 215 — Law declared by High Court — It is binding on lower Courts and Tribunals.

Per Majority (Sarkar, J.: dubitante) :— An administrative Tribunal cannot ignore the law declared by the highest Court in the State. Taking into consideration the provisions of Arts. 215, 226 and 227 of the Constitution of India it would

be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of Supreme Court making the law declared by the High Court binding on subordinate Courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. East India Commercial Co., Ltd., Calcutta v. Collector of Customs Calcutta, **(1963) 3 SCR 338: (1963) 1 SCA 622 : AIR 1962 SC 1893 (1898, 1904) (Pt D) (Prs 14, 29).**

——Art. 227 — Scope.

The plain language of the article clearly shows that clauses 2 and 3 do not, in any way, affect the provisions of the first clause and hence the contention that the power of supervision has to be exercised in the manner similar to that laid down in clauses 2 and 3 of Art. 227 is not correct. **1954 AMLJ 1 : AIR 1954 Ajmer 33 (35) (Pt B) (Pr 7).**

——Arts. 227, 233, 234, 235 and 309 — Restriction of the High Court general control and superintendence of Courts within the State — Art. 235 — "Conditions of service" explained — A condition of service ousting the High Court's power under Art. 227 or Art. 235, to take disciplinary action is ultra vires. See Andhra Civil Service (Disciplinary Proceedings Tribunal) Rules (1953), R. 4 (1) (a) and (b) and (2) Proviso. **AIR 1955 Andhra 65 (DB).**

——Art. 227 — Administration of Justice in Khasi and Jaintia Hills Rules, R. 36 — Applicability of Rule to revenue matters confined to settlement of lands — High Court whether has power of superintendence in its revenue jurisdiction at least over such matter. See Administration of Justice in Khasi and Jaintia Hills Rules, R. 36. **AIR 1953 Assam 192.**

——Art. 227 — Extent of the powers of High Court — Limitations on powers. See Ibid, Art. 226. **AIR 1956 Bom 530.**

——Art. 227 — Bombay Tenancy and Agricultural Lands (Vidarbha Region) (Amendment) Act (44 of 1963) — S. 6 does not apply to proceeding pending before High Court in petition under Art. 227 against order of Tribunal. See Tenancy Laws — Bombay Tenancy And Agricultural Lands (Vidarbha Region and Kutch Area) Act (99 of 1958), S. 38. **AIR 1955 Bom 76.**

——Art. 227 — Scope of article — Article whether deals with right of litigant to any remedy — Power conferred on Court under if disentitles litigant from seeking writ under Art. 226. See Ibid, Art. 226. **AIR 1951 Bom 423 (DB).**

——Art. 227 — Jurisdiction of High Court under Constitution, Art. 227 — Not original but revisional — Judgment of single Judge in proceedings under Art. 227 — Not appealable. See Kerala High Court Act (1958), S. 5. **1961 Ker LT 823.**

——Arts. 227, 226 — Civil P. C. (1908), S. 9 — Ouster of Civil Courts' jurisdiction — Suit for refund of stamp duty and penalty paid under Stamp Act — Maintainability — Jurisdiction whether ousted because of Arts. 226 and 227 of Constitution — Burden of proof — (Stamp Act (1899), Ss. 40, 45, 56 and 57)—(Evidence Act (1872), Ss. 101 to 104). See Civil P. C. (1908), S. 9. **AIR 1959 Orissa 144.**

——Art. 227 — Proceedings before Industrial Court — Writ proceeding — Propriety of. See Bombay Industrial Relations Act (11 of 1947), Section 85. **1959 MPLJ (Notes) 154.**

——Art. 227 — Scope — Decision of Appellate Authority constituted under R. 73, Motor Vehicles Rules — High Court acting under Articles 226 and 227 cannot exercise appellate jurisdiction. See Ibid, Art. 226. **AIR 1955 Nag 199 (DB).**

2. This Article and Article 226.

——Art. 227 — Powers of High Court — Art. 226 — Difference.

The powers of judicial interference under Art. 227 with orders of judicial or quasi-judicial nature are not greater than the powers under Art. 226. Under Art. 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Art. 227 the power of interference is limited to seeing that the tribunal functions within the limits of its authority. Nagendra Nath Bora v. Commr. of Hills Division and Appeals, Assam, **36 Mys LJ 389 : (1958) SCA 572 : (1958) SCJ 798 : 1958 SCR 1240 : AIR 1958 SC 398 (413) (Pt F) (Pr 30).**

——Art. 227 — Arts. 227 and 226.

While in a certiorari under Art. 226 the High Court can only annul the decision of the Tribunal, it can, under Art. 227, do that, and also issue further directions in the matter. Hari Vishnu v. Ahmad Ishaque, **1955 Mad WN 449: (1955) 1 MLJ (SC) 157 : (1955) SCJ 267 : 1955 Andhra WR (SC) 157 : 1955 All WR 339 : 1955 SCR 1104 : 1955 NLJ 1 : 1955 SCA 105 : AIR 1955 SC 233 (243) (Pt H) (Pr 20).**

—— Art. 227 — Scope — Distinction between this article and Art. 226. See High Court Rules and Orders — Allahabad High Court Rules (1952), Chap. VIII, R. 5. **AIR 1957 All 414 (FB).**

——Art. 227 —Scope of articles 226 and 227. See Ibid, Art. 226. **AIR 1955 All 113 (FB).**

——Art. 227 — Judicial powers conferred under — Compared with powers under Art. 226.

While Art. 226 concedes to the High Court vast powers of what may be called judicial review or control by issue of writs, directions and orders over all Courts within its jurisdiction, Art. 227 seems to be for securing administrative supervision not easily exercisable by such writs etc. Arts. 226 and 227 are thus supplementary. The limited judicial powers under Art. 227 are intended for and are merely ancillary to such administrative control. **1952 Cri LJ 1695 : ILR (1952) 1 All 558 : AIR 1952 All 963 (972) (Pt F) (Prs 61, 62, 63) (DB).**

——Art. 227 —Powers of superintendence — Scope.

In exercise of the powers of superintendence under Art. 227 of the Constitution, the High Court cannot exercise the powers exercisable under Art.

226 and the power conferred by Art. 227 is not in any way controlled by the power exercisable by the High Court under Art. 226. According to the rules framed by the High Court (All.) the application under Art. 226 has to be heard by a Bench while that under Art. 227 can be heard by a single Judge. **1952 AWR (HC) 165 : 1952 All Cri R 55 : 1952 ALJ 161 : 1952 Cr LJ 1520 : 1952 RD (HC) 101 : AIR 1952 All 843 (844) (Pt A) (Pr 4).**

——**Art. 227 — Powers of High Court under this article and Art. 226 — Difference between.**

The powers of High Court under Art. 227 are not wider than the powers conferred by Art. 226. But for all practical purposes they are co-equal except that under Art. 227 the High Court has superintendence only over Courts and tribunals whereas under Art. 226 it has supervisory jurisdiction over any person or authority including Government. **(1964) Andh LT 72: (1964) 1 Andh WR 243.**

——**Art. 227** — Powers under Arts. 227 and 226— Difference. See Ibid. Art. 226. **AIR 1954 Bom 171 (DB).**

——**Art. 227 — Art. 227 and Art. 226.**

Art. 227 has no concern with the writs at all. It is concerned with providing the High Courts with power to superintend over the work of the Courts and tribunals; it is Art. 226 which is concerned with the writs and it is necessary to keep the two Articles distinctly in mind. There may be cases where both these Articles may apply and there may be cases where only one of them may apply. It cannot be said that whenever there is a case under Art. 227 of the Constitution, Art. 226 must necessarily apply. **1954 BLJR 594: 1955 Cr LJ 501 : 33 Pat 996 : AIR 1955 Pat 118 (120) (Pt B) (Pr 5) (DB).**

——**Arts. 227, 226 — Power of superintendence— Comparison with powers under Art. 226 — No interference merely on ground that order was erroneous — Punjab Commodities Price Marketing and Display Order (1962), S. 3 (a).**

The powers of judicial interference under Art. 227 with orders of judicial or quasi-judicial nature are not greater than those under Art. 226. Under the latter Article the power of interference may extend to quashing an impugned order on the ground of mistake apparent on the face of the record, but under Art. 227 the power of interference is limited to seeing that the Tribunal functions within the limits of its authority. Moreover, power under Art. 227 is always to be exercised most sparingly and only in appropriate cases, and is clearly not meant for correcting mere errors of fact or even of law.

Where it has not been shown that the officers concerned have in any way travelled beyond the scope of their jurisdiction or have erroneously refused to perform their duty imposed upon them by law then even if their orders are erroneous, that would not by itself warrant correction of the error under Art. 227 of the Constitution. AIR 1962 Punj 117 and AIR 1958 SC 398, Foll.

An order under the provisions of S. 3 (a) of the Punjab Commodities Price Marketing and Display Order, 1962, cannot be interfered with under Art. 227 of the Constitution on the ground that the raid on the shop was conducted beyond working hours as the objection is only technical. **(1964) Cur LJ 324: 1965 (2) Cri LJ 701 (701, 702) (Prs 3; 4) (Punj).**

——**Art. 227** — Article does not in terms provide for writs and is distinguishable in this respect from Art. 226 which alone provides for writs. **AIR 1962 Punj 467 (470) (Pt B) (Pr 13).**

3. Nature and scope of power.

(a) Difference between power of High Court under Government of India Act, 1935 and this Article.
(b) Power is both judicial and administrative.
(c) Power, a discretionary one.
(d) Interference only when error or defect has caused substantial miscarriage of justice.
(e) Power cannot be used to correct mere errors in decision on question of law or fact.
(i) Mistakes of law.
(ii) Findings of fact.
(iii) High Court's power to reappreciate evidence.
(f) Power to be exercised to keep Courts and Tribunals within limits of their authority.
(g) Lower Court acting without jurisdiction.
(i) Instances of orders without jurisdiction.
(ii) Orders which are not without jurisdiction.
(h) Illegal exercise of jurisdiction.
(i) Refusal or failure by lower Court to exercise jurisdiction or to do its duty.
(j) Refusal or failure to proceed with case.
(ja) Bias.
(k) Conflict of jurisdiction.
(l) Illegal orders.
(m) Patently erroneous decisions.
(i) Patent errors — Test of.
(ii) Error of law apparent on record.
(iii) Patent errors of fact.
(n) Contravention of principles of natural justice.
(i) Administrative orders.
(ii) Orders of contractual domestic tribunals.
(iii) Orders made in departmental enquiry.
(iv) Proceedings under Sea Customs Act.
(v) Disciplinary proceedings of University.
(vi) Proceedings under Motor Vehicles Act.
(o) Cases where the High Court may not interfere.
(p) Interlocutory orders.
(q) Discretionary matters.
(i) Discovery and inspection.
(ii) Stay of proceedings.
(iii) Amendment of pleadings.
(iv) Other cases of discretionary orders.
(r) Subsequent events.
(s) Nature of orders that can be passed by the High Court.

3. Nature and scope of power.

——**Art. 227 — Powers of High Court — Nature and scope.**

1. The superintendence referred to in Art. 227 of the Constitution includes judicial superintendence. 2. The power conferred by the Article is wide but not unlimited. The exercise of the power is discretionary and relief under the Article cannot be claimed as a matter of right. The principles regulating the exercise of the power are generally speaking the same as the principles on which writs can be issued under Art. 226 but in a sense wider. 3. The power under the Article can be exercised even in those cases in which no appeal or revision lies in the High Court. 4. The power should not ordinarily be exercised if any

other remedy is available. 5. The power should not be used to correct mere errors of fact or law. 6. The power is to be used sparingly only in appropriate cases. **ILR (1958) 2 All 874: 1958 All LJ 315: 1958 All WR (HC) 445: AIR 1958 All 456 (464) (Pt A) (Pr 36) (DB).**

——**Arts. 227, 228** — Contempt of Courts Act (1952), Section 3 — Power of superintendence if gives power to punish — (Words and Phrases — "Subordinate"). See Contempt of Courts Act (1952), S. 3. **AIR 1956 All 258.**

(**Overruled** on another point in AIR 1962 All 315 (FB).)

——**Art. 227 — Powers of superintendence.**

The Court's powers of superintendence are exercised primarily through S. 115 of the Civil P. C., and Art. 226 of the Constitution and Art. 227 confers upon it supplementary power not differing substantially in content but exercisable in cases to which those provisions are not appropriate.

It is not the duty of the High Court in the exercise of its powers of superintendence to correct mere errors of fact or law unless the latter are apparent on the face of the record and there is no adequate allernative remedy. Nor should it so exercise its power of superintendence as to effect an alternation in the judicial system the maintenance of which it should be its object to uphold. **1955 All LJ 624: 1955 All WR (HC) 516: AIR 1955 All 673 (676) (Pt D) (Prs 15; 16) (DB).**

● ——**Art. 227** — Scope of article — Powers under Art. 227 — When exercised. See Ibid, Art. 226. **1955 Cri LJ 296: AIR 1955 All 113 (FB).**

——**Art. 227 — High Courts' power of superintendence — Nature and extent of — U. P. Panchayat Raj Act (26 of 1947), S. 85 (5).**

A reading of the entire Art. 227 of the Constitution of India in the light of the antecedent law on the subject leads one to the irresistible conclusion that the purpose of the Constitution-makers was to make the High Court responsible for the entire administration of justice and to vest in the High Court an unlimited reserve of judicial power which could be brought into play at any time that the High Court considered it necessary to draw upon the same. Springing as it does from the Constitution, which is the parent of all Acts and Statutes in India, the fact that the judgment or order of a Court or tribunal has been made final by an Act or the fact that the body performing judicial functions is a special tribunal constituted under a Statute cannot be set up as a bar to the exercise of this power by the High Court. The prohibited area is to be found within the four corners of the Constitution itself and nowhere else. The fact that these unlimited powers are vested in the High Court should, however, make the High Court more cautious in its exercise. The self-imposed limits of these powers are established and laid down by the High Courts themselves. These powers cannot be exercised unless there has been an unwarranted assumption of jurisdiction not possessed by Courts or a gross abuse of jurisdiction possessed by them or an unjustifiable refusal to exercise a jurisdiction vested in them by law. Apart from matters relating to jurisdiction, the High Court may be moved to act under it when there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice which calls for remedy. Under this power, the High Court will not be justified in converting itself into a Court of appeal and subverting findings of fact by a minute scrutiny of evidence or interfering with the discretionary orders of Court. Further, this power should not be exercised, if there is some other remedy open to a party. Above all, it should be remembered that this is a power possessed by the Court and is to be exercised at its discretion and cannot be claimed as a matter of right by any party. Case law referred.

Consequently, notwithstanding the provisions of S. 85 (5) U. P. Panchayat Raj Act, the High Court can exercise its powers of superintendence over proceedings of the Panchayat Adalat or any order passed in revision therefrom. **1952 All LJ 493: 1952 All WR (HC) 547: 1952 All Cri C 146: 1952 Cri LJ 1282: AIR 1952 All 788 (792; 793) (Pt B) (Prs 14, 15, 17).**

——**Art. 227 — Power of superintendence — Extent of — Order under S. 160 U. P. Municipalities Act — Interference — Municipalities — U. P. Municipalities Act (2 of 1916), S. 160.**

The power of superintendence under Art. 227 of the Constitution of India is limited in its character. It is exercised when there is refusal by an inferior tribunal to exercise a jurisdiction vested in it or when there is an exercise of a jurisdiction which is not vested in that tribunal or to correct some error apparent on the face of the record which may arise from some defect or informality in the proceedings. The power is not exercised to correct mere errors of law or errors of fact not involving defect of jurisdiction or procedure.

Hence, where an additional District Magistrate hearing an appeal under S. 160, U. P. Municipalities Act, sets aside the order of enhancement of assessment made by the Revising officer, the order even if wrong in law, cannot be interfered with under Art. 227, when the order is passed in the exercise of his jurisdiction and there is no defect or error of procedure adopted by him. **1952 All LJ 108: 1952 RD (HC) 104: AIR 1952 All 505 (505, 506) (Pr 6).**

——**Art. 227** — Jurisdiction of High Court — Nature and extent of. See Ibid, Art. 226. **AIR 1957 Assam 182 (DB).**

——**Art. 227 — Power of Superintendence —Scope — Decision of tribunal based on extraneous considerations or on an error on jurisdictional point — High Court can and should interfere under Art. 227 — Erroneous decision on question of presumption of S. 56, Bengal Tenancy Act resulting in avoidance of its application — Decision can be set aside under Art. 227.**

If the decision of a tribunal can be shown to be arbitrary and devoid of reason or erroneous on the face of it or to be based on an error on a jurisdictional point, or when the tribunal in exercising its jurisdiction has taken recourse to considerations extraneous to the rules of construction and thereby wrongly exercised the jurisdiction then by the exercise of power of superintendence under Art. 227, of the Constitution the High Court can and should revise the said decision. AIR 1963 Cal 409, Rel. on. **AIR 1965 Cal 212 (214) (Pt A) (Pr 15) (DB).**

——**Art. 227 — Power of superintendence — Jurisdictional error — What is.**

If an error, whether of fact or law is such that the erroneous decision resulted in the tribunal exercising jurisdiction, not vested in it by law, or in its having failed to exercise jurisdiction vested in it by law, that will come within the scope of Art. 227 of Constitution. This error may have resulted from a violation of rules of natural justice by taking into consideration matters, which

are extraneous and irrelevant, or by substituting judicial consideration by bias, based on suspicion arising from those extraneous matters or from any other cause whatsoever but if it has affected the assumption or exercise of jurisdiction as envisaged above, it will be a jurisdictional error for purposes of the Article. LR 36 IA 113, Rel. on. **67 Cal WN 179: (1964) 15 STC 186: AIR 1963 Cal 409 (413) (Pt B) (Pr 12) (DB).**

——**Art. 227** —Powers of High Court in revision —Nature and scope of — No irregularity or error in exercise of jurisdiction by Court below — Interference with its order. See Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 14 (4). **ILR (1958) 1 Cal 325.**

——**Art. 227—Power of superintendence —Nature and scope.**

The jurisdiction which High Court exercises under Art. 227 is not merely supervisory, taking that word in its ordinary acceptation. There must be something which goes to the root of the matter before High Court can feel called upon to interfere under the provisions of that Article.

The power of supreintendence conferred by Art. 227 has to be exercised sparingly and only in appropriate cases in order to keep the Courts and Tribunals within the bounds of their authority and not to correct mere errors. Where there has been not mere mistakes in the exercise of jurisdiction but the order complained of has been made in complete disregard of the provisions of the law, interference is called for. **60 Cal WN 241: ILR (1957) 2 Cal 855.**

——**Art. 227 — Scope — Arbitrator committing error in applying Rule 720, Calcutta High Court, Civil Rules and Orders — (High Court Rules and Orders — Calcutta Civil Rules and Orders, Rule 720).**

On an application under Art. 227 of the Constitution it is not open to the High Court nor can it be proper, to embark upon an examination of the evidence and substitute for the decision of the Court or tribunal below, its own decision. Article 227 is intended to authorise the High Court to see that the Courts or Tribunals which cannot be controlled under Section 115 of the Code of C. P. are kept in their proper places and that they exercise their jurisdiction in accordance with the provisions of the laws they administer. If the Court or the tribunal concerned does not exceed jurisdiction and if it does not depart from the principles that it is enjoined to follow by the statute or other law concerned, there can be no occasion for interference under Art. 227 of the Constitution, with the substance of the decision upon a further examination of its merits.

Where the arbitrator applied certain principles with regard to award of costs, which he thought were embodied in and warranted by Rule 720 of the Calcutta Civil Rules and Orders, but no such principles were either warranted by or were embodied in the rule, the arbitrator committed an error which could be corrected under Art. 227. **57 CWN 601: AIR 1953 Cal 702 (702, 703, 704) (Pt B) (Prs 1, 8) (DB).**

——**Art. 227 — Powers under — Exercise of — Order of appellate Court passed without jurisdiction.**

The High Court's power of interference with decisions of tribunals within its jurisdiction under Art. 227 of the Constitution should, no doubt, be sparingly exercised, but such power should and must be exercised in a case where an appellate Court has acted without jurisdiction. **ILR (1952) 2 Cal 360: 55 CWN 611: AIR 1951 Cal 554 (557) (Pt C) (Prs 38, 39) (DB).**

——**Art. 227** — High Court's power — Its extent. See Ibid, Art. 226. **AIR 1963 Guj 283 (DB).**

——**Art. 227 — Interference under — Conditions.**

Where an appellate authority acts with material irregularity in the exercise of its jurisdiction in that it comes to a finding quite arbitrarily and in the teeth of the unrebutted evidence produced by a party, it is a fit case for interference by the Judicial Commissioner's Court in exercise of its powers of superintendence under Art. 227 of the Constitution. **AIR 1952 Him Pra and Bilaspur 18 (20) (Pt B) (Pr 8).**

——**Art. 227 — Superintendence.**

The powers enjoyed under Art. 227 must be restricted to cases where there has been a grave dereliction of duty or flagrant abuse of any fundamental principles of law and natural justice, and they must further be confined to cases where no other adequate or prompt remedy is available. Case-law Rel. on. **ILR (1953) Hyd 88: AIR 1953 Hyd 135 (136) (Pt A) (Pr 4) (DB).**

——**Art. 227** —Scope — When the Tribunal has jurisdiction to come to the conclusion that it did and pass the order it has passed, and there is no lack of evidence to support the conclusion reached by the Tribunal, the jurisdiction of the High Court under Art. 226 of the Constitution is not attracted. The invocation of Art. 227 as well does not widen the circumstances in which a writ of certiorari will issue. Case law discussed. See Ibid, Art. 226. **AIR 1958 Ker 192 (DB).**

——**Art. 227 — Scope.**

Where the Constitution in its wisdom has left the power of superintendence undefined it would not be proper to prescribe any rule which would limit it. The real object of superintendence is that the power may be exercised with reference to the circumstances of each particular case in such a way as to secure the furtherance of justice. In order to achieve its end, the power of superintendence under Art. 227, Constitution must remain fluid. **Madh BLJ 1954 HCR 953: Madh BLR 1955 (Civ) 106: AIR 1955 Madh Bha 21 (23) (Pt A) (Prs 6, 7).**

[**Reversed** on another point in AIR 1961 SC 148]

——**Art. 227** — Power under — How to be exercised. **AIR 1955 NUC (Madh Bha) 5634 (DB).**

——**Art. 227** — Power of superintendence to be exercised most sparingly and in appropriate cases —Decision by District Judge in appeal under M. B. Sthan Niyantran Vidhan — District Judge not acting beyond bounds of his authority — Power of superintendence will not be exercised — Houses and rents—M. B. Sthan Niyantran Vidhan (1950), S. 9 (3). **AIR 1955 NUC (Madh Bha) 3860 (DB).**

——**Arts. 227 and 226** — High Court when can interfere with decision of Election Tribunal. See Ibid, Art. 226. **AIR 1953 Madh Bha 197 (DB).**

——**Art. 227 — Nature of jurisdiction — Order of Master, on question of court-fee — Interference — Error on face of record.**

The jurisdiction vested in the High Court by Art. 227 is a very limited one. Practically, the principles which would apply in deciding whether a writ of certiorari could issue under Art. 226 of the Constitution will also apply in deciding whether under Art. 227 of the Constitution, an order the correctness of which is impugned, can be set aside.

The jurisdiction of the High Court under Art. 227 cannot be invoked to set aside or correct an order passed by the Master of the High Court on the Original Side, in proceedings on appeal preferred against a decree and judgment on the original side, in the matter of court-fee payable on the memorandum of appeal, against which order there is no appeal under the Court-fees Act. There is no error apparent on the face of the record to justify interference under Art. 227. **70 Mad LW 841 : 1957 Mad WN 600 : (1957) 2 Mad LJ 387: AIR 1958 Mad 242 (242, 243) (Prs 3, 4, 6).**

——Art. 227 — Powers under when can be exercised.

Article 227 confers on the High Court powers of superintendence and control over subordinate Tribunals. But these are powers to be exercised under exceptional circumstances. **ILR (1955) Mys 546: (1956) 1 Lab LJ 571: AIR 1956 Mys 7 (8) (Pt D) (Pr 4) (DB).**

——Art. 227 — Power of superintendence — Limits of.

Though the power of superintendence would include judicial review, the power is not unlimited and cannot be employed to correct every form of hardship. The ordinary rule is that the superior Court having power of superintendence would seldom interfere on questions affecting the merits of the decision except when the matter comes up on appeal. **ILR (1953) Cut 682: AIR 1954 Orissa 67 (68) (Pt B) (Pr 4) (DB).**

——Art. 227 — Nature and scope of power of superintendence — When should the power be exercised. See Panchayats — Patiala Panchayat Act (13 of 2000), S. 49. **AIR 1952 Pepsu 130.**

——Art. 227 — Notice of application under S. 15, Payment of Wages Act served only three days prior to date of hearing — Appearance of clerk of employer — Prayer for adjournment — Refusal — Ex parte proceedings — If justified — Procedure tainted with material irregularity — Interference under Art. 227 of the Constitution. See Payment of Wages Act (1936), S. 15. **AIR 1963 Punj 122.**

——Art. 227 — Art. 38 seeks to secure justice to citizens as top priority — Constitution vests wide powers in High Court's under Art. 227 for same purpose — Extent and nature of powers. See Ibid, Art. 38. **AIR 1960 Punj 35.**

——Art. 227 — Panchayat failing to function with letter and spirit of law creating it — Interference is called for — (Panchayats — Punjab Gram Panchayat Act (4 of 1953), S. 66).

By S. 66 of the Punjab Gram Panchayat Act the Panchayats are enjoined to act according to the principles of justice, equity and good conscience. Where a Panchayat fails correctly to function within the letter and sprit of the law creating it, interference is called for. **ILR (1959) Punj 1778: AIR 1960 Punj 35 (39) (Pt D) (Pr 7).**

——Art. 227 — Nature and scope of powers of High Court.

The power of superintending control conferred by Art. 227 is similar to the control exercised by the Courts of King's Bench over the inferior Courts of England under the Common law. The constitutional supervisory power is indefinite in character but unlimited in extent. The Court in the exercise of that power will be justified in prohibiting inferior Courts in all cases where (1) they are threatening to proceed or are proceeding in a matter of which they have no jurisdiction, and (2) where they, although possessing jurisdiction, are exercising or about to exercise it erroneously, and great injustice and irreparable injury would result to the applicant if they should do so and there exists no adequate remedy by appeal or otherwise. **60 Punj LR 282: (1958-59) 14 ELR 412: ILR (1958) Punj 1776: AIR 1958 Punj 409 (414, 415) (Pt B) (Prs 20, 21, 22).**

——Art. 227 — Error of law.

The High Court has been given extensive powers of superintendence over all the tribunals which are even greater than those enjoyed by the High Court under the Government of India Act. Hence, where the decision of the tribunal proceeds on a wrong view of law and the question involved is of general importance the High Court would interfere in revision. **('50) 3 Sau LR 229.**

——Art. 227 — When can be invoked.

No doubt Art. 227 empowers the High Court to interfere in judicial as well as in administrative matters. But the wider the powers granted by statute, the more caution is needed in their exercise. Anything like the generous invocation of this article in judicial matters would bring the case work of subordinate Courts to a standstill. These powers are meant to be exercised only where there is a very general question involved or the subordinate machinery entrusted with the administration of justice is collapsing, or the subordinate Courts are moving on lines fraught with great danger to the public in general. This article, cannot be invoked simply because a litigant has a very common and oft-recurring grievance with an order of a subordinate Court e.g. an order admitting evidence alleged to be inadminissible. **AIR 1952 Vin Pra 4 (6) (Pt B) (Pr 11).**

3 (a). Difference between power of High Court under Government of India Act, 1935 and this Article.

——Art. 227 — (Per Agarawala J.) Under the present Constitution in Art. 227 there is not to be found any provision corresponding to S. 224 (2) of the Government of India Act, 1935. The High Courts have now judicial powers of superintendence. Case law referred. **ILR (1952) 1 All 558 : 1952 Cri LJ 1695 : AIR 1952 All 963 (966) (Pt C) (Pr 19) (DB).**

——Art. 227 — Scope of the power of superintendence.

In Art. 227 of the Constitution there is no such restriction on the power of superintendence as was imposed by sub-s. (2), S. 224 of the Government of India Act, 1935. Now the power of superintendence is exactly what it was up to 1935. In exercise of it the High Court can check the assumption or excess of jurisdiction by Panchayati Adalats or compel them to exercise their jurisdiction and do their duty. **1951 ALJ 305: ILR (1951) 2 All 521: 52 Cri LJ 984 (2): AIR 1951 All 667 (674) (Pt A) (Pr 22) (DB).**

● **——Art. 227 — Nature of remedy.**

The remedy that this article makes available is new. It did not exist under S. 224 of the Government of India Act, 1935, and it partakes of the character of an appeal or revision, though the power of the High Court under the Article is described as one of superintendence. State v. Judhabir Chetri. **1953 Cri LJ 395: ILR (1953) 5 Assam 24: AIR 1953 Assam 35 (37) (Pt B) (Pr 10) (FB).**

——Art. 227 — Effect of the article.

The effect of Art. 227 is that not only it restores to the High Court the jurisdiction of the High Court that was taken away by S. 224 (2), Government of India Act, 1935 but it enlarges the powers of superintendence which the High Court exercised under S. 107, Government of India Act of 1915. **ILR (1951) 3 Assam 181: 52 Cri LJ 966:**

AIR 1951 Assam 106 (109, 110) (Pt B) (Pr 21) (DB).

——Art. 227 — Right of superintendence — Nature and extent of — Non-compliance with provisions of West Bengal Act, 2 of 1950—Interference held necessary.

The right of superintendence under Art. 227 of the Constitution involves the right to interfere judicially. The right of superintendence under the Government of India Act, 1935, did not involve that right. But the limitation placed on the right by that Act has been expressly omitted from Art. 227. It is now beyond all argument that Art. 227 does allow his Court in a proper case to interfere judicially though such interference should be rare and only in cases where justice clearly demands interference, and where there is no other way of securing justice.

Held that justice demanded that the High Court should interfere in the matter as neither the Bhag Chas Conciliation Board nor the Appellate Officer complied with the provisions of S. 3 (2) of the West Bengal Bargadars Act, 1950, itself or the rules made thereunder relating to applications under the Act. **56 Cal WN 23: AIR 1951 Cal 138 (139) (Pt C) (Prs 11, 15) (DB).**

——Art. 227 — High Court's powers of superintendence over subordinate Courts — Extent of — Arbitrary dismissal of suit for default of parties — Interference in revision in exercise of powers of superintendence — Civil P. C. (1908), S. 115, Order 9, Rule 3.

The High Court's powers of superintendence over subordinate Courts under Art. 227 of the Constitution of India correspond more to those laid down under S. 107 of the Government of India Act, 1915, than to those under S. 224 of the Government of India Act, 1935, since the limitations placed upon the exercise of powers of superintendence by sub-section (2) of S. 224 of the 1935 Act did not find place in the 1915 Act and are absent from the aforesaid Article of the Constitution of India.

Where the subordinate Judge has signally failed to do his duty in that he has arbitrarily dismissed the suit for default of parties under O. 9, R. 3 although no default had in fact taken place, and there has also not been any patent neglect on the part of the petitioners, it is a fit case in which the High Court, on an application for revision, would set aside the order dismissing the suit for default of appearance in exercise of the power of Superintendence under Art. 227: 18 All 4, Rel. on. **AIR 1952 Him Pra and B 24 (26) (Pt C) (Pr 9).**

——Art. 227 — Enlargement of power.

Sub-section (2) of S. 224 of the Government of India Act, 1935, is deleted from its corresponding provision in Art. 227 of the Constitution thus showing that the rights of judicial interference of the High Court under the old Government of India Acts of 1861 and 1915 are not only restored but enlarged by deleting the expression "subject to its appellate jurisdiction" occurring in the aforesaid Acts from the Constitution. AIR 1951 Cal 258 (SB) and AIR 1951 Cal 574, Rel. on. **1954 BLJR 138: 32 Pat 956: AIR 1954 Pat 225 (232) (Pt F) (Pr 28) (DB).**

3 (b). Power is both judicial and administrative.

——Art. 227 — Superintendence over Election Tribunals.

The Election Tribunals are subject to the superintendence of the High Courts under Art. 227 of the Constitution. That superintendence is both judicial and administrative. Hari Vishnu v. Ahmad Ishaque, **1955 Mad WN 449: (1955) 1 MLJ (SC) 157: 1955 SCJ 267: (1955) Andhra WR (SC) 157: 1955 All WR 339: 1955 SCR 1104: 1955 Nag LJ 1: 1955 SCA 105: AIR 1955 SC 233 (243) (Pt G) (Pr 20).**

——Art. 227 — Nature of superintendence under.

The contention based on Cl. (2) of Art. 227 that the article only confers on the High Court administrative superintendence over the subordinate Courts and Tribunals cannot be accepted because Cl. (2) is expressed to be without prejudice to the generality of the provisions in Cl. (1). The material part of Art. 227 substantially reproduces the provisions of S. 107 of the Government of India Act, 1915, except that the power of superintendence has been extended by the Article also to Tribunals. Further, the preponderance of judicial opinion in India was that S. 107 which was similar in terms to S. 15, of the High Courts Act, 1861, gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. S. 107 was reproduced as section 224 in the Government of India Act, 1935, with a new sub-s. (2), which was omitted when S. 224 was reproduced with some modifications as Art. 227 of the Constitution. This significant omission has been regarded by all High Courts in India as having restored to the High Court the power of judicial superintendence it had under S. 15 of the High Courts Act, 1861 and S. 107 of the Government of India Act, 1915. AIR 1952 All 963, Ref. Waryam Singh v. Amarnath. **1954 SCJ 290: 1954 Mad WN 424: 1954 SCA 334: 1954 SCR 565: AIR 1954 SC 215 (217) (Pt B) (Pr 13).**

——Art. 227 — Jurisdiction under S. 36 of the Legal Practitioners Act is disciplinary or administrative jurisdiction — Order under Section 36 declaring a person a tout — Revision under general powers of superintendence — See Legal Practitioners Act (1879), S. 36. **1950 AMLJ 18: AIR 1951 Ajmer 13.**

——Art. 227 — Houses and Rents — U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 3, 2nd proviso — Scope — Compliance as to sufficiency of accommodation at disposal of occupier — Decision of Administrative authorities — Interference in writ proceedings — Permisibility. See Houses and Rents — U. P. (Temporary) Accommodation Requisition Act (25 of 1947), Section 3. **AIR 1963 All 592 (DB).**

——Art. 227 — Administrative acts — Revision— Power of superintendence of the High Court under Art. 227 extends to administrative as well as judicial matters. **1960 Cr LJ 441: AIR 1960 All 230 (231) (Pt B) (Pr 8).**

——Art. 227 — Superintendence referred to in the article includes judicial superintendence. **1958 All LJ 315: 1958 All WR (HC) 445: ILR (1958) 2 All 874: AIR 1958 All 456 (464) (Pt A) (Pr 36) (DB).**

——Art. 227 — Scope — Administrative Order of magistrate — Power of High Court to set aside— Applicability of S. 561-A, Cr. P. C. (Criminal P. C. (1898), S. 561-A.).

Even if the order passed by a Magistrate is not a judicial order but an administrative order, the High Court has full power of superintendence under Art. 227 of the Constitution. Further, the High Court has full powers also under S. 561-A Cr. P. C., in the interest of justice to prevent an abuse of the process of the Court. **1958 All LJ 10: 1958 All WR (HC) 82: 1958 All Cr R 64.**

——Art. 227 — Scope — Power to interfere with judicial orders.

Art. 227 empowers the Court to exercise superintendence over all Courts and tribunals throughout the territories within its jurisdiction. It is therefore, obvious that, this power is not confined to the specific administrative powers given under clause (2). The High Court has under Cl. (1) judicial powers of superintendence also over the said Courts and tribunals. (History of the powers and case-law reviewed.).

While Art. 226 concedes to the High Court vast powers of what may be called judicial review or control by issue of writs, directions and orders over all Courts within its jurisdiction, Art. 227 seems to be for securing adminstrative supervision not easily exercisable by such writs, etc. Arts. 226 and 227 are thus supplementary. The limited judicial powers under Art. 227 are intended for and merely ancillary to such administrative control. **ILR (1952) 1 All 558: 1952 Cri LJ 1695: AIR 1952 All 963 (966) (Pt C) (Pr 19) (DB).**

——Art. 227 (1) — U. P. Panchayat Raj Act — Transfer of case to Panchayati adalat — Power to give direction to magistrate to transfer. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), Ss. 52, 56. **AIR 1950 All 611.**

——Art. 227 — 'Superintendence' — Connotation of.

The power of 'superintendence' vested in the High Courts under Art. 227 is not merely administrative, but also judicial. The word 'superintendence' is of very wide connotation, and should be invoked generally only where there is no other remedy available.

But the jurisdiction of the Andhra High Court under Arts. 226 and 227 is circumscribed in some measure, by the location of Officers and authorities outside the territories of the Andhra State, though they pass orders affecting the citizens, resident in the Andhra State. It is a serious anomaly. **(1959) 29 ITR 222: 1956 Andhra LT 61: 1956 Andhra WR 729 : AIR 1957 Andh Pra 672 (674, 675) (Pt B) (Prs 5; 6) (DB).**

——Art. 227 — Power of High Court to take the disciplinary action either under Art. 227 or 235— Condition of service depriving it of such power — Validity of — Suspension of Subordinate Judge by Registrar, Madras High Court. See Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules (1953), Rule 4 (2). **(1954) 2 MLJ (Andhra) 240 : AIR 1955 Andhra 65 (DB).**

——Art. 227 — Power under article is not limited to administrative matter only. **52 Cri LJ 966 : ILR (1951) 3 Assam 181 : AIR 1951 Assam 106 (109, 110) (Pt B) (Pr 21) (DB).**

——Art. 227 — The superintendence of the High Court is not confined to administrative superintendence; it also includes judicial superintendence, and undoubtedly the High Court has power to correct any decision of a tribunal within its jurisdiction through its powers of superintendence. **ILR (1952) Bom 864 : 53 Bom LR 674 : AIR 1951 Bom 423 (426) (Pt A) (Pr 7) (DB).**

——Art. 227 — Power of High Court under Art. 227 is both judicial and administrative. **AIR 1955 NUC (Cal) 2074 (DB).**

——Art. 227 — Power of superintendence — Extent — Includes judicial interference.

Article 227 of the Constitution gives High Court a right in appropriate cases to interfere judicially with orders of Courts and tribunals made amenable to its jurisdiction by that Article. Bimala Prosad Ray v. State of West Bengal, **55 Cal WN 87 : ILR (1951) 2 Cal 427 : AIR 1951 Cal 258 (260) (Pt A) (Pr 12) (SB).**

——Art. 227 — Power of superintendence — Extent of.

The power of superintendence possesed by the High Court under Art. 227 extends to judicial matters also and it can be exercised in appropriate cases in order to keep the subordinate Courts within bounds of their authority. AIR 1954 SC 215, Foll. **ILR (1954) Hyd 832: AIR 1954 Hyd 236 (237) (Pt A) (Pr 2) (DB).**

——Art. 227 — Jurisdiction over Special Tribunals.

The word 'superintendence' cannot be confined to mere matters of administrative control but confers judicial powers also on the High Court. The High Court has powers of superintendence not only over Courts subject to its appellate jurisdiction but also over those whose decisions are not subject to appeal to the High Court. If there be laches or denial of justice by a Special Judge the High Court can under Art. 227, transfer a case from the Special Judge. This jurisdiction cannot be taken away by State Legislation such as Special Judges' Regulation. **1952 Cri LJ 708: ILR (1951) Hyd 174 : AIR 1951 Hyd 82 (83) (Pt A) (Pr 1) (DB).**

——Art. 227 — Supervision of judicial matters.

Under Art. 227, the High Court, now, has supervisory powers over all Courts and Tribunals within the State, and this authorises supervision of judicial matters also. **1952 Cri LJ 1333: ILR (1951) Hyd 1: AIR 1951 Hyd 11 (34, 35) (Pt G) (Pr 111) (FB).**

——Art. 227 — "Superintendence" — Meaning of — Powers of High Court — Error of law or fact — Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act (66 of 1950), S. 147.

The word 'superintendence' in Article 227 includes administrative as well as judicial superintendence. In the exercise of its judicial functions, the Board of Revenue is a tribunal subject to the superintendence of the High Court under Article 227. Section 147 of the Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act cannot be construed so as to take away the power given to the High Court under Article 227. If section 147 of the Act purports to take away the right of superintendence of the High Court under Article 227 of the Constitution, then clearly section 147 of the Act is to that extent ultra vires the Constitution. The right given to the High Court under Article 227 cannot be taken away by the State Legislature.

The power of superintendence under Art. 227 is not restricted to cases of non-exercise or illegal exercise of jurisdiction but extends also to cases where there has been an obvious miscarriage of justice because a Court or a tribunal has approached the matter entrusted to it in an arbitrary or despotic manner and against all rules of natural justice. But the power cannot be exercised to disturb a decision of a Court or a tribunal merely because it has misconceived a point of law or come to a wrong decision of the facts. Case-law discussed. **AIR 1952 Madh B 51 (51, 52, 53) (Prs 3, 4, 5, 15) (DB).**

——Art. 227 — Scope — Administrative or executive action — High Court will not substitute its own decision on merits. See Ibid, Art. 226. **1960 MPC 492.**

——Art. 227 — Unjudicial orders arising from error of jurisdiction. See Civil P. C. (1908), S. 115. **ILR (1965) 1 Mad 274 : AIR 1966 Mad 89.**

——Art. 227 — Scope.

Art. 227 confers a general power of superintendence on the High Court over tribunals like Dis-

trict Collector as well as Courts, and such superintendence is not confined to administrative matters only. The Article therefore, enables a person aggrieved by an order of such a tribunal to invoke the revisional powers of the High Court. (History of Art. 227, traced) (Distinction drawn between Art. 226 and Art. 227). Case-law reviewed. **67 Mad WN 29: (1954) 1 MLJ 165: 67 Mad LW 24: ILR (1954) Mad 592: AIR 1954 Mad 573 (573; 574; 576) (Prs 1, 2, 3, 12) (DB).**

——Art. 227 — Scope.

Article 227 confers upon the High Court a power of supervision over all judicial matters decided by any Court or tribunal within the State. **1953 Cri LJ 636: 65 Mad LW 1229: AIR 1953 Mad 362 (364) (Pt B) (Pr 7).**

● **——Art. 227** — Scope — Issue of writ against Government — Administrative orders passed by Government in defiance of mandatory provisions of law. See Ibid, Art. 226. **AIR 1953 Mys 156 (1 B).**

——Art. 227 — Power of superintendence —Extent of.

All tribunals as well as Courts throughout the territories in relation to which the High Court exercises jurisdiction have been subjected to the superintendence of the High Court under clause (1) of Art. 227. The power of superintendence includes the power of judicial interference. Case law referred. **1951 Nag LJ 463: ILR (1951) Nag 818: AIR 1951 Nag 90 (92) (Pt C) (Pr 9) (DB).**

——Art. 227 — Power to interfere judicially.

The High Court can, under Art. 227, exercise superintendence over the Election Tribunal and also can judicially interfere with the judgment and order of the Tribunal. AIR 1953 All 633, Ref.; (1888) 81 QBD 313, Disting. **1954 BLJR 138: 32 Pat 956: AIR 1954 Pat 225 (231) (Pt E) (Pr 25) (DB).**

——Art. 227 — Order of removal of petitioner from membership under section — Order passed on grounds which did not amount to a flagrant abuse of position as member — High Court has power to quash the order even though it is an administrative one. See Ibid, Art. 226. **(1964) 66 Punj LR 226.**

——Art. 227 — Scope — Art. 227 confers power of judicial superintendence — AIR 1954 SC 215 and AIR 1955 SC 233 and AIR 1958 SC 398, Rel. on. **61 Punj LR 315: ILR (1959) Punj 859: AIR 1959 Punj 291 (293) (Pt B) (Pr 5) (DB).**

——Art. 227 — Nature of function of High Court under Article. See Ibid, Art. 226. **AIR 1955 Punj 3.**

——Art. 227 — Nature of power.

The powers of superintendence vested in the High Court are not merely administrative but are also judicial. **AIR 1951 Punj 124 (124, 125) (Pt B) (Prs 5; 6; 8).**

——Art. 227 — Applicability — Payment of Wages Act (1936), S. 15 — Order under — Interference under Art. 227.

It is well settled that the power of superintendence under Art. 227 includes judicial superintendence also of Courts and Tribunals within the territories over which the High Court exercises jurisdiction. Therefore, it would be within the power of the High Court to interfere with the order of the authority under S. 15, Payment of Wages Act, in an appropriate case under Art. 227. **1957 Raj LW 77: ILR (1956) 6 Raj 1077: AIR 1957 Raj 115 (117) (Pt B) (Pr 15) (DB).**

——Art. 227 — Power of High Court includes power to interfere with administrative and judicial matters — (Civil P. C. (1908), Sec. 115). **AIR 1955 NUC (Sau) 1450.**

——Art. 227 — Supervisional jurisdiction of High Court — Refusal by High Court to exercise — No revision on decision of facts — (C. P. Code (1908), S. 115).

The High Court has no jurisdiction under S. 115, C. P. Code, to interfere, when the question decided by the lower Court is one of fact only. But it has jurisdiction under Art. 227 of the Constitution of India to interfere in its supervisional jurisdiction in matters both judicial and administrative.

However, this does not mean that the High Court should invoke these powers in very case where it finds some error of law or fact in the proceedings of the lower Courts and Tribunals. After all, it is discretionary for the High Court to interfere in the exercise of its revisional or supervisional jurisdiction and the High Court would be most reluctant to interfere when the rights and interests of third parties are affected. AIR 1949 PC 156, AIR 1949 PC 239 and AIR 1953 SC 23 Ref. AIR 1951 Sau 43, Rel. on. **6 Sau LR 336: AIR 1954 Sau 7 (8) (Pt B) (Prs 5; 6) (DB).**

——Art. 227 — Powers of superintendence of High Court — Limitation — Interference in judicial matters — Civil P. C. 1908, S. 115.

The powers of superintendence now enjoyed by the High Court under the present Constitution include interference in both administrative and judicial matters; but that does not mean that the High Court should invoke these powers in every case where the Court finds some error of law or fact in the proceedings of the lower Courts and tribunals.

Where the finding by District Judge on the issue of bona fide and reasonable requirement of the landlord in Saurashtra Rent Act proceedings, depending upon the appreciation of evidence, could not be said to be patently illegal or so manifestly wrong as to lead to the inference of a total denial of justice or infliction of an irreparable injury, held, that this was not a fit case for upsetting the decision of District Judge in the exercise of the power of superintendence. **AIR 1951 Sau 43 (45; 46) (Prs 5, 9).**

——Art. 227 — Fixation of minimum wages — Nature of act — Interference with, under Arts. 226 and 227, when fixation is found ultra vires the powers of the Government under the Minimum Wages Act. See Minimum Wages Act (1948), Section 5 (2). **AIR 1955 Trav-Co. 97 (DB).**

——Art. 227 — 'Superintendence' — Decision of Election Commissioner — Interference with.

There can be no doubt that the Election Commissioner is a tribunal with all the trappings of a Court and that he exercises judicial as distinct from administrative or inquisitorial functions in the discharge of his duties. There cannot also be any doubt that the word "superintendence" in Art. 227 is a term of legal force and signification involving the responsibility to keep the Courts and tribunals concerned within the bounds of their authority, to see that they do their duty, and that they do it in a legal manner. The power of superintendence covers both administrative and judicial matters and it should be invoked in all cases of a non-exercise or illegal exercise of a jurisdiction vested by law in any Court of Tribunal. AIR 1933 Cal 132; AIR 1954 SC 215; Rel. on. **ILR (1954) Trav-Co 1194: 1954 KLT 582: AIR 1955 Trav-Co 24 (24; 25) (Pt A) (Pr 4) (DB).**

——**Art. 227 — Scope and extent of powers under — Exercise of powers — Principles governing— Need for caution.**

Art. 227 of the Constitution empowers the High Court to interfere in judicial as well as in administrative matters. But the wider the powers granted the greater is the caution needed in their exercise. The powers are meant to be exercised only where there is a very general question involved or the subordinate machinery entrusted with the administration of justice is collapsing or the subordinate Courts are moving on lines fraught with greater danger to the public in general. The Article will not be invoked merely because a litigant has a very common and often recurring grievance with an order of a subordinate Court, e. g., an order admitting evidence alleged to be inadmissible. **AIR 1952 Vin Pra 4 (6) (Pt B) (Pr 11).**

3 (c). Power, a discretionary one.

——**Art. 227** — Scope of jurisdiction under — Interference with concurrent findings of fact — West Bengal Estates Acquisition Act, 1953 (1 of 1954), Ss. 44, 59 — Concurrent findings upheld— Interference of High Court under Art. 227 held improper — Nature of enquiry under S. 44 (1) — Order appealable — Duty of Revenue Officer to record oral evidence — Rules 30 (2) and 17 (2) framed under S. 59. Nibaran Chandra Bag v. Mahendra Nath Ghughu, **(1963) 1 Ker LR 353: (1963) 2 SCJ 552: (1963) 2 SC WR 435: (1963) Supp 2 SCR 570: AIR 1963 SC 1895 (1898, 1899, 1900) (Prs 10, 12, 15, 17, 18).**

——**Art. 227**—Power under, when to be exercised. See Ibid, Art. 226. **AIR 1959 All 525.**

——**Arts. 227, 226** — Authorised levy of surcharge for supply of electrical energy — Petition against — Considerations which are not relevant — (U. P. Electricity Supply (Licensed UndertakingWar Cost) Order, Cl. 4). See Ibid, Art. 226. **AIR 1959 All 220.**

——**Art. 227—Principles guiding exercise of power.**

The exercise of the power conferred by this article is discretionary and relief under the article cannot be claimed as a matter of right. The principles regulating the exercise of the power are generally speaking the same as the principles on which writs can be issued under Art. 226 but in a sense wider. **1958 All LJ 315: 1958 All WR (HC) 445: ILR (1958) 2 All 874: AIR 1958 All 456 (464) (Pt A) (Pr 36) (DB).**

——**Art. 227 — Decision on preliminary issue as to jurisdiction of civil Court — Interference.**

Though the High Court has certainly power under Art. 227 of the Constitution to interfere in appropriate cases with the decision of the trial Court with regard to the preliminary issue of jurisdiction, it is not bound to do so in every case merely because the question of jurisdiction had been wrongly decided. The mere fact that the order is not revisable under S. 115, Civil Procedure Code will not be sufficient to prevent the exercise of powers under Art. 227. Even if the decision is wrong it is open to the applicant to question its correctness in appeal if the case is ultimately decided against him. If there is no question of miscarriage of justice or gross dereliction of duty, the High Court would not interfere with that decision in exercise of its powers under Art. 227. **1958 All LJ 315: ILR (1958) 2 All 874: 1958 All WR (HC) 445: AIR 1958 All 456 (464) (Pt B) (Pr 37) (DB).**

——**Art. 227** — Scope — Articles 226 and 227 of the Constitution are very wide in their scope but the very plenitude of the power conferred by them requires a cautious exercise of it. See Ibid, Art. 226. **AIR 1956 All 644.**

——**Art. 227 — Exercise of power so as to effect alteration in judicial system.**

The High Court should not exercise its power of superintendence so as to effect an alteration in the judicial system, the maintenance of which it should be its object to uphold. **1955 All LJ 624: 1955 All WR (HC) 516: AIR 1955 All 673 (676) (Pt D) (Prs 15; 16) (DB).**

——**Art. 227** — Absence of another remedy — Desirability of exercising discretion in favour of petitioner. See Ibid, Art. 226. **AIR 1952 All 822 (DB).**

——**Art. 227 — Exercise of power under — Party's right to claim such exercise by Court.**

It should be remembered that under Art. 227 it is a power possessed by the Court and is to be exercised at its discretion and cannot be claimed as a matter of right by any party. **1952 Cri LJ 1282: 1952 All LJ 493: 1952 All WR (HC) 547: 1952 All Cri C 1462: AIR 1952 All 788 (792, 793) (Pt B) (Prs 14, 15).**

——**Art. 227 — Power of superintendence —Election dispute — Transfer of — Deputy Registrar present at election in his administrative capacity — Decision of dispute by him in his judicial capacity — Propriety of — Bias — Refusal to transfer dispute to another Tribunal on ground of delay — Interference by High Court.**

A Deputy Registrar of Co-operative Societies was present at an election of the directors of a Co-operative Bank in his administrative capacity. Dispute regarding that election was referred to his decision in his judicial capacity. A party to the dispute applied to the Deputy Registrar for transfer of that dispute to some other Deputy Registrar, as the former was to be a witness at the enquiry in regard to that dispute. The application was dismissed on the ground that the transfer would delay the decision of the dispute. Against this order the party applied under Art. 227 of the Constitution of India.

Held, that (i) the Deputy Registrar being the sole judge of fact and law, it was not only prudent but expedient in the sound administration of law, that he should have transferred it to another Deputy Registrar so as to enable the parties to cite and examine him as a witness, 5 CWN 864; 20 Suth WR (Cr) 76 and 36 Mad 168, Ref. to.;

(ii) that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done and that nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice. Though the Deputy Registrar might not be under any legal disqualification to decide the disput, it was proper and desirable that he should not function as a judge in deciding the election dispute. AIR 1953 Mad 709; (1877) 2 QBD 558; 3 Ind App 259 (PC) and (1924) 1 KB 256, Ref. to;

(iii) that it was not for the Deputy Registrar to say that he was not a necessary witness. He might be summoned and examined as a witness like any other individual to speak to the facts within his knowledge. The observations of Stephen, J., in Queen v. Ferrant, (1888) 20 QBD 58 at p. 62, Considered.

(iv) that it was an eminently fit and appropriate case in which the power of superintendence should be exercised by the High Court and the election petition transferred to another Deputy Registrar for disposal, not only for the purpose of meting

out justice between the parties, but also for making it appear that justice is also meted out;

(v) that the ground of delay in speedy disposal should not stand in the way of a transfer of a case where it is necessary in the interests of justice to transfer the case. **(1955) Andhra WR 22: AIR 1955 Andhra 40 (42, 43, 44) (Pt A) (Prs 5; 6; 7; 9).**

——**Art. 227** — Appeal against order of Tenancy Awal Karkun filed more than 4 years after the impugned order — Deputy Collector allowing appeal without satisfying himself as to existence of sufficient cause for delay — During four years' period, landlord losing chance of safeguarding his interest relying on order in his favour passed by the Tenancy Awal Karkun — Order allowing appeal quashed. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (1948), S. 79. **1964 Mah LJ (Notes) 84 (Bom).**

——**Art. 227 — Panchayats — Bombay Village Panchayats Act (6 of 1933), S. 75 — Extraordinary powers of interference not to be used on mere technical matters — Nyaya Panchayat convicting accused under Ss. 341, 352 and 323, I. P. Code—Sessions Court setting aside conviction under S. 341 but maintaining conviction under Ss. 323 and 352 — Trial not vitiated if no prejudice is caused to accused by joinder of charges.**

Where the accused was convicted by Nyaya Panchayat under Ss. 341, 323 and 352, I. P. Code, and in revision the Sessions Court set aside the conviction under S. 341, but maintained conviction under Ss. 323 and 352 and the accused moved the High Court under Art. 227 and claimed that the whole trial was vitiated on the ground that the Nyaya Panchayat had no jurisdiction to take cognizance of offence under S. 341 as laid down in S. 75 of the Bombay Village Panchayats Act, but it could not be shown that any prejudice was caused to the accused on account of joinder of the offence under S. 341 with those under Ss. 323 and 352;

Held, that in exercise of its extraordinary powers under Art. 227 the High Court will not ordinarily interfere on mere technical matters. **1962 NLJ (Notes) 7 (Bom).**

——**Art. 227 — Discretition of Court — Petition based on technical ground — Rules of natural justice not violated—No interference—(Police Act (1861), S. 7).**

An order under Art. 227 of the Constitution is a discretionary order and a petitioner has no right to obtain relief under that Article. If a petitioner was deprived of his fundamental right it would be incumbent upon the Court to give him the necessary relief.

Thus where the petitioner, a dismissed police constable, had been heard in full by all the authorities who were bound to hear his defence and his appeal under the rules, and where every opportunity had been furnished to the petitioner to put forward all the arguments in support of his case, and the plea that he put forward in his application under Art. 227 was not that there was a violation of Art. 311 of the Constitution, but a purely technical ground that the departmental inquiry had not been conducted as required by the rules under the Police Act and further it was clear that the setting aside of the order of dismissal might lead to a situation where it would be impossible to hold a preliminary inquiry by reason of the witnesses not being available.

Held, that the Court should not exercise their discretion in favour of the petitioner. **AIR 1956 Bom 545 (547) (Pt C) (Pr 8) (DB).**

——**Art. 227 — Power of superintendence—Conditions for exercise of.**

The Court has to proceed cautiously in applying Art. 227 and it has to be resorted to only sparingly. **(1959) 63 CWN 211.**

——**Art. 227—Powers under—Order without jurisdiction and invalid orders — Interference — Appeals under Rent Control Act of 1948 — Disposal by Judge not empowered — Effect — (Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 17 (2)).**

Even if the order challenged before the High Court in revision under Art. 227 be without jurisdiction, the Court is not bound to interfere with that order unless it is satisfied that the order is unjust and wrong on the merits.

That, however, is not the position in the case of a decision of certain appeal by an incompetent tribunal. It is a different thing to give effect to the invalid order as a valid one as against refusal to interfere with an invalid order in exercise of discretion. AIR 1951 Cal 554, Rel. on.

Thus where the appeals under the Rent Control Act of 1948, had been disposed of by the Judge, Second Court, Court of Small Causes, Calcutta, who was not competent to hear the same, those appeals must be deemed to be lying undisposed of and pending in the eye of law and, accordingly, no application for re-fixation of the standard rent under S. 17 (2) of the W. B. Premises Rent Control Act, 1950, are maintainable. **ILR (1958) 1 Cal 415: 61 CWN 308: AIR 1957 Cal 546 (547) (Prs 3; 4; 5) (DB).**

——**Art. 227** — Dismissal of appeal on the ground that it is incompetent as well as on merits — Dismissal on former ground erroneous — Still High Court will refuse relief under article in such a case. **(1960) 1 Ker LR 24.**

——**Art. 227** — Certiorari—Adjudication by Industrial Tribunal — Error made at the instance and in favour of petitioner — Writ will not be granted. See Ibid, Art. 226. **AIR 1962 Madh Pra 172 (DB).**

——**Art. 227 — Power of superintendence —Substantial justice done — High Court not to interfere.**

Power of superintendence given to the High Court under Art. 227 of the Constitution is an extraordinary power and is meant to be used in grave and exceptional cases to prevent miscarriage of justice. By its very nature it is discretionary. Even in case of want of jurisdiction, it is not obligatory on the High Court to interfere in the exercise of its power of supervision under Art. 227 of the Constitution. (AIR 1952 Cal 192, Rel. on). **1959 Jab LJ 430: 1959 MPC 675: 1960 MPLJ 209: AIR 1960 Madh Pra 22 (24) (Pr 13).**

——**Art. 227 — Revision dismissed for default — Application for restoration — Application dismissed — Interference.**

Held: The powers under Art. 227 of the Constitution of India cannot be invoked in a matter where a party is guilty of the default such as the one involved in the case, viz., that the lawyer failed to enter in his diary the date fixed for hearing, which would not afford sufficient ground for restoration. **1959 MPLJ (Notes) 187.**

——**Art. 227 — Interference to set aside order to restore an order even more defective.**

For exercising the discretionary power of superintendence, which cannot be claimed as a matter of right, the error ought to be shown to have resulted in grave miscarriage of justice or flagrant abuse of authority vested in Court of Tribunal. The High Court should not interfere under the

article to set aside a defective order in order to restore an order which is even more defective. **AIR 1956 Pepsu 83 (85, 86) (Pt B) (Prs 5; 8) (DB).**

——**Art. 227** — Power under, is discretionary. **AIR 1955 NUC (Pepsu) 2514.**

——**Art. 227** — Discretion — Granting of relief is discretionary — Objection as to jurisdiction—When to be taken. See Ibid, Art. 226. **AIR 1960 Punj 432.**

[**Overruled** on another point in AIR 1963 Punj 156 (DB).]

——**Art. 227**— Discretion of High Court. See Ibid, Art. 226. **ILR (1957) Punj 1682.**

——**Art. 227**— 'May' — Meaning of — Power to refuse to order ejectment — Interference under Art. 227. See Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (2). **AIR 1955 NUC (Punj) 738 (DB).**

——**Art. 227** — Order by rent controller re-determining rent already fixed — High Court can entertain revision under Art. 227 as the question whether Rent Controller has such power is one of importance. See Houses and Rents — Delhi and Ajmer-Merwara Rent Control Act (1947), S. 7-A. **AIR 1952 Punj 273 (DB).**

——Art. 227 — Power of superintendence — Extent of its exercise.

The powers of superintendence vested in the High Court are not merely administrative but are also judicial. The exercise of the power is, however, in the discretion of the High Court and the power being one in the nature of extraordinary jurisdiction is to be exercised sparingly and with caution. Thus, even though the words used in Art. 227 impose no limit on the exercise of the power the High Court may in its discretion, refuse to exercise its extraordinary jurisdiction except in cases which disclose some grave and patent errors not otherwise to be remedied.

Note :— Tests laid down on the exercise of the powers of superintendence by the High Court in 7 Bom 341 (FB), enumerated. **53 Pun LR 264 : AIR 1951 Punj 124 (124) (Pt B) (Prs 5; 6; 8).**

——**Art. 227** — Practice — Petitioner coming to Court with false allegations — No interference by High Court with order of lower tribunal. See Ibid, Art. 226. **1964 Raj LW 472.**

——Art. 227 — Case where third party rights will be affected by interference.

It is discretionary for the High Court to interfere in the exercise of its revisional or superintendence jurisdiction and the High Court would be more reluctant to interfere when the rights and interests of third parties are affected. **6 Sau LR 336 : AIR 1954 Sau 7 (8) (Pt B) (Prs 5, 6) (DB).**

3 (d). Interference only when error or defect has caused substantial miscarriage of justice.

——Art. 227 — Supervisory powers — Exercise of.

Ordinarily the supervisory powers under Art. 227 should not be exercised unless there is danger of miscarriage or the perpetration of grave injustice. But at the same time, it is the duty of the High Court to keep the lower Courts within the strict bounds of their jurisdiction. **1966 All LJ 96 : 1965 All WR (HC) 683.**

——**Art. 227** — Error in excluding evidence under S. 33, Evidence Act — Interference to avoid gross miscarriage of justice — High Court's power of superintendence. See Civil P. C. (1908), S. 115. **1955 Andhra WR 87.**

——Art. 227 — Powers under — When to be exercised — Held, on facts that case was not fit for supervision of High Court.

Powers of supervision under Art. 227 ought to be exercised in exceptional cases.

Where in proceedings brought under S. 5 of the Assam Adhir Protection and Regulation Act, 1948, at the instance of the landlord, the latter obtained an order on 2nd March, 1951 and another ex parte order on 16th April, 1951 and on appeal from the latter order, the Deputy Commisisoner entertained the appeal in respect of both the orders, although no appeal had been filed from the former order, on the ground taken in the memo, of appeal, namely, that the appellant did not receive any summons before the order was passed ex parte and set aside the order dated 2nd March, 1951 :

Held, that it was not a fit case which called for the supervision of the High Court in the matter of the order of the Deputy Commissioner setting aside the order of 2nd March, 1951. **ILR (1952) 4 Assam 175 : AIR 1953 Assam 103 (103) (Pr 5) (DB).**

——Art. 227 — Interference under — Grounds for.

It is not every error or defect that can be remedied under the extraordinary provisions of Art. 227, which can be invoked only in cases where there has been a substantial failure of justice and that again only with a view to keeping subordinate Tribunals within the bounds of their authority. **1958 Cr LJ 572 (573) (Pt C) (Pr 6) (Cal).**

——Art. 227 — High Court, when can interfere.

Where, in ascertaining the cess payable by the assessee, the prayer for deduction of certain amounts has been wrongly disallowed and the action of the Tribunals, namely, the Collector hearing the appeal, the Commissioner and the Board of Revenue has resulted in gross injustice, it is a fit case where the High Court should interfere in exercise of its power of superintendence. **('57) 61 Cal WN 228.**

——Art. 227 — Power of superintendence —Scope and extent of.

In an application under Art. 227 the High Court is not called upon to interfere unless it finds that the irregularity which occurred was such as had caused a failure of justice. **ILR (1957) 2 Cal 357 : 60 Cal WN 1: AIR 1956 Cal 357 (358) (Pt B) (Pr 14). (DB).**

——Art. 227 — Power of interference.

Art. 227 of the Constitution allows the High Court to interfere in special cases but the interference will, however, be rare and only in cases where justice clearly demands such interference. AIR 1951 Cal 138, Rel. on. **ILR (1955) 1 Cal 350: 57 CWN 692: AIR 1953 Cal 636 (639) (Pt C) (Pr 12) (DB).**

——Art. 227 — Interference under — When justified.

Under Art. 227 of the Constitution, interference should be rare and the Court should act only in cases where there would be a grave miscarriage of justice if the Court did not interfere.

The High Court will decline to interfere under the Article where interference would have eventually no effect on the decision at all. **AIR 1952 Cal 192 (192) (Pt A) (Prs 2, 3, 4) (DB).**

——Art. 227 — Power of superintendence — Nature and scope — Mistake of law by Revenue Tribunal.

Article 227 confers powers of supervision on the High Court which are intended to be used to prevent substantial injustice and to keep the subordinate Courts and tribunals within the bounds of their authority.

Where the Board of Revenue committed a mistake of law in applying the law of limitation there can be no interference on that ground with the order passed by the Board by the High Court under Art. 227, as it cannot be argued that the Revenue Board could not interpret the law. **Madh BLJ 1955 HCR 1590 : AIR 1955 Madh B 185 (188) (Pt B) (Pr 23) (DB).**

——Art. 227 — Conditions under which power can be exercised.

Grave miscarriage of justice and flagrant violation of law are the two paramount considerations by which a petition under Art. 227 is to be determined. AIR 1953 SC 58 and AIR 1952 Madh Bha 51, Rel. on. AIR 1952 SC 192, Dist.

The absence of jurisdiction is a matter which renders the entire proceeding a nullity and the decision amounts to a flagrant violation of law, which calls for intervention under Art. 227. **Madh Bha LJ 1954 HCR 953: Madh BLJ 1955 Civ 106: AIR 1955 Madh Bha 21 (23) (Pt B) (Prs 8, 9).**

[**Reversed** on another point in AIR 1961 SC 148]

——Art. 227 — Power of superintendence — Extent of.

The power of superintendence under Art. 227 is not restricted to cases of non-exercise or illegal exercise of jurisdiction but extends also to cases where there has been an obvious miscarriage of justice because a Court or tribunal has approached a matter entrusted to it in an arbitrary or despotic manner and against all rules of natural justice. But the power cannot be exercised to disturb a decision of a Court of tribunal merely because it has misconceived a point of law or come to a wrong decision on facts. **1952 Madh BLR (Civil) 94: AIR 1952 Madh Bha 51 (51, 52, 53) (Prs 3, 4, 5, 15) (DB).**

——Art. 227 — Interference — Grounds — Interference under Art. 227 is allowed when miscarriage of justice is obvious — Power under the Article not to be exercised for correcting mere errors. See Ibid, Art. 226. **1961 MPLJ (Notes) 111.**

——Art. 227 — Superintendence — Scope of.

Superintendence includes power to guide, and encourage Judges of the subordinate Courts, to direct subordinate Courts and tribunals to carry out orders of the High Court; and to direct enquiry with a view to take disciplinary action for flagrant maladministration of justice. Case-law summarised. **1953 Cri LJ 636: 65 Mad LW 1229: AIR 1953 Mad 362 (366) (Pt D) (Pr 12).**

——Art. 227 — Illegal orders — Interference.

High Court has ample authority under Art. 227 of the Constitution to interfere where the inferior Court or tribunal has passed an illegal order, ignored clear and mandatory provisions of a statute or acted in flagrant violation of law. The power of superintendence which the High Court has under the Article does not devolve upon it the responsibility for correcting every error or illegality committed by an inferior Court or tribunal. The error may be one of fact or of law; for exercising the discretionary power of superintendence, which cannot be claimed as a matter of right, the error ought to be shown to have resulted in grave miscarriage of justice or flagrant abuse of authority vested in the Court or tribunal. High Court would ordinarily refuse to exercise that power where interference is not called for in the interest of justice.

The power conferred by Art. 227 being discretionary, High Court should not interfere to set aside a defective order in order to restore an order which is even more defective. **AIR 1956 Pepsu 83 (85, 86) (Pt B) (Prs 5, 8) (DB).**

——Art. 227 — Error of law resulting in injustice — High Court has jurisdiction to set right injustice under Article. **AIR 1955 NUC (Pepsu) 4003.**

——Art. 227 — Scope.

The power under Art. 227 is extraordinary and must therefore, be used only in exceptional cases of flagrant abuse of elementary principles of justice or manifest and patent error of law. **ILR (1962) 1 Punj 285: AIR 1962 Punj 94 (101) (Pt E) (Pr 15).**

——Art. 227 — Interference — Grounds.

It is only when an order of a tribunal is violative of the fundamental basic principles of fairness and fair play or where a patent or flagrant error in procedure or law has crept or again where the order passed results in mainfest injustice, that a Court may justifiably intervene under Art. 227. AIR 1954 SC 215, AIR 1951 Cal 193, AIR 1957 Cal 546, AIR 1958 All 456, Rel. on. The power is to be used sparingly in appropriate cases. AIR 1958 All 456, Rel. on. **(1960) 62 Punj LR 234.**

——Art. 227 — Tenancy laws — Rajasthan Protection of Tenants Ordinance, (1949), S. 7 — Application for reinstatement should be made within three months of dispossession — Application prima facie within time — Grant of application — Question of limitation raised for first time before Board of Revenue — Board deciding that application was not time barred — No miscarriage of justice—No interference under Art. 227 of Constitution. See Tenancy Laws — Rajasthan Protection of Tenants Ordinance (1949), S. 7. **AIR 1953 Raj 86.**

——Art. 227 — Power to be exercised to prevent perpetration of illegal or unauthorised acts by subordinate tribunals resulting in miscarriage of justice. **1952 Ker LT 538 : AIR 1953 Trav-Co 41 (43) (Pt D) (Pr 5) (DB).**

3 (e). Power cannot be used to correct mere errors in decision on question of law or fact.

(i) Mistake of law.
(ii) Findings of fact.

3 (e). Power cannot be used to correct mere errors in decision on question of law or fact.

●**——Art. 227** — Industrial Disputes Act (1947), S. 10 — Wrongful dismissal — Interference with findings of Industrial Tribunal — (Constitution of India, Arts. 226, 227). See Industrial Disputes Act (1947), S. 10. **AIR 1953 SC 58.**

——Art. 227 — Superintendence — Meaning of— Other remedy open — U. P. Land Utilization Act (5 of 1948), Ss. 3 and 6.

The superintendence referred to in article 227 of the Constitution of India does not invest the High Court with an unlimited prerogative to interfere in cases where a wrong decision has been arrived at by judicial or quasi-judicial tribunals either on fact or on questions of law and powers conferred by the article on the High Courts must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or natural justice. The right to obtain relief thereunder depends further on the conditions that no other remedy is available to the applicant and the remedying of the wrong is essential in order to prevent very serious results. When after the Deputy Commissioner held that

the landlord's allegation that the land had already been let out was without substance and held that the plots were in fact vacant, the Petitioners filed fresh objections on the basis of certain leases alleging that they were holding some of the lands and cultivating them before notice under S. 3 of the U. P. Land Utilization Act, when they were admitted to tenancy by the landlord and the Deputy Commissioner refused to accept the assertion, and the petitioners in spite of the finding of the Deputy Commissioner insisted that the leases upon which they relied were genuine.

Held, that the question of fact which was sought to be reagitated by the petitioners must be deemed, in view of section 6 of the U. P. Land Utilization Act, to be concluded by the decision of the Deputy Commissioner. There was no infringement of any fundamental rights and no apparent dereliction of duty or the violation of the principles of natural justice. AIR 1952 All 526, Rel. on. **1952 All LJ 283 : 1952 All WR (HC) 239: AIR 1952 All 750 (751, 752) (Prs 5; 6) (DB).**

——Art. 227 — Power of superintendence—Scope of.

The superintendence referred to in Art. 227 does not invest the High Court with an unlimited prerogative to interfere in cases where a wrong decision has been arrived at either in fact or in law and the powers contained therein must be restricted to cases of grave dereliction of duty and flagrant abuse of any fundamental principles of law. The right to obtain relief under it depends further on the conditions that no other remedy is available to the applicant and the remedying of the wrong is essential in order to prevent very serious results; Case-law Ref. **1952 Cri LJ 1176: 1952 All WR (HC) 106 : 1952 All LJ 180 : 1952 RD (HC) 180 : 1952 All Cr R 41 : AIR 1952 All 526 (527) (Pt A) (Pr 3).**

——Art. 227 — Power of superintendence—When can be used by High Courts.

The High Court's power of superintendence under Art. 227 of the Constitution is a power to keep Subordinate Courts and Tribunals within the bounds of their authority and to see that they would do what their duty requires and that they do it in a legal manner. The power of superintendence, it is understood, is not a power given to the Court to correct errors of fact or law, and it should not be exercised if no injustice has been done. The right should be exercised only in cases where the Courts below have clearly done something which they were not entitled to do. **(1964) 1 Andh LT 21 : (1964) 1 Andh WR 307.**

——Art. 227 — Interference — Grounds — Decision of Special Assistant Agent in appeal on a question of fact—Decision by Agent in further appeal—Finding set aside—No error of law or fact committed by Agent — Interference under Art. 227. See Andhra Agency Rules, R. 47. **AIR 1957 Andh Pra 1041.**

——Art. 227 — S. 3, Assam Land (Requisition and Acquisition) Act, 1948 — Order under is administrative order — Error committed by appellant authority either of law or fact — Interference under Arts. 226 and 227. See Assam Land (Requisition and Acquisition) Act (25 of 1948), S. 3 (As amended by order, dated 24-4-52). **AIR 1954 Assam 143 (DB).**

——Art. 227 — Scope — High Court will not enter into question of merits.

Under Art. 227 it is not open to the High Court to interfere with merits of a decision when there is no actual want of jurisdiction in the officers concerned to decide the questions involved.

Where one of the findings is doubtful but the case could be decided as it was on the other findings which were not challenged, the decision would not be set aside. **AIR 1954 Assam 88 (89) (Pr 1) (DB).**

——Art. 227 — Power of superintendence — Extent of.

Assuming that there is some error committed by a Tribunal, the High Court will not, when invited to exercise its powers vested in it by Art. 227, interfere where it thinks that the Tribunal has not gone outside the bounds of its authority in interpreting a deed. AIR 1954 SC 215, Foll. **59 Bom LR 209 : (1957) 2 Lab LJ 194 : (1956-57) 12 FJR 251 : ILR (1958) Bom 8 : AIR 1957 Bom 111 (115) (Pt C) (Pr 9) (DB).**

——Art. 227 — Power of superintendence—Nature and extent of — Working plans for conservation of private forests — Paragraphs for afforestation added by forest authorities — Application for deletion of — Refusal by authorities — (W. B. Private Forests Act (14 of 1948), Ss. 3, 57, R. 11 and Appendix A to Rules).

(Powers of the High Courts under Art. 227 and the extent of those powers and the duty of the High Courts under the Article indicated). Though, it is part of 'superintendence', as ordinarily understood, to set right whatever has gone wrong, the High Court will refuse to act merely because a Court or tribunal has come to a decision which is erroneous because of a wrong decision on a question of fact or a wrong decision on a question of law. Where, however, a Court or a tribunal has refused to do its duty, that is eminently a matter within the scope of superintendence and the High Court will whenever it finds that other convenient modes of redressing the grievance that has resulted from the Court or tribunal not doing its duty are not readily available to the aggrieved party, direct the Court or tribunal concerned to do its duty or in suitable cases itself remedy the injustice that has resulted from such refusal. The fact that such refusal was the consequence of an honest mistake of fact or law will not make it any the less a refusal by the Court or tribunal to do its duty and will be no ground for the High Court staying its hand to set matters right.

The petitioner submitted the working plans as required by the notification issued under S. 3 (1) of the West Bengal Private Forests Act and according to the Rules and Appendix A to the Rules. These plans were not approved by the Regional Forest Officer and the petitioner was persuaded to prepare fresh working plans in a form containing two additional paragraphs for the afforestation in the waste lands. The petitioner applied for the sanction of deviation from the plans by deletion of these two paragraphs on the ground that these were not authorised by the Act and Rules. The application was dismissed and so also the appeal. The petitioner thereupon applied under Art. 227 of the Constitution :

Held, that the inclusion of the scheme of afforestation in a working plan submitted under S. 3 was wholly unauthorised by the Act. The Regional Forest Officer was bound in law to sanction the deviation. In refusing the prayer he clearly refused to do his duty. The Appellate Committee was equally bound when the owner appealed and by not doing this they refused to do their duty. This refusal on their part resulted in the position that either the owner must incur heavy expenditure for carrying out the additional undertaking or he must face prosecution under S. 6 (1) of the Act. This was manifestly gross injustice and against this there was no convenient remedy available to the owner. It was right and proper, therefore, that in the performance of the High Court's function of superintendence over the tri-

bunals the High Court should remove this injustice by ordering that the prayer for deviation be allowed. **ILR (1956) 2 Cal 378 : 58 CWN 963 : 96 CLJ 98 : AIR 1954 Cal 580 (582) (Pt A) (Prs 7; 9) (DB).**

——Art. 227 — Applicability — Correction of slight errors.

Art. 227 of the Constitution is not meant to correct slight errors. **AIR 1951 Cal 100 (100) (Pt B) (Pr 3) (DB).**

——Art. 227 — Power of superintendence — (Punjab Tenancy Act (16 of 1887), Ss. 84, 5 (1) (c) and (8)).

The powers of superintendence of the High Court under Art. 227 of the Constitution cannot be invoked merely for the purpose of correcting errors in decision on questions of fact or law in the exercise of their jurisdiction. AIR 1952 All 526 and AIR 1951 Cal 193 (SB), Foll. **AIR 1953 Him P 59 (60) (Pr 7).**

——Art. 227 (1) — Power of superintendence — Nature of.

The power of superintendence under Art. 227 is not meant for correcting errors of law and fact as that would amount to exercise of appellate jurisdiction not conferred on the High Court by law. Under that Article the High Court has to see whether the subordinate Court or tribunal has kept itself within the bounds of law. Where a subordinate Court or tribunal has exercised the jurisdiction not vested or has refused to exercise the jurisdiction vested or has given a decision which is patently erroneous on a question of fact or law or where there is such grave irregularity of procedure as to prejudicially affect the party against whom the order sought to be challenged is made, the Court will interfere. **AIR 1954 Kutch 47 (48) (Pt B) (Pr 4).**

——Art. 227 — Error of law.

The powers under Art. 227 of the Constitution are to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. AIR 1954 SC 215, Foll. **Madh BLJ 1955 HCR 1502 : Madh BLR 1955 Civil 345 : AIR 1954 Madh Bha 54 (54) (Pt A) (Pr 2) (DB).**

——Arts. 227 and 226 — Wrong decision of Rent Controller — S. 11 of Bihar Act (3 of 1947) misconstrued — Remedy under Arts. 226 and 227 — Applicability — Order cannot be interfered with under Arts. 226 and 227. See Houses and Rents — Bihar Buildings (Lease Rent and Eviction) Control Act (3 of 1947), S. 11. **AIR 1955 Pat 142.**

——Art. 227 — Power of superintendence — Order of Custodian of Evacuee Property.

The Custodian of Evacuee Property and his subordinates, in so far as they have to decide questions relating to the respective rights of the parties that appear before them, are tribunals and the High Court has power of superintendence over them under Art. 227 of the Constitution and this power includes the power to interfere with their orders in appropriate cases. The power of superintendence is not a power given to the Court to correct errors and the power should be exercised only in cases where the Courts have clearly done something which they were not intended to do and further it must be used to keep the Courts within the bounds prescribed by law for such Courts. **AIR 1952 Pepsu 16 (16, 17) (Pr 2).**

——Art. 227 — Power of High Court under — Exercise of — Duty of Courts to inspire confidence and faith in judicial process pointed out.

It is undobtedly true that the power conferred on the High Court by Article 227 of the Constitution has, as a rule of practice, to be most sparingly exercised and only in exceptional cases of grave dereliction of duty and is not intended to be used merely for the purpose of correcting errors of fact or of law. This self-imposed restraint is necessary because of the wide language conferring the unlimited reserve of power of superintendence. But it does not mean that, when a Tribunal illegally refuses to exercise the jurisdiction vested in it by law, the High Court is to act as a helpless spectator and is incapable of setting right the failure of justice thus caused. If an error of law apparent on the face of the record is grave and material and has occasioned manifest failure of justice, then the High Court, is not only competent, but indeed is duty-bound to interfere.

If therefore, a judicial or a quasi-judicial Tribunal is of the view that an appeal before it is not competent, then dealing with the merits of the controversy and giving a decision thereon cannot but be described to be a somewhat unsatisfactory, if not unjudicial, approach to the case.

In such circumstances to uphold the contention that as the Tribunal had decided the matter on merits, High Court cannot interfere with its order under Art. 227 and to deny relief to the petitioners would not only fail to promote the cause of justice but would be clearly inconsistent with the true concept of Rule of Law. Such a course can by no means inspire the petitioners' confidence in our judicial process. The importance of citizens' confidence and faith in the judicial process to the civilized and orderly preservation of the society cannot be over-emphasised because it is this confidence and faith which restrains them and keeps them away from drift towards defiant thinking. It is accordingly for the judicial and quasi-judicial Tribunals, and ultimately for the High Courts, to see that this faith and confidence is strengthened and not shaken, and nothing is done to contribute towards the weakening of such faith. AIR 1958 Punj 155; AIR 1950 All 180; AIR 1962 Raj 173; Ref. **ILR (1965) 2 Punj 485.**

——Art. 227 — Jurisdiction—Distinction —Power under Art. 227 limited to restrain excessive jurisdiction by inferior tribunals — Errors even if apparent on face of record — Cannot be corrected under Art. 227. See Ibid, Art. 226. **AIR 1962 Punj 117.**

——Art. 227 — Powers of High Court — Question whether requirements of proviso to S. 13 (2) (i) of Punjab Act 3 of 1949 have or have not been complied with is mixed question of law and fact and will not be interfered with —(Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (ii) Proviso). **AIR 1955 NUC (Punj) 5396.**

——Art. 227—Scope — Interference with decision of tribunal, which does not fall under scope of S. 115, C. P. Code — (Houses and Rents —East Punjab Urban Rent Restriction Act (3 of 1949).

Art. 227 authorises High Court to see that the tribunals which do not fall under S. 115 of the C. P. Code are 'kept in their proper place and that they exercise their jurisdiction in accordance with the provisions of the laws they administer'. AIR 1953 Cal 702, Relied on.

Finding of Rent Controller acting under East Punjab Urban Rent Restriction Act that the trans-

action was lease and not license — Finding maintained by appellate authority — High Court refused to interfere with the finding under Art. 227 — Similarly High Court refused to interfere with finding on question of fair rent. **54 Punj LJ 75 : AIR 1954 Punj 24 (25) (Pt B) (Prs 8; 9; 10).**

——Art. 227 — Nature of jurisdiction — Decision under S. 13 (2) (i), Proviso, West Punjab Urban Rent Restriction Act — Power to question correctness of decision.

Powers of superintendence under Art. 227 should be exercised only in cases where the Courts and Tribunals have done something which they were not competent to do. It is not a power to correct errors, as otherwise it would tantamount to a power to entertain appeals on law and fact. The decision that the requirements of the proviso to S. 13 (2) (i), West Punjab Urban Rent Restriction Act, are not satisfied raises a mixed question of law and fact and therefore, the correctness of such a decision does not fall for examination under Art. 227 of the Constitution. **54 Punj LR 501: AIR 1953 Punj 70 (71) (Pt B) (Pr 7) (DB).**

——Art. 227 — Scope of power.

The fact that the High Court has jurisdiction under Art. 227 to interfere in its supervisional jurisdiction in matters both judicial and administrative does not mean that it should invoke these powers in every case where it finds some error of law or fact in the proceedings of the lower Courts and tribunals. **6 Sau LR 336 : AIR 1954 Sau 7 (8) (Pt B) (Prs 5; 6) (DB).**

——Art. 227—Scope of powers of superintendence of High Court.

The powers of interference under Art. 227 of the Constitution relate to both administrative and judicial matters. But that does not mean that the High Court should invoke these powers in every case where the Court finds some error of law or fact in the proceedings of the lower Courts and Tribunals. If this were so, the limitations placed upon a Court of Second Appeal under section 100, Civil P. C. (1908), and Court of revision under S. 115, Civil P. C. (1908), would become nugatory. AIR 1950 Cal 379, Foll. Case-law reviewed.

(On the facts of the case it was held that the High Court should not upset the decision of the Judge in a matter as it rested upon appreciation of facts only.) **AIR 1951 Sau 43 (45, 46) (Prs 5; 9).**

——Art. 227 — Wrong decision of law or fact by election tribunal.

A wrong decision by the election Commissioner on a question of fact or of law will not by itself be a sufficient ground for the High Court to interfere in the exercise of its powers under the article. **ILR (1955) Tra-Co 646: 1955 Ker LT 714 : AIR 1956 Trav-Co 63 (69) (Pt C) (Pr 19) (DB).**

——Arts. 227, 226 — Powers of High Court under — Labour Court acting within jurisdiction— Decision, when can be interfered with — Normally, no interference on merits. See Ibid, Art. 226. **AIR 1960 Tripura 35.**

3 (e) (i). Mistakes of law.

●**——Art. 227** — Motor Vehicles Act (1939), Ss. 68-D, 68-F (2) (c) (iii), 64, 64-A — Scheme notified under S. 68-D — Effect on permits of private operators — Powers of R. T. A. — Renewal of private permits not legal — Appeal Board can set aside such renewals — Board can act in revisional powers if appeal is incompetent — Decision of Appeal Board being correct in law, no interference under Arts. 226 and 227. See Motor Vehicles Act (1939), S. 68-D. **AIR 1962 SC 1135.**

●**——Art. 227—Limited scope of Art. 227 though it is wider than S. 115 of Civil Procedure Code— High Court cannot assume appellate powers to correct every mistake of law.**

Article 227 of the Constitution corresponds to S. 107 of the Government of India Act, 1915. However wider it may be than the provisions of S. 115 of the Code of Civil Procedure, the High Court cannot, in exercise of its power under that section, assume appellate powers to correct every mistake of law. An erroneous decision which error, not being apparent on the face of the record, cannot be corrected by the High Court in revision under S. 115 of the Code of Civil Procedure or under Art. 227 of the Constitution. Satyanarayan Laxminarayan Hedge v. Malikarjun Bhavanappa Tirumale, **62 Bom LR 146 : 1961 Andh LT 1 : (1960) 1 SCR 890 : 1960 SCJ 1065 : AIR 1960 SC 137 (142) (Pt B) (Pr 18).**

——Art. 227 — Decision in accordance with law— Interference — Member of Board of Revenue allowing second appeal and sending it for concurrence to another member who differed — Appeal again coming before the first member who dismissed it confirming the decree of lower appellate Court — Judgment is in accordance with law, viz., S. 98 (2), Proviso, C. P. Code and cannot be interfered with under Art. 227 unless it is shown that the Board exercised a jurisdiction not vested in it or failed to exercise jurisdiction vested in it. **1954 All LJ 230 : 1954 All WR (HC) 425 : AIR 1954 All 521 (522) (Pt B) (Pr 4).**

——Art. 227 — Certiorari — Error of law—Interference — Powers of High Court — Proceedings under S. 12, Madras Estates (Abolition and Conversion into Ryotwari) Act — Conclusion of Tribunal justified on the evidence on record —Order not interfered. See Ibid, Art. 226. **(1963) 1 Andh LT 296.**

——Art. 227 — Error of law — Error committed by inferior tribunal not self-evident but requires to be established — Jurisdiction to issue writ of certiorari will not be exercised. See Ibid, Art. 226. **1961 Nag LJ (Notes) 37.**

——Art. 227 — Sufficient cause — Ignorance of law — Distinction between ignorance of law and mistake of law — Decision of authority that ignorance did not constitute sufficient cause for delay — No interference. See Payment of Wages Act (1936), S. 15 (2). **AIR 1954 Bom 537 (DB).**

——Art. 227 — Interference under — (Representation of the People Act (1951), Ss. 83 (2), 85).

It is for the Election Tribunal to determine whether the forms of Schedules attached to the election petition fulfil the legal requirements of the Representation of the People Act under which the Tribunal acts. That is the very issue which the Tribunal has to determine before proceeding further to determine the issues involved in the petition and the reply thereof on merits. The jurisdiction of the Tribunal does not depend upon the facts whether the Schedules are property verified or not but is independent of it. The legislature in giving the Tribunal power to dismiss the petition for failure of the petitioner to supply Schedules duly verified in the manner laid down in the Code of Civil Procedure has empowered Tribunal to determine whether the Schedules are duly verified or not and while in doing so even if it arrived at an erroneous decision it could not be said to have acted in a manner calling for the interference by the High Court in exercise of its powers of

superintendence as in that it would be acting as a Court of appeal to correct errors of law. Case-law discussed. **ILR (1954) MB 128 : AIR 1953 Madh B 267 (269) (Pr 20) (DB).**

——Art. 227 — Erroneous view of law.

The object of Art. 227 is really to canalise the proceedings in inferior Courts and Tribunals so that there is no overflow of the banks. Where the lower Court has taken an erroneous view of the law, it is a fit case in which the High Court should interfere in the extraordinary jurisdiction of the High Court under Art. 227. AIR 1953 Cal 702, Rel. on. AIR 1951 Punj 124, Dist. **56 Punj LR 18 : ILR (1954) Punj 776 : AIR 1954 Punj 135 (136) (Pt B) (Prs 9, 10).**

——Art. 227 — Scope — Order erroneously interpreting law — Substantial justice however done — Interference.

Even if the Court below in the interpretation of the language of a statute has come to a conclusion which is erroneous, this by itself is no ground for interference in the exercise of extraordinary jurisdiction under the provisions of Art. 227 of the Constitution, if it has in its order come to substantial justice **AIR 1952 Punj 416 (417) (Pt A) (Prs 4, 7) (DB).**

3 (e) (ii). Findings of fact.

●——**Arts. 227 and 133** — Finding of facts—Interference — Finding of the Authority under Payment of Wages Act that deduction of servant allowance as a result of revision of wage structure did not contravene S. 23 as the total wages earned before such revision not reduced — Finding cannot be challenged in a petition under Art. 227 nor under Art. 133 when the High Court has confirmed it. Payment of Wages Act (1936), S. 23. Dinaram Chutlaya v. Kakajan Tea Estate. **1963 (6) Fac LR 189 : (1963) 1 Lab LJ 267 : ILR (1963) 15 Assam 299 (SC).**

●——**Art. 227** — Question of fact — Interference with finding of fact recorded by the Industrial tribunal where the tribunal had jurisdiction to determine the question. See Ibid, Art. 133. **AIR 1957 SC 264.**

——**Art. 227** — Finding of fact — Objection to — No interference. See Ibid, Art. 226. **1957 All WR (HC) 388 : 1957 All LJ 325.**

——**Art. 227** — Question of fact —No interference. See Ibid, Art. 226. **AIR 1955 All 163 (DB).**

——**Art. 227** — High Court under Art. 227 cannot sit as Court of appeal and review findings of fact. **(1964) 1 Andh LT 72 : (1964) 1 Andh WR 243.**

——**Art. 227** — Finding of fact — Interference. See Ibid, Art. 226. **(1959) 1 Lab LJ 563 (Andh Pra).**

——Art. 227 — Powers of superintendence — Exercise of — Grounds.

The power now vesting in the High Courts by virtue of Art. 227 of the Constitution is the same which the High Courts exercised under S. 15 of the Charter Act and then under S. 107, Government of India Act. Speaking generally this power of superintendence places at the disposal of the High Court an extraordinary reserve of power in order that there should be no species of injustice which the High Court may not be able to cure. Since the jurisdiction is extraordinary it should not serve ordinarily as a substitute for revisional jurisdiction in cases where the revisional jurisdiction has been taken away from the High Court by a competent Legislature, though even in such cases, absence, excess or abuse of jurisdiction will no doubt justify interference. The High Court may also draw on its powers of superintendence, to avoid or prevent obvious miscarriage of justice. It shall not, however, be justified in getting round any express provisions of statute depriving it of its revisional jurisdiction by resorting to its extraordinary jurisdiction except in cases mentioned above. It will not also be justified in constituting itself a Court of appeal and substitute its own view on findings of fact after a minute scrutiny of the evidence, though the extraordinary jurisdiction may be utilised for correcting miscarriages of justice which have been occasioned by patent errors of law or procedure which cannot be corrected otherwise. **52 Cr LJ 966: ILR (1951) 3 Assam 181 : AIR 1951 Assam 106 (112, 115) (Pt E) (Prs 39, 59).**

——**Art. 227** — Finding of fact — In exercise of the jurisdiction of the High Court under Art. 227 it would not be open to the High Court to go behind the finding of fact recorded by the lower Court though erroneous. **61 Bom LR 294 : ILR (1959) Bom 509.**

——**Arts. 227, 226** — Finding of fact — No interference — (Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 29). See Ibid, Art. 226. **AIR 1956 Bom 128 (DB).**

——**Art. 227** — Scope — Tribunal's decision on question of existence or non-existence of facts entitling it to exericse jurisdiction to review its own orders — High Court will not interfere. See Ibid, Art. 226. **AIR 1953 Bom 284 (DB).**

——**Art. 227** — Power of High Court — Ejectment of tenant on ground of requirement for purposes of building or for developing it — Matters to be taken into account by tribunal — Interference under Art. 227. See Tenancy Laws — Calcutta Thicka Tenancy Act (2 of 1949), S. 3 (IV). **(1957) 61 Cal WN 745.**

——**Art. 227**— Question of fact — Whether result of election has been materially affected. See Gujarat Taluka Panchayat (Election) Rules (1962), S. 3 (3). **ILR (1965) Guj 395.**

——**Art. 227** — Finding of fact — Interference. See Ibid, Art. 226. **AIR 1961 Him Pra 2.**

——Art. 227 — Power of Superintendence — Exercise of — (Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13).

Where, in a proceeding for ejectment of tenant on ground of failure to pay rent, both the Controller and the appellate authority found, on facts, that there was no default in payment of rent :

Held, that it could not be said that the authorities acted arbitrarily or that they refused to discharge their duties or to exercise jurisdiction vested in them by law. Their decision could not therefore, be interfered with under Art. 227. AIR 1954 SC 215, Disting. **AIR 1954 Him Pra 75 (76) (Pr 4).**

——**Art. 227** — Jurisdiction of High Court—Finding of fact — Interference. See Ibid, Art. 226. **1959 Cr LJ 1082 : AIR 1959 Ker 275 (DB).**

——**Art. 227** — Procedure — Finding of fact — Interference. See Ibid, Art. 226. **AIR 1955 NUC (Madh B) 4312.**

——**Arts. 227 and 226** — Whether assessee had paid sales-tax amount in treasury, is a question of fact which cannot be enquired into in proceedings under Articles. See Ibid, Art. 226. **AIR 1964 Madh Pra 214 (DB).**

——**Art. 227** — Errors of fact cannot be considered in writ proceedings. See Ibid, Art. 226. **1963 MPLJ (Notes) 254.**

——**Art. 227** — Writ jurisdiction — Powers of High Court — Not an appellate Court — Finding of fact, cannot be disturbed — Election challenged on the ground of disqualification under Section 14 (1) (i) read with S. 94 of M. B. Municipalities Act (1 of 1954) — Finding arrived at by the Election Tribunal — Interference with. See Ibid, Art. 226. **1963 Jab LJ 795.**

——**Arts. 227, 226**— Interference with findings of fact — Workmen's Compensation Act (1923), S. 2 (1) (n) — Question whether casual labourer is employed for purposes of employer's trade or business is one of fact — No interference under Art. 226 or 227. See Ibid, Art. 226. **1963 Jab LJ 587.**

——**Art. 227 — Findings of fact if can be gone into in application under Art. 227.**

It is not the business of the High Court in an application under Art. 227 to go into the findings of fact; in regard to it, the statutory appellate authority should be deemed to be the final forum. **1959 MPLJ 513.**

——**Art. 227** — Finding of fact — Powers of High Court to interfere. See Ibid, Art. 226. **AIR 1958 Madh Pra 368 (DB).**

——**Art. 227 — Finding of fact — Interference.**

The findings of the Tribunal on pure questions of fact are not open to review in proceedings under Art. 227 of the Constitution. **71 Mad LW 679: (1958) 2 Lab LJ 602: (1958-59) 15 FJR 25: 1958 Mad WN 732: (1959) 1 Mad LJ 235: 1959 Mad LJ (Cri) 241.**

——**Art. 227** — Finding of fact — Finding that petitioner failed to submit written representation as required by S. 57 (4), Motor Vehicles Act, is one of fact — Not open to review by High Court when there is no error of law. **(1964) 2 Mys LJ 394: AIR 1965 Mys 258 (259) (Pt A) (Pr 4) (DB).**

——**Art. 227** — Motor Vehicles Act (1939), Ss. 47 and 64 — Grant of permit—Findings of fact — Interference in writ proceedings not permissible. See Motor Vehicles Act (1939), S. 47. **(1965) 2 Mys LJ 30 (DB).**

——**Art. 227** — Finding that there exists need for bus service on particular route, recorded by Revenue Appellate Tribunal being essentially on question of fact, its correctness cannot be discussed in writ petition. See Ibid, Art. 226. **(1963) 2 Mys LJ 93.**

——**Art. 227** — Certiorari — Writ of — Disputed questions of fact — Writ proceedings to quash certificate proceedings to recover arrears of sales-tax — Dispute as to facts for deciding whether sales-tax was payable — Interference by High Court. See Ibid, Art. 226. **(1961) 12 STC 649 (Orissa).**

——**Art. 227** — Findings of fact — Interference with. See Ibid, Art. 226. **AIR 1957 Pat 241 (DB).**

——**Art. 227** — Question of fact. See Ibid, Art. 226. **AIR 1957 Pat 163 (DB).**

——**Art. 227** — Procedure — Questions of fact. See Ibid, Art. 226. **AIR 1955 NUC (Pat) 2151 (DB).**

——**Art. 227** — Question of fact — Interference. See Ibid, Art. 226. **AIR 1954 Pat 334 (DB).**

●——**Art. 227** — Certiorari — Requisition of premises under S. 3, Requisition and Acquisition of Immoveable Property Act — Whether premises were required bona fide for their personal use by owners is a question purely of fact — Even an erroneous finding on the question cannot entitle High Court to interfere with the order of requisition when the Collector and Chief Commissioner have acted within the bounds of their jurisdiction and without doing any violence to principles of natural justice. See Ibid, Art. 226. **AIR 1962 Punj 387 (FB).**

——**Art. 227 — Interference with orders of subordinate Tribunal — Power of High Court — Extent of — Finding of fact cannot be questioned.**

The scope of Art. 227 of the Constitution in the matter of interference with the orders of the subordinate Tribunals is no wider than Art. 226. Therefore, in a petition under Art. 227 against an order of a Labour Court, it is not open to High Court to go into the correctness of facts found by that Court. **AIR 1962 Punj 231 (233, 235) (Pt B) (Prs 3, 13).**

——**Art. 227** — Question of fact — Findings cannot be gone into. See Ibid, Art. 226. **AIR 1961 Punj 464.**

——**Art. 227** — Retrenchment of employee — Question of mala fides—Finding of Industrial Tribunal — Interference by High Court. See Industrial Disputes Act (1947), S. 33-A. **AIR 1959 Punj 360.**

——**Arts. 227 and 226** — Elections — Representation of the People Act (1951), S. 98 — Corrupt practice — Question of fact — Jurisdiction of election tribunal — High Court will not intervene. **61 Pun LR 253: ILR (1959) Punj 368: AIR 1959 Punj 309 (311) (Pt B) (Pr 12) (DB).**

——**Art. 227** — Rajasthan Panchayat and Nyaya Panchayat Election Rules (1960), R. 78 — Decision of Election Tribunal — Finding in respect of age of a candidate — Is a finding of fact — Cannot be disturbed in a writ petition under Arts. 226 and 227 of the Constitution. See Ibid, Art. 226. **ILR (1962) 12 Raj 969.**

3 (e) (iii). High Court's power to re-appreciate evidence.

●——**Arts. 227, 226** — Findings in departmental enquiry — High Court has no power to reappreciate evidence — ILR (1959) Cut 425, **Reversed.** See Ibid, Art. 226. **AIR 1963 SC 404.**

——**Art. 227** — Power under article will not be exercised as in case of appeals by going into minute details of evidence. **1952 Cri LJ 1282: 1952 All LJ 493: 1952 All WR (HC) 547: 1952 All Cri C 1462: AIR 1952 All 788 (792, 793) (Pt B) (Prs 14, 15, 17).**

——**Art. 227 — Finding of fact — Interference— (Bombay Industrial Relations Act (11 of 1947), S. 3 (36)).**

Where the lower Court taking the entire evidence on record into consideration found that the workers had stopped work and that though they were provided with normal work they refused to do the normal work and failed to give the normal production, there is a finding of fact which cannot be challenged in proceedings under Art. 227. But High Court's powers under Art. 227 being limited to the correction of errors of the lower Courts on the face of record, it is not entitled to re-appreciate the evidence and differ from the finding on fact of the lower Court. **(1958) 13 FJR 467 (Bom).**

——**Art. 227** — Finding of lower Court based on evidence — Need of landlord under S. 3 (iv), Calcutta Thika Tenancy Act — Finding of Controller and Appellate Court — Interference by High Court. See Tenancy Laws — Calcutta Thika Tenancy Act (2 of 1949), S. 3 (iv). **(1957) 61 CWN 170.**

——**Art. 227** — No interference with finding of fact based on evidence that there was proper service of notice — (C. P. Code (1908), S. 115). **AIR 1955 NUC (Cal) 4852 (DB).**

——**Art. 227** — Finding of fact — Finding as to fair rent based on evidence — No interference. **Madh BLJ 1955 HCR 1949: ILR (1955) Madh Bha 406: Madh BLR 1955 (Clv) 528: AIR 1955 Madh B 177 (179) (Pt C) (Pr 7) (DB).**

——**Art. 227** — Adjudication by Industrial Tribunal — Dispute relating to fixation of fair wages and provision for gratuity scheme — View taken by the tribunal on paying capacity of industry not impossible on evidence recorded —High Court cannot deal with the matter as a Court of appeal and substitute its own judgment. See Ibid, Art. 226. **AIR 1962 Madh Pra 172 (DB).**

——**Art. 227** —Finding given after consideration of entire evidence on point — No error of law— Finding cannot be called in question. See Ibid, Art. 226. **AIR 1957 Pat 241 (DB).**

——**Art. 227** — High Court will not review appraisal of evidence by Rent Controller. **AIR 1955 NUC (Pepsu) 2507.**

——Art. 227—High Court cannot go into merits of case.

The power of superintendence under the article does not make the High Court a Court of appeal or revision over the proceedings of the tribunal. Thus it cannot go into the merits of the case and hold that the decision of the tribunal was not justified on the evidence before it. **ILR (1954) Patiala 387 : AIR 1954 Pepsu 118 (122, 123, 125) (Pt H) (Prs 17, 28) (DB).**

——**Art. 227** — Re-appraisal of evidence —Conviction for offence under S. 447, Penal Code challenged on ground that evidence did not warrant conviction — Held, that High Court could not re-appraise evidence. **67 Punj LR 698 : ILR (1965) 2 Punj 472.**

——**Arts. 227 and 226** — Writ jurisdiction, nature of — It is not appellate jurisdiction — Decisions of subordinate tribunals not reviewable to find out whether they are based on substantial evidence as against absence of legal evidence — American and English law compared. See Ibid, Art. 226. **1965 Cur LJ 561 : ILR (1965) 2 Punj 348.**

3 (f). Power to be exercised to keep Courts and Tribunals within limits of their authority.

● ——**Art. 227 — Power of superintendence under — Exercise of (Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (2)).**

The power of superintendence conferred by Art. 227 is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. AIR 1951 Cal 193 (SB), Ref.

Thus where the lower Courts realised the legal position but in effect declined to do what was, by S. 13 (2) (i) of the East Punjab Urban Rent Restriction Act, 1949, incumbent on them to do, and thereby refused to exercise jurisdiction vested in them by law it was a case called for an interference by the Court of the Judicial Commissioner under this Article and it acted quite properly in doing so. Waryam Singh v. Amarnath. **1954 SCJ 290 : 1954 Mad WN 424 : 1954 SCA 334 : 1954 SCR 565 : AIR 1954 SC 215 (217) (Pt C) (Pr 14).**

——Art. 227 — Scope — Interference limited to question of jurisdiction.

The power of interference under Art. 227 is limited to seeing that the Tribunal functions within the limits of its authority. Where the contention of the defendant was that he had filed certain documents in the Court which, however, were not found on the record, and that the Court after inquiry held that they were not filed and that no opportunity was given to the defendant to prove his allegations :

Held, that no petition under Art. 227 was maintainable. Though the Court should have given the defendant an opportunity to prove his case, it was a question of error and not of jurisdiction on its part : AIR 1958 SC 398 and AIR 1954 SC 215 and AIR 1958 All 456, Applied. **AIR 1961 All 306 (308) (Pr 7).**

——Art. 227 — Power of judicial superintendence of High Court — Conditions precedent for exercise.

The powers of the High Court under Art. 227 of the Constitution are not wider than the powers conferred by Art. 226, but for all practical purposes, they are co-equal except that under Art. 227 the High Court has superintendence only over Courts and tribunals whereas under Art. 226 it has supervisory jurisdiction over any person or authority including the Government. The main purpose of Art. 227 is to keep the subordinate Courts and tribunals within the bounds of their authority. It is not open to the High Court acting under Art. 227 to sit as a Court of Appeal and review findings of fact by reappreciating oral and documentary evidence. The High Court would be justified in interfering under Art. 227 only in cases where substantial injustice has been done by reason of the decision of the Court or tribunal below being vitiated by defect in jurisdiction, violation of the principles of natural justice, total absence of evidence or error of law apparent on the face of the record. It is only in such cases and within those limits that the High Court can interfere under Art. 227 of the Constitution. **(1964) 1 Andh LT 72 : (1964) 1 An WR 243.**

——Art. 227 — Powers under — When to be exercised.

The power of superintendence conferred by Art. 227 should be exercised by the High Court most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors: AIR 1954 SC 215, Rel. on. **(1960) 2 Andh WR 53.**

——Art. 227 — Nature and scope of powers of jurisdiction under.

The power of superintendence conferred by Art. 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. **1959 Andh LT 676: (1959) 2 Andh WR 146.**

——Art. 227 — Powers of High Court to vacate lower Court's order — (C. P. Code (1908), S. 115).

Art. 227 of the Constitution, confers power on High Courts to keep lower Courts within limits of their legal jurisdiction and if the judgment of the lower appellate Court proceeds on entirely wrong principles of law, it can be vacated. **(1958) 2 Andh WR 56.**

——Art. 227 — Error of law — If ground for revision.

The power of superintendence of the High Court under Art. 227 is only to see that the Court below does not exceed its bounds. If the Court below had jurisdiction to decide a matter and in the exercise of that jurisdiction has committed any error of law, that is no ground for the High Court to interfere in the exercise of its powers, under Art. 227. Art. 227 was not intended to be a substitute for the revisional jurisdiction of High Court. AIR 1952 Assam 166, Rel. on. **AIR 1958 Assam 77 (78) (Pt B) (Pr 1) (DB).**

——Art. 227 — Power of superintendence —Extent — Petitioner resisting execution of decree — Application by decree-holder before subordinate Judge for making complaint against petitioner under S. 195 (1) (a) Cr. P. C. — Application rejected on ground that proper remedy was under O. 21, R. 97 C. P. C. — Similar application before District Judge — District Judge making complaint under Section 195 (1) Cr. P. C., in administrative capacity — Order held not substainable and set aside under Art. 227 — Criminal P. C. (1898), S. 195 (1) (a) (b).

Per D. N. Das Gupta, J.: (agreeing with Amaresh Roy, J.) :— The power of superintendence under Art. 227 of the Constitution is to be exercised by the High Court most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors.

A decree-holder made an application in the Court of Subordinate Judge alleging that the pleader-commissioner and the peon who had gone to give possession of land to him had been resisted in the discharge of their official duties by the petitioner and prayed that a complaint should be made by the Court against the petitioner in accordance with S. 195 (1) (a) Cr. P. C. That application was dismissed on the ground that the proper remedy of the decree-holder was by way of an application under O. 21, R. 97 C. P. C., especially when obstruction was caused by third parties who had prima facie a bona fide claim to the lands. Thereafter the decree-holders made a similar application before the District Judge who passed an order, termed as administrative, for the protection of the Court peon as a public servant subordinate to him making a complaint under S. 195 (1) (a) Cr. P. C. In passing that order he did not consider whether interest of justice required such an order. In an application for revision under S. 115 C. P. C., and Art. 227 of the Constitution filed against the order.

Held, that the District Judge had no power to make the administrative order in the face of the order of the subordinate Judge which had not been set aside in any appropriate proceedings. Merely saying that the order was an administrative order would not make an order immune from interference by High Court under Art. 227. The High Court has the power to scrutinise the order and to see whether it was within the bounds of the authority passing the order. The order was, therefore, set aside. 42 CWN 531, 44 CWN 1011; AIR 1942 Cal 434; AIR 1954 SC 215, and AIR 1955 SC 233, Ref. **(1963) 67 Cal WN 887.**

——Art. 227 — High Court's power of superintendence — Extent of — Election under Bengal Municipal Act.

The High Court's power of superintendence under Art. 227 of the Constitution is a power to keep subordinate Courts (Tribunals) within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner. In appropriate cases, the Article may be employed to correct, at least, errors of jurisdiction, to wit, assumption of excessive jurisdiction or illegal or irregular exercise of it or refusal or failure to exercise the same. **AIR 1958** SC 398; AIR 1954 SC 215; AIR 1951 Cal 193; AIR 1952 Cal 526, Rel. on.

The petitioner's nomination paper for a municipal election was improperly rejected by the Election Officer who had no authority in that behalf and the order was confirmed by the Appellate Authority arbitrarily without applying his mind to the real question involved.

Held, that, in the circumstances of the case, it was a fit case where the High Court would exercise its powers under Art. 227 of the Constitution and quash the order of the Appellate Authority rejecting the nomination paper. The case was one where the Tribunal had not kept itself within the bounds of its authority as there was failure on his part to exercise the jurisdiction which was vested in him by law and which he was bound to exercise under and in terms of the statute to which he owed his authority and existence. AIR 1923 Mad 475, Rel. on; AIR 1928 Mad 1271, Dist. **64 Cal WN 1043: ILR (1961) 1 Cal 356: AIR 1962 Cal 53 (60) (Pt C) (Prs 28, 29) (DB).**

——Art. 227 — Powers of High Court.

The High Court has power under Art. 227 to keep subordinate Courts and tribunals within the bounds of their authority.

Where the Tribunal below decided the case practically on inadmissible evidence, or, in flagrant violation of Evidence Act, and, in, so doing, it served to perpetuate a grave injustice interference in such cases would be amply justified. The tribunal must, at least be held to have acted illegally in exercise of its jurisdiction and that is sufficient for interference under Art. 227 as the illegal exercise of jurisdiction by the lower tribunal resulted in a grave injustice. **AIR 1958 Cal 679 (680) (Pt A) (Prs 8, 9) (DB).**

● **——Art. 227 — Powers of superintendence — Scope and extent of.**

Though under Art. 227 of the Constitution the High Court has a right to interfere with decisions of Courts and Tribunals under its power of superintendence, that right must be exercised most sparingly and only in appropriate cases. In general words, the High Court's power of superintendence is a power to keep subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner. The power of superintendence is not a power given to the Court to correct errors, otherwise, it would be tantamount to a right to entertain appeals on law and fact. That right should be exercised only in cases where the Courts below have clearly done something which they were not entitled to do. Dalmia Jain Airways, Ltd. v. Sukumar Mukherjee, **AIR 1951 Cal 193 (193, 194) (Pt A) (Prs 6, 7) (SB).**

——Art. 227 — Scope.

Article is meant to keep subordinate Courts within bounds of their jurisdiction and not to correct errors of decision on questions of law or questions of fact. **AIR 1953 Him P 60 (60) (Pt A) (Pr 4).**

——Art. 227 — Power of superintendence — Nature and scope of — Appeal dismissed as incompetent and on merits — Court will refuse relief under Article — Tenancy Laws — Malbar Tenancy Act (14 of 1930), S. 17.

The power of superintendence conferred by Art. 227 is to be exercised most sparingly and

only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. AIR 1951 Cal 193, AIR 1953 Cal 702 and AIR 1954 SC 215, Foll.

Under S. 17 of the Malabar Tenancy Act an appeal lies against the order of the Rent Court under S. 16 of that Act, whether the order fixes fair rent or refuses to do so, and hence the dismissal of an appeal against an order refusing to fix fair rent as incompetent is erroneous. But still the appellant will not be granted relief under Art. 227 of the Constitution where the appellate Court dismissed the appeal not on the sole ground of incompetency but also after a consideration of the appeal on its merits. **(1960) 1 Ker LR 24: 1960 Ker LT 50 : 1960 Ker LJ 156 : ILR (1960) Ker 629.**

——Art. 227 — Enabling power of High Court.

The extraordinary powers conferred on the High Court under Art. 227 enable the High Court to ensure that the tribunals are kept within the bounds of their authority and that they do what their duty requires and that they do it in a legal manner. **1953 Cri LJ 636 : 65 Mad LW 1229 : AIR 1953 Mad 362 (366) (Pt E) (Pr 12).**

——Art. 227 — Power of superintendence—Nature and scope of power.

The High Court's power of superintendence is a power to keep subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner. It is not a power given to correct errors, otherwise it would be tantamount to a right to entertain appeals on law and fact. The right should be exercised only in cases where the Courts have clearly done something which they were not entitled to do. **1954 BLJR 594 : 1955 Cr LJ 501 : 33 Pat 996 : AIR 1955 Pat 118 (121) (Pt F) (Pr 7) (DB).**

——Art. 227 — Limits to exercise of power of superintendence.

The power of superintendence under Art. 227 of the Constitution does not make the High Court a Court of appeal or revision over the proceedings of the Tribunal. Thus, the High Court cannot go into the merits of the case and hold that the decision of the Tribunal was not justified on the evidence before it. The powers are to be used sparingly and only in appropriate cases with a view to keep the subordinate Courts or Tribunals within the bounds of their authority, to see that they do what their duty enjoins and that they do it in a legal manner. **ILR (1954) Patiala 387 : AIR 1954 Pepsu 118 (122, 123, 125) (Pt H) (Prs 17, 28) (DB).**

——Art. 227 — Power of High Court.

The power of the High Court under Art. 227 is limited. It cannot be used to correct error of subordinate Courts and tribunals. This power is quite different from the power that a Court of Appeal or a Court of Revision possesses. It is a power to keep subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner. 1951 Pepsu LR 347, Rel. on. **ILR (1953) Patiala 208 : AIR 1954 Pepsu 17 (17, 18) (Pt A) (Pr 3).**

——Art. 227 — Powers of High Court.

While dealing with orders of Tribunals or Subordinate Courts under Article 227 the High Court does not act either as a Court of Appeal or a Court of Revision. The object of Art. 227 is not to enable the High Court to correct every error but merely to see that the Subordinate Tribunals are kept within the four corners of law and they do not act outside the jurisdiction given to them by law. Therefore, no writs are issued against the Tribunals except when their proceedings are vitiated by total want of jurisdiction or the defect of jurisdiction is apparent on record. **ILR (1954) Pepsu 1 : AIR 1953 Pepsu 133 (141) (Pt J) (Pr 21) (DB).**

——Art. 227 — Object of conferring power.

Under Art. 227 the power of interference is limited to seeing that the Tribunal functions within the limits of its authority. Moreover, power under the article is always to be exercised most sparingly and only in appropriate cases and is clearly not meant for correcting errors of fact or even of law. **1964 Cur LJ 324 : 1965 (2) Cri L Jour 701 (701, 702) (Prs 3, 4) (Punj).**

——Art. 227 — Power of superintendence —When to be exercised.

The power of superintendence conferred by Art. 227 is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors : AIR 1954 SC 215, Foll. **62 Punj LR 302 : AIR 1960 Punj 432 (433) (Pt C) (Pr 8).**

[**Overruled** on another point in AIR 1965 Punj 156 (DB).]

——Art. 227 — Powers under — When may be exercised.

The power given by Art. 227 of the Constitution is meant to be exercised in cases where the subordinate Courts clearly have done something which they are not entitled to do. The power must be used to keep the Courts below within the bounds prescribed by law for such Courts, and is not limited to interference with orders passed by them without jurisdiction. **ILR (1953) Punj 100 : 54 PLR 358 : AIR 1952 Punj 422 (422) (Pt A) (Pr 3) (DB).**

——Art. 227 — Superintendence, its object.

The object of superintendence is to keep all inferior Courts and Tribunals within the bounds of their authority and to see that they do which their duty requires them to do and that they do it in a legal manner. **53 Pun LR 264 : AIR 1951 Punj 124 (124) (Pt A) (Pr 5).**

——Art. 227 — Power of superintendence —Scope of—Interference with order of appellate authority under East Punjab Rent Restriction Act (1949).

The power under Art. 227 of the Constitution is not the same as is exercisable by a Court of appeal but should be confined to keeping the subordinate Courts and other tribunals within the narrow limits which the law prescribes for them. It does not give the High Court the power to interfere in every case but in cases which would be proper for exercising the powers of issue of mandamus.

Where the appellate authority under the East Punjab Rent Restriction Act (1949) had held that the premises were not needed for personal occupation by the landlord.

Held, that in view of the limited power given to the High Court under Art. 227, this was not an appropriate case for interference under that article. **53 Pun LR 175: AIR 1951 Punj 108 (109) (Pr 7).**

3 (g). Lower Court acting without jurisdiction.

(i) Instances of orders without jurisdiction.

(ii) Orders which are not without jurisdiction.

3 (g). Lower Court acting without jurisdiction.

● **——Art. 227**—Abducted Persons (Recovery and Restoration) Act (1949), S. 6 — Tribunal constitut-

ed under S. 6 to decide the question of restoration of the abducted woman, held was not properly constituted and its decision was, therefore, without jurisdiction. See Abducted Persons (Recovery and Restoration) Act (1949), S. 6. **AIR 1953 SC 10.**

●——**Art. 227 — 'All Courts and Tribunals' — (U. P. Panchayat Raj Act (26 of 1947), S. 49).**

Where admittedly the Bench of the Panchayati Adalat which tried the case was constituted in contravention of the provisions of Section 49, U. P. Panchayat Raj Act, inasmuch as it included only one instead of two members of the Gaon Sabha of the village in which both the complainant and the accused resided:

Held, that the Constitution of the Bench was illegal, that the illegality committed could not be waived and that the order of the panchayati adalat could be quashed under Art. 227 of the Constitution. AIR 1955 All 113 (FB), Foll. Mata Bhikh v. Baij Nath. **1955 All LJ 17 : 1955 All WR (HC) 155 : 1955 Cri LJ 596 : AIR 1955 All 249 (250) (Pt B) (Pr 14) (FB).**

●——**Art. 227** — Defective constitution of Bench — Objection does go to root of jurisdiction. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 49 (2). **1955 Cri LJ 296: AIR 1955 All 113 (FB).**

——**Art. 227** — Administering oath to a witness is not a question of jurisdiction. **AIR 1955 NUC (All) 6048.**

●——**Art. 227** — Tribunal of limited jurisdiction — Decision on jurisdictional fact — High Court when will interfere under Art. 227 — Ejectment of adhiar under Assam Adhiars Protection and Regulation Act — Whether opposite party is adhiar is jurisdictional fact — Decision of question is not entrusted to Adhiar Board — High Court can question decision and interfere under Art. 227. AIR 1952 SC 319, Applied; (1888) 21 QBD 313, Rel. on. AIR 1960 Assam 59, Approved. AIR 1952 Assam 166 (FB), Diss. from. Jyotish Chandra Nath v. Ejdam Mea Majumdar. **ILR (1963) 15 Assam 173: AIR 1963 Assam 49 (51, 52) (Pt B) (Prs 5, 6) (SB).**

——**Art. 227** — Writ of quo warranto — Burden — Person claiming legal right has to support his claim. See Ibid, Art. 226. **1965 Mah LJ (Notes) 40 (Bom).**

——**Art. 227 — Payment of Wages Act (1936), S. 15 — Authority assuming jurisdiction which it did not possess — Interference.**

Where the authority appointed under S. 15, Payment of Wages Act, has assumed jurisdiction which it did not possess it is a fit case for interference under Art. 227 of the Constitution in order to keep the subordinate Courts within the bounds of their authority. **ILR (1955) Madh Bha 229: Madh BLJ 1955 HCR 507: Madh BLR 1955 (Civ) 35: AIR 1955 Madh Bha 60 (64) (Pt C) (Pr 5) (DB).**

——**Art. 227** — Rent control proceedings — Power to interfere with orders of Rent Controller passed without jurisdiction. See Houses and Rents — M. B. Sthan Niyantran Vidhan (15 of 1950), S. 7. **AIR 1955 Madh Bha 21.**

——**Art. 227 — Absence of jurisdiction — Effect.**

Absence of jurisdiction is a matter which renders the entire proceeding a nullity and the decision amounts to a flagrant violation of law which calls for intervention under Art. 227. **Madh BLJ 1954 HCR 953: Madh BLR 1955 Civil 106: AIR 1955 Madh Bha 21 (23) (Pt B) (Pr 9).**

[Overruled on another point in AIR 1961 SC 148.]

——**Art. 227** — Appellate authority consisting of two members under relevant notification constituting it — Objection to appeal being heard by single member not raised at the time — Appellant will not be permitted to question the jurisdiction of the appellate authority when it has gone against him by invoking the jurisdiction of the High Court under Arts. 226 and 227. See Ibid, Art. 226. **AIR 1965 Madh Pra 113 (DB).**

——**Art. 227 — Supervisory powers of High Court under — Nature of — High Court quashing decision offending against law — Inference regarding lack of jurisdiction of Tribunal not correct.**

Under Art. 227 of the Constitution, the High Court controls all inferior tribunals, including the Board of Revenue, not in an appellate capacity but in a supervisory capacity. The control so exercised extends not only to seeing that the inferior tribunals keep within their jurisdiction but also to seeing that they observe the law. When the High Court interferes by quashing the decision which offends against the law, it cannot be inferred that the tribunal had no jurisdiction to deal with the matter or that any other like decision of the tribunal, which was not corrected either in the manner provided by the relevant Act or by invoking the supervisory jurisdiction of the High Court, could be collaterally disregarded as a decision without jurisdiction. **1961 Jab LJ 537 : 1961 MP LJ 530 : ILR (1961) Madh Pra 391.**

——**Art. 227** — Writ of quo warranto — When issued — Relator need have no special interest. **1957 Jab LJ 170: 1957 MPC 177: ILR (1957) Madh Pra 188: 1962 MPLJ (Notes) 5: AIR 1957 Madh Pra 60 (62) (Pt A) (Prs 16, 19).**

——**Art. 227 — Absence, excess, or abuse of jurisdiction by Judge — Powers of High Court under Art. 227 — Appeal under S. 11 Assam Adhiars Protcetion Act disposed of — Extension of time by subordinate judge — High Court set aside orders — Tenancy Laws — Assam Adhiars Protection and Regulation Act (12 of 1948), S. 11.**

If it is found that there is absence, excess or abuse of jurisdiction by a Judge, High Court has got powers under Art. 227 of the Constitution to quash the order of the judge.

Where subordinate judge had no jurisdiction under Assam Adhiars Protection and Regulation Act to pass an order extending time after the appeal under S. 11 of the Act had been disposed of and that being so, such order was without jurisdiction, High Court under Art. 227 of the Constitution set aside that order. AIR 1952 Assam 166 (FB), Expl. **1963 Mys LJ (Supp) 358.**

——**Art. 227 — Lower Court acting without jurisdiction.**

It is not in every case of legal error that the High Court will interfere under Art. 227. It will interfere where there has been a substantial ground for interference, such as, jurisdiction.

It is not correct to argue that when the accused has acquiesced in his trial before a certain Court and that when it is found that that Court had no jurisdiction to try him, the High Court cannot interfere with the conviction and sentence passed by that Court merely on the ground that there has been acquiescence. On the contrary, where there has been no jurisdiction to hear or try a case, then the order of such a Court must be deemed to be such a substantial error as would justify the High Court to interfere with such an order under Art. 227 of the Constitution.

Where, therefore, a Gram Cutchery Court has passed an order without jurisdiction, it is open to the High Court to interfere under Art. 227, Case-

law Ref. **1954 BLJR 594: 1955 Cri LJ 501: 33 Pat 996: AIR 1955 Pat 118 (120, 121) (Pt D) (Prs 6, 10) (DB).**

——**Art. 227** — Controller under E. P. Urban Rent Restriction Act (3 of 1949) is not a Court — Order passed by him without jurisdiction — High Court's power of superintendence to interfere. See Civil P. C. (1908), S. 115. **AIR 1951 Punj 432.**

——**Art. 227** — Lower Courts acting without jurisdiction — Reference to High Court is competent — High Court has power to interfere when proceedings were defective for want of jurisdiction— Rajasthan Revenue Courts (Procedure and Jurisdiction) Act (1 of 1951), S. 40 — (C. P. Code (1908), S. 115). **AIR 1955 NUC (Raj) 4625.**

——**Art. 227** — Exercise of jurisdiction under — Subordinate Tribunal acting without jurisdiction— Duty of High Court. See Ibid, Art. 226. **AIR 1953 Vin Pra 41.**

3 (g) (1). Instances of orders without jurisdiction.

——**Art. 227** — Panchayati adalat — No power to convert civil case into criminal one. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 83. **AIR 1955 NUC (All) 4165.**

——**Arts. 227, 226** — Eastern Bengal and Assam Excise Act (1910), S. 36 — Rules under — Rules 205, 207, 208, 209 — Scope of — Settlement of liquor shops — Choice is with lower authorities — Duty of Appellate Authority — Appellate authority usurping power of lower authorities and making a selection itself —Order to be interfered with under power of superintendence. See Eastern Bengal and Assam Excise Act (1 of 1910), S. 36. **AIR 1957 Assam 182.**

——**Art. 227** — Application by decree-holder for making complaint against petitioners rejected by subordinate judge — District judge granting a similar application presented to him in his administrative capacity — **Held** that the order made by him in his administrative capacity is without power. **(1963) 67 Cal WN 887.**

●——**Arts. 227, 233, 234, 235, 309, 310, 311, 320 — Judicial service — District Judge — Disciplinary jurisdiction over — Enquiry conducted by State Government — Validity — Civil Services (Classification, Control and Appeal) Rules, R. 55 — Validity.**

The control over the District Courts and the Courts subordinate thereto in the State is vested with the High Court under Art. 235 of the Constitution, and the authority competent to take disciplinary proceedings and action against a District Judge in the State or to deal with him in any way is the High Court and not any other authority.

Per Special Bench : The provisions of Art. 311 of the Constitution cannot be read as divesting the control which Art. 235 vests in the High Court, but only as regulating and prescribing the conditions under which such control has to operate in the three cases of (1) dismissal, (2) removal and (3) reduction in rank. After the disciplinary authority has conducted the enquiry and reported on its finding, the High Court in case of dismissal or removal must send it to the Governor, and in case the punishment of dismissal or removal or reduction in rank is going to be imposed as a penalty by the appropriate authority, reasonable opportunity must be given to the person concerned against whom the action is proposed to be taken under Art. 311 (2) of the Constitution.

Where the High Court was neither asked by the State Government to constitute the Tribunal nor conduct the departmental proceedings nor take disciplinary action against the petitioner, an Additional District Judge, but the High Court was presented with the accomplished fact that charges had been framed against the petitioner and the results obtained on the enquiry held by the Anti-Corruption Department and the appointment of the Commissioner of the Division had been made to hold the departmental enquiry under R. 55 of the Civil Services (Classification, Control and Appeal) Rules :

Held, that the appointment, constitution, proceedings and the report of the disciplinary tribunal were wholly without jurisdiction and unconstitutional, in violation of Art. 235 of the Constitution and therefore, void and must be set aside. AIR 1955 Andh Pra 65 and AIR 1959 Andh Pra 497, Rel. on. Nripendra Nath Bagchi v. Chief Secretary, Government of West Bengal, **65 Cal WN 361: (1961) 2 Lab LJ 312: AIR 1961 Cal 1 (8, 9, 11, 17) (Pt C) (Prs 29, 31, 46, 76, 78) (SB).**

——**Art. 227** — Order of Rent Controller under W. B. Act 38 of 1948 fixing charges of boarder in lodging house — Appeal — Competency — Appeal entertained — Case is one where jurisdiction is exercised when there is no jurisdiction — Power of High Court to set aside appellate Order — Power of superintendence. See Houses and Rents — W. B. Premises Rent Control (Temporary Provisions) Act (38 of 1948), S. 22. **AIR 1955 NUC (Cal) 2947.**

——**Art. 227** — Appeal decided by person having no jurisdiction. See Houses and Rents — West Bengal Premises Rent Control (Temporary Powers) Act (38 of 1948), S. 32. **AIR 1951 Cal 554 (DB).**

——**Art. 227** — Civil P. C. (1908), Ss. 96 and 115 — Stay order by higher Court — Moment of operation — Judgment and decree passed after stay — Effect — Proper remedy — No appeal but revision will lie. See Civil P. C. (1908), S. 96. **AIR 1959 Madh Pra 34.**

——**Art. 227** — Jurisdiction — Collector not competent to entertain or dispose of appeal against order of Nyaya Panchayat removing peon from service — Writ — Issue of. See Panchayats — C. P. and Berar Panchayats Act (1 of 1947), Section 116. **1959 MPLJ (Notes) 3.**

——**Art. 227** — Mutation proceedings before S. D. C. without jurisdiction — Proceedings taken by S. D. C. under S. 476 are also without jurisdiction — High Court has power to interfere with his order. See Criminal P. C. (1898), S. 476. **1963 (2) Cri LJ 658: AIR 1963 Manipur 49.**

——**Art. 227** — Assam Land and Revenue Regulation (1 of 1886), S. 147 — Order of Sub-Deputy Collector — Appeal against orders passed by the Sub-Deputy Collector as well as by the Additional Deputy Commissioner and the Chief Commissioner are quasi-judicial orders and not mere administrative orders — No appeal is provided to the Deputy Commissioner from order passed by Sub-Deputy Collector — It follows that the Additional Deputy Commissioner also cannot have such appellate jurisdiction — Orders in appeal by the Additional Deputy Commissioner and the Chief Commissioner in second appeal have to be set aside. See Tenancy Laws — Assam Land and Revenue Regulation (1 of 1886), S. 147. **AIR 1962 Manipur 14.**

——**Art. 227** — Assam Land and Revenue Regulation (1 of 1886), Ss. 50, 51, 52, 53, 54, 126, 129, 124, 123, 125, 127 — Powers of Sub-Deputy Collector — He cannot act under Ss. 50 to 54 and S. 126 (1)

— Order of S. D. C. set aside — Effect on orders passed in appeal and second appeal. See Tenancy Laws — Assam Land and Revenue Regulation (1 of 1886), S. 50. **AIR 1962 Manipur 14.**

——**Art. 227** — Award directing reinstatement but not determining specific sum as payable on account of back wages — Amount payable left to the discretion of employer — State Government or its delegate has no jurisdiction to determine amount of back wages while issuing certificate for its recovery under S. 33 (c) (i) — Quashing of certificate. See Industrial Disputes Act (1947), S. 33-C (i). **AIR 1963 Mys 250 (DB).**

——**Art. 227** — Jurisdiction — Absence — Question of automatic transfer of proceedings under States Reorganisation Act — Subordinate Court deciding — Decision is without jurisdiction — Interference. See States Reorganisation Act (1956), S. 125. **1959 Cri LJ 746: AIR 1959 Mys 158.**

——**Art. 227** — Allowing amendment after fresh petition has become barred. See Municipalities — C. P. and Berar Municipalities Act S. 20-A. **('52) 1952 Nag LJ (Notes) 123.**

——**Art. 227 — Appeal proceedings before Industrial Tribunal — Erroneous and without jurisdiction — High Court competent to quash proceedings either under S. 115, Civil P. C. or under Art. 227 — C. P. Code (1908), S. 115.**

If the order of and the appeal proceedings pending before the Industrial Tribunal are erroneous and without jurisdiction High Court can quash the appeal proceedings either in exercise of the revisional jurisdiction of High Court under S. 115 of the Civil Procedure Code if the Tribunal is a Court, or under Art. 227 of the Constitution of India, if it is not a Court as there cannot be any doubt that the Industrial Tribunal is a Tribunal subject to the superintendence of High Court under Art. 227 of the Constitution. **(1962) 2 Jab LJ 338 (Pat).**

——**Art. 227** — Reference of dispute to Industrial Tribunal — Dispute not industrial dispute — Jurisdiction of Tribunal to adjudicate — (Industrial Disputes Act (1947), S. 10). See Ibid, Art. 226. **1959 BLJR 172.**

——**Art. 227 — Jurisdiction under — When exercised — Conviction by Gram Panchayat under wrong section — Interference.**

There is nothing in Art. 227 restricting the powers of the High Court in interfering in appropriate cases.

Thus where a Bench of the Gram Cutcherry has no jurisdiction to try persons for an offence constituted by acts done by them, and when the conviction is for an offence which never, was the prosecution case, the High Court in those circumstances may interfere, especially when the petitioners had moved the Sub-divisional Officer who had jurisdiction to set aside the conviction and sentence and had failed to obtain relief. **1956 BLJR 117: 1957 Cri LJ 651: AIR 1957 Pat 276 (277) (Pt A) (Pr 6) (DB).**

——**Art. 227** — Jurisdiction of Gram Cutcherry— Finding that petitioner is guilty of offence under S. 448, Penal Code. See Penal Code (1860), S. 441. **AIR 1955 NUC (Pat) 4897 (DB).**

——Art. 227 — Order of remand and retrial without jurisdiction — High Court will interfere. See Panchayats — Bihar Panchayat Raj Act (7 of 1948), S. 73. **AIR 1955 NUC (Pat) 724 (DB).**

——**Art. 227** — Bihar Panchayat Raj Act (1948), S. 73 — Order of remand by Magistrate is without jurisdiction. See Panchayats — Bihar Panchayat Raj Act (7 of 1948), S. 73. **AIR 1953 Pat 339.**

——**Art. 227** — Scope — Appeal against award of District Judge is competent under S. 56 — Land not acquired under Act — Reference misconceived and without jurisdiction — Quashed under Art. 227 of Constitution. See Patiala and East Punjab States Union Land Acquisition Act (4 of 2006, B. K.), S. 20. **(1963) 65 Pun LR 130.**

——**Art. 227** — Right of Badli Workman to permanent post — Requirements — Must have worked for 240 days in twelve calendar months — Ss. 25-B and 25-C of Industrial Disputes Act held not applicable — Direction to employer to absorb Badli workmen on permanent posts held without jurisdiction. See Industrial Disputes Act (1947), Sch. 3, S. 7-A. **AIR 1962 Punj 553.**

——**Art. 227 — Lower Court acting without jurisdiction — Interference.**

When a decision as to whether there was relationship of sub-lessor and sub-lessee between a Company and its agent or Manager is not merely wrong but with complete lack of jurisdiction, it is not a case of interference with a finding of fact while disposing of a petition under Art. 227. **(1958) 60 Punj LR 349.**

——**Art. 227** — Death of agent of plaintiff — Order declaring suit to have abated is without jurisdiction and illegal. See Civil P. C. (1908), O. 22, R. 1. **AIR 1952 Punj 122.**

——**Art. 227** — Houses and Rents — Rajasthan Premises Control of Rent and Eviction Act (1950), Ss. 22 (3) and 27 (2) — Application under Matsya Premises Rent Control Ordinance, 1948 for ejectment of tenant — Before decision of case Ordinance repealed and Rajasthan Act coming into force — Application allowed — Appeal to District Judge under provisions of Ordinance — Appeal against order of Rent Controller held lay to District Magistrate and District Judge had no jurisdiction — Order set aside under Art. 227 of the Constitution. See Houses and Rents — Rajasthan Premises Control of Rent and Eviction Act (17 of 1950), S. 22 (3). **AIR 1953 Raj 77.**

——**Art. 227** — Criminal P. C. (1898), S. 516-A — Account books recovered in search — Order for taking photographic copies of — Order to be quashed as one without jurisdiction. See Criminal P. C. (1898), S. 516-A. **AIR 1956 Trav-Co. 256.**

3 (g) (ii). Orders which are not without jurisdiction.

——**Art. 227** — Criminal P. C. (1898), Ss. 439, 476-B — Production of fabricated documents — Order directing prosecution is not without authority — Revision — (Civil P. C. (1908), S. 115) — (Himachal Pradesh — (Courts) Order, Para 35). See Criminal P. C. (1898), S. 439. **AIR 1956 Him Pra 2.**

——**Art. 227** — Houses and Rents — M. B. Sthan Niyantran Vidhan (Sm. 2006), S. 9 (2) (a) and (c) — Suit for fixation of fair rent — Failure of Rent Controller to pass order contemplated by S. 9 (2) (a) does not affect his jurisdiction — It is mere error of law. See Houses and Rents — M. B. Sthan Niyantran Vidhan (Sm. 2006), S. 9 (2) (a) and (c). **AIR 1956 Madh Bha 54.**

——**Art. 227** — Interference — Grounds — Exercise of power under S. 45 (2), Indore Land Revenue and Tenancy Act — Sanction of sale in absence of registered sale deed — Order is not without jurisdiction. See Tenancy Laws — Indore Land Revenue and Tenancy Act, S. 45 (1). **1961 MPLJ (Notes) 36.**

——**Art. 227** — Powers of High Court — Requirements of statute not amounting to condition

precedent to exercise of jurisdiction — Failure to follow requirements — Interference under article not called for. See Panchayats — Madhya Bharat Panchayat Vidhan (58 of 1949), S. 66. **1958 MPC 490.**

——Art. 227 — Order holding notice of termination of tenancy invalid under law.

Where the landlord stated that the tenancy rights had been terminated from the date of his notice the notice is invalid in view of the proviso in sub-s. (1) of S. 14 Bombay Tenancy and Agricultural Lands Act of 1948. If the Tribunal had held it so, it could not be said that it committed any error apparent on face of the record or acted beyond the limts of its authority. **37 Mys LJ 82: ILR (1959) Mys 150: AIR 1959 Mys 108 (111) (Pt B) (Pr 7) (DB).**

——Art. 227 — Order of Revenue Court refusing to declare petitioner as occupancy tenant—Order passed on certain evidence in preference to other — Interference — (Tenancy Laws — C. P. Tenancy Act (1 of 1920), S. 41). See Ibid, Art. 226. **AIR 1956 Nagpur 65.**

——Art. 227 — Jurisdiction — Absence of — Failure to dismiss appeal although time-barred — Effect — Interference — (Limitation Act (1908), S. 3).

It cannot be said as a general proposition that failure to dismiss a proceeding although time-barred, always amounts to the exercise of a jurisdiction not vested in the Court by law. A Court having initial jurisdiction to entertain a proceeding has jurisdiction to decide the question of limitation as well. Hence the decision by the District Judge of the appeal instituted after the period of limitation prescribed by S. 16 of Pepsu Urban Rent Restriction Ordinance cannot be regarded as void for want of jurisdiction. It is not a case of total want of jurisdiction, but one of irregular or illegal exercise of it. **AIR 1956 Pepsu 83 (84) (Pt A) (Pr 4) (DB).**

——Art. 227 — Withdrawal of election petition by petitioner without leave of Tribunal — Tribunal passing order allowing ex parte respondent to continue application — Order not in excess of Tribunal's Jurisdiction. See Representation of the People Act (1951), S. 117. **AIR 1954 Raj 158 (DB).**

——Art. 227 — Interference with decisions of Election Tribunal — No assumption of jurisdiction, which it had not, by the tribunal — **Held** could not be interfered with either under this article or Art. 226. See Ibid, Art. 226. **AIR 1954 Sau 1 (DB).**

3 (h). Illegal exercise of jurisdiction.

●**——Art. 227** — New plea — Plea of jurisdiction not depending upon facts — Plea that order of Magistrate acting under S. 259 of Cantonments Act is not revisable under Ss. 435, 439 of Cr. P. Code — Plea not allowed to be raised — Order can be interfered with under Art. 227 of the Constitution. See Ibid, Art. 136. **1966 Cri LJ 93: (1965) 2 SCWR 972: (1965) 2 SCA 783: AIR 1966 SC 108.**

——Art. 227 — Reviewing authority acting as appellate authority and restoring election which had been set aside and substituting a fresh or second judgment — Legality — Interference. See Panchayats — U. P. Panchayat Raj Rules (1947), R. 25 (1) Cl. (viii). **1959 All LJ 223.**

——Art. 227 — Order without jurisdiction — Interference.

Where the points made out against the order of the tribunal clearly make out arbitrariness on the part of the tribunal in ordering eviction the order does not suffer from a mere error of law, but has to be set aside as being without jurisdiction. AIR 1954 SC 215, Foll. **(1959) 10 STC 394: 1959 Andh LT 654: (1959) 2 Andh WR 135.**

——Art. 227 — Illegal exercise of jurisdiction — Error in excluding evidence under S. 33, Evidence Act — Interference — High Court's power of superintendence. See C. P. Code (1908), Section 115. **AIR 1955 NUC (Andhra) 3609.**

——Art. 227 — Illegal exercise of jurisdiction — (Criminal Law Amendment Act (1952), S. 7 (2)).

When there is illegal exercise of jurisdiction by any of the Court or tribunal within the territorial jurisdiction of the High Court, the High Court in exercise of its power of superintendence under Art. 227 can interfere and set aside the orders impugned and give proper directions.

On the construction of relevant Gazette notifications it was held that the Special Judge at Gauhati who succeeded in office his predecessor had at no time acquired any jurisdiction or seisin under Section 7, Criminal Law Amendment Act, 1952, over the case in which a Circle Inspector of Police stood charged with an offence punishable under S. 161, Penal Code, and S. 5, Prevention of Corruption Act, 1947 and his orders relating to the hearing of the case were without jurisdiction. **1953 Cri LJ 1768: AIR 1953 Assam 220 (223) (Pr 11) (DB).**

——Art. 227 — Absence of jurisdiction — Interference — Proceedings for acquisition of land for extension of abadi — State Government not applying its mind as to whether any unoccupied land was available — Acquisition proceedings for occupied land are without jurisdiction. See Madhya Pradesh Land Revenue Code (2 of 1955), S. 226. **1961 NLJ (Notes) 56.**

——Art. 227 — Order of remand directing Mamlatdar to give fresh decision after taking additional evidence — Appeal to Collector against decision after remand — Collector going into merits — Interference — (Civil Procedure Code (1908), O. 41, R. 26).

By the order of remand the Collector remanded the case to the Mamlatdar for recording whatever evidence respondent No. 2, may desire to adduce for proving that the grant was of Barkhali nature and directed him to give a fresh decision. On a consideration of evidence the Mamlatdar held that Respondent 2 was not a Barkhalidar. If after the decision of the Mamlatdar when the matter came up afresh before the Deputy Collector, he went into the merits of the question and decided those facts for himself, it cannot be said that he had gone beyond his powers or beyond the order of remand which was made previously. **61 Bom LR 399: ILR (1959) Bom 1329.**

——Art. 227 — Failure to follow obligatory or mandatory requirement of S. 4 of Public Premises Act makes order null and void and without jurisdiction and likewise this omission to state reasons in notice under S. 5 makes the order null and void as being a material irregularity in exercise of the jurisdiction — High Court can suo motu take notice of illegal assumption under Art. 227. See Public Premises (Eviction of Unauthorised Occupants) Act (1958), S. 4. **(1965) 69 Cal WN 1035 (DB).**

——Art. 227 — Assessment of Sales Tax — Turnover including sales to registered dealers — Deductions not allowed on 30 items on suspicion

that transactions were not genuine — Appellate authority rejecting ground of suspicion but disallowing nine items due to defect in declaration form — Revision to Board of Revenue — Board again proceeding on suspicion and not considering reasons of lower appellate authorities or its previous decisions — Decision held arbitrary, based on jurisdictional error and set aside — Sales tax — Bengal Finance (Sales Tax) Act (6 of 1941), S. 5 (2) (a) (ii).

In assessing sales tax on a turnover which included sales to registered dealers, the Commercial Tax Officer disallowed deductions under S. 5 (2) (a) (ii) in respect of 30 items of such sales on the suspicion that the transactions were not genuine. In appeal from that order, the appellate authorities did not accept this ground of suspicion and allowed the deductions in respect of 21 items. The other 9 items were disallowed. In revision to the Board of Revenue, the Board rejected the revision. In a petition under Art. 227 of the Constitution against the order of the Board.

Held, that the Board instead of considering the grounds on which the deductions were disallowed by the lower appellate authorities, had proceeded on mere suspicion. The error, therefore, which the Board has committed is not an error on a mere question of fact or law but an error, touching and concerning jurisdiction, as by committing such error, the said tribunal has failed to exercise jurisdiction to grant deduction under S. 5 (2) (a) (ii), to which the assessee was entitled, and it had assumed jurisdiction to disallow the deduction which jurisdiction it would not have but for such error: **Held** further, that the Board of Revenue acted arbitrarily and in violation of natural justice by not adhering to their own precedents in administering this taxing statute when there was no reason or circumstance to justify any change of mind of that Tribunal. On that ground, also, the order of the Board was liable to be set aside. **67 Cal WN 179: (1964) 15 STC 186: AIR 1963 Cal 409 (415, 416) (Pt C) (Prs 20, 26) (DB).**

——**Art. 227** — Power to be exercised under by Criminal Bench of High Court must be in connection with criminal matter — Controller acting under S. 31 of W. B. Premises Tenancy Act (1956), exercises criminal jurisdiction and acts illegally in following procedure under R. 10 of the W. B. Premises Tenancy Rules — Procedure for trial of offence should be regulated by the Code of Cr. Procedure in terms of S. 5 (2) of the Code — Controller following R. 10 and inflicting fine exceeds the bound of his authority. AIR 1953 Cal 85, Foll.; AIR 1961 Cal 199, Disting. **1962 (1) Cri LJ 809 (Cal).**

——**Art. 227** — Tribunal deciding case on inadmissible evidence or flagrant violation of Evidence Act — Amounts at least to illegal exercise of jurisdiction by the tribunal. **AIR 1958 Cal 679 (680) (Pt A) (Prs 8, 9) (DB).**

——**Art. 227 — Power of interference — Bengal Village Self-Government Act (5 of 1919), S. 93 — (Penal Code (1860), S. 447).**

Where an accused was convicted by a Union Bench Court under S. 447, Indian Penal Code, when the evidence was far from establishing the ingredients of the offence of criminal trespass:

Held, that there had been a failure of justice and that the Tribunal did not act within the bounds of authority in convicting and sentencing the accused, and hence the conviction and sentence must be set aside by the High Court. **1958 Cr LJ 572 (Cal).**

——**Art. 227** — Power of superintendence — Court passing order under Calcutta Thika Tenancy Act failing to act within bounds of its authority — Order calls for interference under Art. 227 — (Tenancy Laws — Calcutta Thika Tenancy Act (2 of 1949), S. 6). **AIR 1955 NUC (Cal) 2894.**

——**Art. 227 — Board applying considerations unjustified by West Bengal Bargadars Act — West Bengal Bargadars Act (2 of 1950), S. 5 (1) (a) Proviso.**

It appears plain from the proviso that cultivation of land by Bargadar cannot be terminated even by the owner's desire under S. 5 (1) (a) of the Act 2 of 1950 except under the order of the Board. The Board's order is an indispensable element to effect termination of Bargadar's cultivation. If, however, the Board applies considerations unjustified by the Act in making its order, such an order can be revised and superintended by the High Court under Art. 227 of the Constitution. AIR 1951 Cal 574, Rel. on. **89 Cal LJ 15: 56 Cal WN 325: AIR 1952 Cal 184 (187) (Pt D) (Prs 15, 15a) (DB).**

——**Art. 227 — Special tribunal not applying correctly provisions of laws — West Bengal Bargadars Act (2 of 1950), S. 5 (1) (a).**

Where a tribunal has been set up under a Special Act, it is the duty of the High Court to see in the exercise of its power of superintendence, that such tribunal acts within the limits of the Statute creating it, and applies correctly and properly the laws it is authorised to administer. Where both the Board and the appellate Officer were applying and administering not S. 5 (1) (a) of the West Bengal Bargadars Act 1950, but that section with certain supplementary provisions added to it by themselves such an error the High Court is entitled to correct in exercise of its powers under Art. 227. **56 Cal WN 320: 89 Cal LJ 196: AIR 1951 Cal 574 (576) (Pt B) (Pr 10) (DB).**

——**Art. 227 — Powers of superintendence—When exercised — Decree for divorce — Non-compliance with Ss. 13 and 23 of Act 25 of 1955 — Validity — (Hindu Marriage Act (1955), Ss. 13 and 23).**

Under Art. 227 of the Constitution, it is open to the High Court, in the exercise of its powers of superintendence, to set aside a decree passed by a Subordinate Court, if it is found that the decree is in excess of the legitimate authority of that Court.

Under the provisions of the Hindu Marriage Act, 1955, a Court can grant a decree for divorce only, if certain conditions laid down in Ss. 13 and 23 of that Act are fulfilled, and not otherwise. Where, therefore, a Court grants a decree for divorce, without going into the evidence and without giving a judicial finding on the plea of adultery, the Court exercises a jurisdiction not vested in it by law, and it is thus a case where the High Court must, in the exercise of its powers of superintendence, interfere. AIR 1954 SC 215, Rel. on. **AIR 1958 Him Pra 15 (16) (Pt A) (Pr 7).**

——**Art. 227** — Municipalities — Travancore City Municipal Act (4 of 1116), S. 91 (1) — Charges of irregularities against corporation officer — Order of acquittal passed by Mayor after enquiry — Subsequent direction by Government to revive disciplinary action — Order taking action on same charges. **Held** in excess of authority and quashed. See Municipalities — Travancore City Municipal Act (4 of 1116), S. 91 (1). **ILR (1960) Ker 519.**

——**Art. 227** — Jurisdiction — Absence of — Order of Tribunal striking out various paragraphs in election petition on ground of vagueness and defective particulars without calling upon petitioner to supply other particulars is without juris-

diction and is liable to be set aside under Art. 227. **ILR (1959) Mad 256: 19 ELR 260: 72 Mad LW 285: AIR 1959 Mad 288 (294) (Pt C) (Pr 37).**

——Art. 227 — Illegal exercise of jurisdiction — Extra Assistant Commissioner trying case under S. 165 (A), Penal Code.

The Court of Judicial Commissioner, Manipur, has power to interfere under Art. 227, where there is illegal exercise of jurisdiction by any Court or any tribunal within the territories of Manipur State. Hence where an Extra Assistant Commissioner is proceeding with the trial of an accused under S. 165 (A), Penal Code, even though he has no jurisdiction to try it, the Judicial Commissioner's Court, Manipur, in the exercise of its power of superintendence is bound to interfere and give proper directions: AIR 1953 Assam 220, Rel. on. **1956 Cri LJ 240: AIR 1956 Manipur 9 (11) (Pt E) (Pr 15).**

——Art. 227 — Jurisdiction of Prescribed Authority — Election petition — Authority should scrutinize votes on basis of which returned candidate was elected and not those of petitioner — Authority permitting challenge to validity of votes secured by petitioner — Order is in excess of jurisdiction — High Court can interfere under Art. 227. See Panchayats — Punjab Gram Panchayat Amending Act (1962), S. 13 (0) (1) (d) (ii). **(1964) 66 Punj. LR 1196.**

——Art. 227 (1) — Applicability — Order of Collector fixing standard rent under S. 6 (2), Rent Control Order — Interference by High Court — (Rajasthan) Rent Control Order, S. 6 (2).

The powers of revision under Art. 227 can be invoked in cases of grave dereliction of duty for which no other remedy is available and which will have serious consequences if not remedied. In cases where grave injustice results by ignoring the provisions of law it becomes the duty of the High Court to interfere and to issue a proper direction to the Court or the tribunal to exercise its jurisdiction in accordance with the provisions of law.

Where both the parties pleaded the existence of data on which basic rent could be fixed by the Controller and the Collector but instead of arriving at the basic rent they chose to fix standard rent under S. 6 (2) of the (Rajasthan) Rent Control Order instead of in accordance with the second schedule of the Order :

Held, that both of them had ignored the provisions of S. 6 (2) and of tthe second schedule and thus committed an illegality in the exercise of their jurisdiction.

(The order of Collector was set aside and he was directed to fix standard rent after considering the provisions of the second schedule). **AIR 1952 Raj 3 (4) (Prs 5, 6) (DB).**

3 (1). Refusal or failure by lower Court to exercise jurisdiction or to do its duty.

● **——Art. 227** — Scope — Possession of disputed land obtained from respondent in execution of award of Debt Adjustment Court and without order from Mamlatdar as required by S. 29 (2) of Bombay Tenancy and Agricultural Lands Act— Respondent unlawfully dispossessed — Revenue Authorities refusing to give respondent assistance — Illegal refusal to exercise jurisdiction—High Court is competent to exercise jurisdiction under Art. 227. Dahya Lala v. Rasul Mahomed Abdul Rahim, **1962 Nag LJ 682 : 40 Mys LJ 958 : 65 Bom LR 328 : (1963) 3 SCR 1 : (1963) 2 SCJ 450 : AIR 1964 SC 1320 (1323) (Pt B) (Pr 8).**

● **——Art. 227 — Refusal to exercise jurisdiction vested under East Punjab Urban Rent Restriction Act, 1949.**

Where the lower Courts realised the legal position but in effect declined to do what was by S. 13 (2) (i) of the East Punjab Urban Rent Restriction Act, 1949, incumbent on them to do and thereby refused to exercise jurisdiction vested in them by law it was a case which called for an interference by the Court of the Judicial Commissioner under this article and it acted quite properly in doing so. Waryam Singh v. Amarnath, **1954 SCJ 290 : 1954 SCA 334 : 1954 Mad WN 424: 1954 SCR 565 : AIR 1954 SC 215 (217) (Pt C) (Pr 14).**

——Art. 227 — Failure to exercise jurisdiction — (Houses and Rents — U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S. 3).

Where a revision application is made to the revisional authority against the order of Rent Control and Eviction Officer, and the authority without considering the merits of the case, dismisses the application as infructuous due to the fact that a civil suit for eviction has been instituted by a party to whom permission was granted, the authority fails to exercise the jurisdiction and a writ can issue to quash the order of dismissal. 1958 ALJ 724, Foll. **AIR 1959 All 391 (392) (Pr 6) (DB).**

——Art. 227 — Jurisdiction under — High Court when can interfere with order of inferior Tribunal — Failure by revenue tribunals while rejecting petition for eviction of tenant, to consider real and substantial matters in controversy and to assign reasons for their orders — Orders amount to declining to exercise jurisdiction and suffer from error apparent on the face of record and are liable to be quashed under Art. 227 — Andhra Tenancy Act (18 of 1956), Ss. 13, 16.

The High Court under Art. 227 of the Constitution does not act as a Court of Appeal and consequently a mere error in the decision of the inferior tribunal cannot be a ground for interference. But there has always been an important exception to this general rule. This is, when the decision of the inferior Tribunal is vitiated by an error of law, or other error on the face of the record, the proceedings of the inferior Tribunal can certainly be quashed under the supervisory jurisdiction which undoubtedly vests in the High Court under Art. 227. When the inferior Tribunal gives grounds of its order, or makes what is commonly known as a speaking order and these grounds are untenable in law, the order is erroneous on its face and will have to be quashed by the Court. (1952) 2 All ER 122, Applied.

The Tahsildar and the Revenue Divisional Officer appointed under section 16 of the Andhra Tenancy Act to decide disputes like eviction of tenant by landlord under section 13 of the Act may not be civil Courts but they are undoubtedly Tribunals which are of a quasi-judicial nature and are therefore, expected to act in accordance with the procedure and the law relevant for the disposal of the disputes before them. The purpose of S. 16 of the Act is to enable persons to receive proper and adequate reasons for orders passed by any such Tribunal. These reasons must not only be intelligible but must also deal with substantial points which had been raised. If the reasons assigned by the Tribunal are inadequate and do not comply with the purpose of the aforesaid provisions of the Andhra Tenancy Act, it would certainly amount not only to declining the exercise of the jurisdiction, but also to an error of law on the face of the order. (1963) 2 WLR

1309. Rel. on. **AIR 1964 Andh Pra 528 (530) (Pt A) (Pr 7).**

——**Art. 227** — Scope — Property not belonging to judgment-debtor — Board has no jurisdiction to sell property — Failure of Board to exercise jurisdiction under S. 41 — High Court can interfere in revision. See Debt Laws — Hyderabad Jagirdars Debt Settlement Act (12 of 1952), S. 9 (1). **1961 Andh LT 169: (1961) 1 Andh WR 100.**

——**Art. 227** — Interference — Failure to exercise jurisdiction — Case under Payment of Wages Act. See Civil P. C. (1908), S. 115 (b). **AIR 1959 Assam 13 (DB).**

——**Art. 227** — Order under Minimum Wages Act —Authority ignoring question of limitation deciding case on merits—Interference. See Civil P. C. (1908), S. 115. **AIR 1958 Assam 1 (DB).**

——**Art. 227** —High Court's power of interference —Application under S. 15, Payment of Wages Act, made beyond limitation — Condonation of delay — Authority postponing decision on such question till consideration of claim on merits—Amounts to flagrant disregard of rules of procedure — Patent error of jurisdiction — Order quashed. See Ibid, Art. 226. **AIR 1964 Bom 89 (DB).**

——**Art. 227**— C. P. and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 — Order refusing permission to landlord to terminate tenancy — Appellate authority allowing landlord's appeal but not making operative order, or considering the question of suitability of premises in occupation of landlord — Order was quashed and case sent back for fresh decision. See Ibid, Art. 226. **ILR (1960) Bom 795.**

——**Art. 227** — Appellate authority confirming order rejecting nomination paper — Authority acting arbitrarily without applying its mind to real question involved — **Held,** there was a failure to exercise jurisdiction by the appellate authority. **64 Cal WN 1043 : ILR (1961) 1 Cal 356 : AIR 1962 Cal 53 (60) (Pt C) (Prs 28, 29) (DB).**

——**Art. 227** — Dismissal of appeal under S. 15(b), E. P. Urban Rent Restriction Act — Order passed on erroneous conception of law of limitation — Interference under power of superintendence. See Limitation Act (1908), S. 12 (2). **AIR 1955 Him Pra 12.**

——Art. 227 — Powers of superintendence — Scope.

The powers of superintendence of the High Court over subordinate Courts under Art. 227 of the Constitution correspond more to those laid down under S. 107 of the Government of India Act, 1915, than those under S. 224 of the Government of India Act, 1935, since the limitation placed upon the exercise of powers of superintendence by sub-section (2) of S. 224 of the 1935 Act did not find a place in the 1915 Act and are absent from the present Art. 227 of the Constitution. It was held that where a lower Court has failed to do its duty and dismissed a suit arbitrarily for default though in fact there was no default and there has been no neglect on the part of party, it was a fit case for interference under Art. 227. **AIR 1952 Him Pra and Bilaspur 24 (26) (Pt C) (Pr 9).**

——Art. 227 — Rectification of dereliction of duty — (C. P. Code, O. 20, R. 4 and O. 41, R. 31).

Where a case is set up by one party and there is evidence led in support of such case, the failure of the presiding officer of the Court to bestow any thought or to consider the matter, would be regarded as a dereliction of duty. Thus, disposal of a case on an alternative but minor ground without considering and giving a finding on the primary ground of relief sought in the suit amounts in law to a failure or a dereliction of the duty on the part of the Court. The High Court has ample powers under Art. 227 of the Constitution to have such defect rectified. AIR 1952 SC 179, Rel. on. **ILR (1953) Hyd 255 : AIR 1953 Hyd 190 (191) (Pr 3) (DB).**

——**Art. 227**— Powers of High Court — Industrial Tribunal's failure to consider piece of evidence— Award will be quashed and direction to reconsider evidence will be issued under Art. 227. See Ibid, Art. 226. **AIR 1961 Ker 92 (DB).**

——**Art. 227** — Proceeding for fixation of fair rent — Failure of Court to enquire into question of gross produce — Voluntary agreement regarding fair rent treated as conclusive — Order of Court held not proper and quashed. See Tenancy Laws — Malabar Tenancy Act (14 of 1930), S. 16. **1960 Ker LT 590.**

——**Art. 227** — Powers under can be exercised where there is grave dereliction of duties for which no other remedy is available. **AIR 1955 NUC (Madh B) 2383.**

——**Art. 227**— Amount received by Chairman of Society for repayment to another body not vouched by pucca receipts of that body treated as advance to Chairman, who asked for time to repay the amount — Claim by society under Section 67, M. B. Co-operative Societies Act — Absence of Chairman to appear before the Assistant Registrar resulting in ex parte award — Writ petition alleging failure of justice for non-framing of issue by Assistant Registrar — **Held,** in view of admission of liability, non-framing of issues, did not cause failure of justice. See M. B. Co-operative Societies Act (9 of 1955), S. 67. **1964 MPLJ (Notes) 219.**

——**Art. 227** — High Court remitting the case to Regional Transport Authority with specific directions — Regional Transport Authority is bound to carry out —R. T. A. passing another order acting contrary to directions — Order quashed. See Ibid, Art. 226. **1963 MPLJ (Notes) 178.**

——**Arts. 227, 226** — Motor Vehicles Act (1939), S. 60—Order granting permit to B in preference to A — Appeal by A on ground that B had obtained permit by fraud—Proper remedy — S. T. A. refusing to enquire into matter — Does not amount to failure to exercise jurisdiction. See Motor Vehicles Act (1939), S. 60. **AIR 1959 Madh Pra 320.**

——**Art. 227** — Scope — Judgment perfunctory— Interference. See Houses and Rents — M. B. Sthan Niyantran Vidhan Smt 2006 (15 of 1950), S. 9 (3). **1959 Jab LJ 75.**

——Art. 227 — Powers of High Court — Power of superintendence — When exercised.

The powers under Art. 227 are of an extraordinary and discretionary nature, and ought to be restricted to cases of grave dereliction of duty for which no other remedy is available and which would have serious consequences if not remedied. These powers cannot be claimed as a matter of right and ought to be exercised only in exceptional cases, and the High Court will take into consideration the conduct of the party which invokes its powers.

Held, on facts that the case was not fit for interference under Art. 227. **AIR 1958 Manipur 41 (44) (Pt C) (Prs 15, 16, 17).**

——**Art. 227** — Failure to exercise jurisdiction— Interference. See Sales-Tax — Mysore Sales-tax Act (25 of 1957), S. 40. **AIR 1959 Mys 201 (DB).**

——**Art. 227** — Appeal on both tenable and untenable grounds — Appeal allowed on tenable

grounds — Whether order amounts to one without jurisdiction. See Ibid, Art. 226. **1952 Nag LJ (Notes) 29.**

——**Art. 227** — Jurisdiction — Collector refusing to make reference under S. 18 (1), Land Acquisition Act — Interference by writ. See Land Acquisition Act (1894), S. 18. **AIR 1952 Orissa 98.**

——**Art. 227** — Making of interim payment of compensation — Collector failing to perform statutory duty — Writs can be issued. See Ibid, Art. 225. **1960 BLJR 297.**

——**Art. 227 — Applicability — Refusal to exercise jurisdiction vested by law — (Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), Ss. 12 (1) and 11 (1) (b)).**

Where a tenant by his non-compliance of the mandatory provisions of S. 12 (1), Bihar Buildings (Lease, Rent and Eviction) Control Act made himself liable to be evicted under S. 11 (b) of that Act it is incumbent on the Rent Control authorities to make an order for ejectment of the tenant. If by their orders they in effect decline to do so they thereby refuse to exercise a jurisdiction vested in them by law calling for interference by the High Court under its power of superintendence under Art. 227 of the Constitution. **1956 BLJR 658: ILR 35 Pat 894: AIR 1957 Pat 206 (209) (Pt D) (Pr 28) (DB).**

——**Art. 227 — Refusal to exercise jurisdiction by wrongly entertaining inconsistent plea.**

Where the rent control authorities commit the legal error of permitting the tenant to raise an inconsistent plea and decline to exercise jurisdiction vested in them under Rent Control Act the more appropriate article under which remedy is to be given is Art. 227 and not Art. 226. **1955 BLJR 47: AIR 1955 Pat 198 (198, 199) (Prs 3, 4) (DB).**

——**Art. 227** — Patiala and East Punjab States Union Urban Rent Restriction Ordinance, S. 13 (2) Proviso — Express provisions of, ignored by Rent Controller and the Deputy Commissioner— Amounts to an omission or refusal to exercise jurisdiction given by law. **ILR (1952) Patiala 345: AIR 1952 Pepsu 174 (177, 178) (Pt C) (Pr 11).**

——**Art. 227** — Labour Court which was bound to give effect to provision of Bank award failing to do so — Amounts to an illegal failure to exercise jurisdiction — Interference under article is necessary. See Industrial Dispute — Bank (Sastry) Award, Section 3, Paragraph 521 (2) (c), Direction 2 (c). **(1963-64) 24 FJR 154 (Punj).**

——**Art. 227** — Trial of warrant case — Magistrate refusing to decide an issue of law as preliminary issue — He does not act in contravention of Criminal P. C. See Criminal P. C. (1898), S. 252. **AIR 1952 Punj 51.**

3 (j). Refusal or failure to proceed with case.

——**Art. 227 — Tribunal going wrong in matter of grave importance to public — (Civil P. C. (1908), S. 115).**

Held, that even though the Court were to take a strict view of S. 115, C. P. Code, that no question of jurisdiction arose in the decision of the Chief Judge of the Small Causes Court in wrongly dismissing the suit of the petitioner for the return of the amount recovered by the Traffic Supervisor under S. 460-II (4) of the Bombay Municipal Corporation Act (3 of 1888), the High Court would if necessary have exercised its power under Art. 227 of the Constitution to correct a Court or a tribunal, which had gone wrong in a matter which was of grave consequence to the public at large in the city of Bombay. **56 Bom LR 264: ILR (1954) Bom 727: AIR 1954 Bom 427 (430) (Pt D) (Pr 8).**

——**Art. 227** — Court of Tribunal by dismissing application for relief refusing to do its duty — Other convenient modes of redressing the grievance resulting from refusal not readily available to aggrieved party — High Court will interfere to direct the Court or Tribunal to do its duty or to remedy the injustice itself. **58 Cal WN 963: 96 Cal LJ 98: ILR (1956) 2 Cal 16: AIR 1954 Cal 580 (582) (Pt A) (Prs 7, 9) (DB).**

3 (ja). Bias.

● ——**Art. 227 — Powers of High Court — Order under S. 23, Punjab Gram Panchayat Act — Interference on ground of bias of panchas.**

The petitioners who were convicted for an offence under S. 23 of the Punjab Gram Panchayat Act did not in the first instance choose to appear before the Panchayat, but in the proceedings under section 23 of the Act they did appear though they did not avail of the opportunity of producing defence.

Per S. B. Capoor, J.: — **Held,** that in the circumstances the 'order made against them cannot be set aside in the exercise of High Court's extraordinary jurisdiction under Art. 227 merely because some allegations are made as to some of the Panchas being biased against the petitioners. Narain Singh Hira Singh v. The State. **61 Punj LR 93: ILR (1958) Punj 1696: 1958 Cr LJ 1220: AIR 1958 Punj 372 (377) (Pt D) (Pr 17) (FB).**

3 (k). Conflict of jurisdiction.

——**Arts. 227, 226 — Conflict of jurisdiction — Order of remand — Writ petition — Maintainability.**

It is well settled that, where an order is made which is an order of remand, no petition by way of writ would lie to the High Court under Art. 227. Where however, the question raised was whether the Mamlatdar had or had not jurisdiction under Bombay Act (67 of 1948) to decide the question, the question being one of jurisdiction, could be permitted to be argued. **59 Bom LR 1036: ILR (1957) Bom 818: AIR 1958 Bom 62 (66) (Pt D) (Pr 8) (DB).**

——**Arts. 227 and 226 — Applicability — Conflict of jurisdiction between Civil and Revenue Courts — Power of Judicial Commissioner's Court of V. P. to resolve conflict — (Civil P. C. (1908), S. 9) — (Tenancy Laws — Rewa Land Revenue and Tenancy Code S. 239 (g)).**

A plaint presented to a Civil Court was returned by the former Chief Court of Rewa for presentation to the Revenue Court. The plaintiff prosecuted his suit in the Revenue Court but ultimately the Board of Revenue held that the suit was cognizable only by the Civil Court. The plaintiff thereupon applied under Arts. 226 and 227, Constitution of India praying for direction to the proper Court to dispose the suit on merits.

Held, (i) that a conflict of jurisdiction having arisen between the Civil Courts and Revenue Courts, and there being no other remedy the matter has to be dealt with by the Judicial Commissioner's Court not under Art. 226 which is inapplicable, but under the general supervisory powers under Art. 227 which can be exercised

over the Board of Revenue also. AIR 1952 VP 10, Rel. on.

(ii) Even under S. 239 (g) of the Rewa Land Revenue and Tenancy Code such a conflict could be finally resolved by the Durbar which was the highest Court of appeal in the former Rewa State. However, after 1948 when the durbar ceased to be the highest judiciary, that position was occupied by the High Court and the J. C.'s Court of V. P. Thus the only rational interpretation of section 239 of the Rewa Code in the present set up is that such conflict should be resolved by the highest Court of general jurisdiction for the time being.

(iii) Consideration of the question on general lines also leads tto the same result. The civil Courts have general jurisdiction to try all civil cases; any other tribunal of special nature including the Board of Revenue and its subordinate Courts, derive their powers from special statutes. Cases which are not fully covered by the statute would automatically go to the Courts of general jurisdiction which are the repositories of residuary jurisdiction. Therefore, in the event of doubt or conflict the highest Court of general jurisdiction should decide whether it should itself exercise the jurisdiction or the Court of special jurisdiction should exercise it. AIR 1918 Mad 786, AIR 1940 Rang 84 and AIR 1941 Lah 234, Ref. **AIR 1952 Vindh Pra 74 (75, 76) (Prs 3, 4, 5, 8).**

3 (l). Illegal orders.

——**Art. 227** — Interpleader Suit — Amendment seeking inclusion of certain property as suit property and addition of certain parties — Order allowing amendment not in violation of any rule of law — Interference under Art. 227 held not called for. See C. P. Code (1908), S. 88. **AIR 1961 All 559.**

——**Art. 227** — Accepting nomination paper of person not attaining age 30 — There is gross failure to comply with Act. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 12 c (1) (b) (iii). **1957 All LJ 325.**

——**Art. 227 — Interference with illegal conviction by Panchayati Adalat — (U. P. Panchayat Raj Act (26 of 1947), S. 52 (1) (a).)**

Panchayati Adalat has no jurisdiction to entertain a complaint and try a case where the allegations in the complaint clearly make out an offence under Penal Code which is not mentioned in S. 52 (1) (a), U. P. Panchayat Raj Act (1947). **1953 All WR (HC) 483 : 1953 All LJ 559 : 1953 Cri LJ 1852 : AIR 1954 All 8 (9) (Pr 3).**

——**Art. 227** — Criminal case in Panchayati Adalat — Some panches not signing order-sheet on same date — Omission mere irregularity —No interference — (U. P. Panchayat Raj Act (1947), S. 83). **1953 All WR (HC) 53: 1953 All LJ 93: 1953 All Cr R 26 : 1953 Cri LJ 751 : ILR (1954) 1 All 145 : AIR 1953 All 347 (348) (Pt B) (Pr 6).**

——**Art. 227** — Illegal order — Sale of defaulter's property by auction — Failure to publish notification — Sale is void and not merely voidable — High Court can set it aside under Arts. 226 and 227. See Hyderabad Land Revenue Act (8 of 1317-F), S. 130. **(1961) 1 An WR 160.**

——**Art. 227 — Order under S. 39, Punjab Village Panchayat Act — (Punjab Village Panchayat Act (11 of 1939), Ss. 39, 54).**

An order passed by District Magistrate under S. 39 of the Punjab Village Panchayat Act can be revised by the High Court on the ground of its not being in consonance with law. AIR 1944 Lah 218; AIR 1952 Pepsu 130; AIR 1952 All 788, Ref. **1954 Cr LJ 1309 : AIR 1954 Bilaspur 5 (6) (Pt B) (Pr 2).**

——**Arts. 227 and 226** — Order contrary to law — Industrial Disputes Act (1947), S. 25-G —Question whether there was single industrial establishment or different industrial establishments —Conclusion drawn from facts as found by Industrial Tribunal is not mere question of fact — Order passed by Tribunal, if not justified in view of S. 25-G, can be challenged and set aside in application under Arts. 226 and 227, as being contrary to law. See Ibid, Art. 226. **AIR 1961 Bom 277.**

——**Art. 227** — Power of superintendence — Bombay Revenue Tribunal taking particular view of law — Different view taken by High Court subsequently — Tribunal refusing to change its previous view when matter came before it for second time —Interference with Tribunal's order by High Court valid — (Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), Ss. 34, 76 and 78) (after Amendment by Act 33 of 1952). **60 Bom LR 613 : ILR (1958) Bom 894 : AIR 1958 Bom 474 (476, 477) (Prs 6, 7, 8, 9, 10) (DB).**

——**Art. 227** — Criminal P. C. (1898), S. 491 — Proceedings under Lunacy Act entirely illegal — Proceedings quashed under Art. 227 of the Constitution — Proceedings put forward for detaining alleged lunatic — Rule for Habeas Corpus made absolute. See Criminal P. C. (1898), section 491. **AIR 1963 Cal 261.**

——**Art. 227** — Duty of High Court to consider propriety of lower Court's order pointed out. **AIR 1955 NUC (Cal) 5332.**

——**Art. 227 — Interference when election is unlawfully set aside.**

It is only meet and proper that when an election has been unlawfully set aside and the matter has come to the High Court under Art. 227 for necessary redress, there being no other remedy open or available the illegal order should not be allowed to stand. AIR 1952 Cal 526, Rel. on. **58 CWN 262 : ILR (1955) 1 Cal 473 : AIR 1953 Cal 731 (733) (Pt B) (Pr 16) (DB).**

——**Art. 227** — Committal order under S. 337 (2-A), Criminal P. C. — Quashing of— Jurisdiction of High Court. See Criminal P. C. (1898), S. 337 (2-A). **1961 (1) Cr LJ 496 (2) : AIR 1961 Guj 49.**

—**Art. 227** — Proceedings under S. 145, Criminal Procedure Code — Petitioner inviting adjudication of his status — Right to challenge decision as being illegal. See Ibid, Art. 226. **1959 Cr LJ 1082 : AIR 1959 Ker 275 (DB).**

——**Art. 227 — Interference — Grounds — Illegality.**

Plaintiff filed a suit before Nyaya Panchayat. The Nyaya Panchayat sought opinion of the Deputy Commissioner regarding limitation of the suit. The Deputy Commissioner forwarded it to the Civil Judge who was revisional authority. The Civil Judge opined that the suit was barred by limitation. The Nyaya Panchayat accordingly dismissed the suit.

Held, that if plaintiff invoked jurisdiction of one of the two Courts which may have jurisdiction to try the suit, and he had already made his election he cannot be permitted subsequently to say that the particular Court had no jurisdiction. The hearing of the revision therefore amounts to an illegality. **1959 MPLJ (Notes) 233.**

——**Art. 277** — Scope — In exercise of writ jurisdiction illegal order coming to notice of High Court — High Court can set it aside under Art. 227. See Ibid, Art. 226. **AIR 1962 Manipur 14.**

——**Arts. 227, 226** — Motor Vehicles Act (1939) Sections 57 (3), 63 (3), Proviso, 43 (4), 44 (4) — Grant of inter-State permits—Procedure — Procedure for grant of permits in S. 57 not dispensed with by Proviso to S. 63 (3) — Directions issued by S. T. A. incorporating conditions for grant of inter-State permits imposed by inter-State Agreement, violated by R. T. A. — Procedure in S. 57 also violated — Action of S. T. A. in forwarding recommendations of R. T. A. for grant of permits to counter-signing authority in other State held illegal and ineffective — Inter-State permit issued by Mysore State — Writ petition — Territorial jurisdiction of Mysore High Court. See Motor Vehicles Act (1939), S. 57 (3). **AIR 1964 Mys 26 (DB).**

——**Art. 227 — Scope — Railway Establishment Code (Discipline and Appeal Rules), R. 1707 (d), Proviso — Nature of — Dismissal of railway employee based on findings in departmental enquiry — Non-compliance with proviso to R. 1707 (d) by enquiry committee —Effect.**

The requirement of Proviso to Rule 1707 (d) of the Discipline and Appeal Rules of the Indian Railway Establishment Code is of a mandatory character and failure of the Committee of inquiry to record special reasons in writing for departing from the normal procedure of examining the witnesses in presence of the railway servant concerned is not merely an irregularity but an illegality which vitiates the finding of the committee of inquiry against the railway servant concerned. An order of dismissal based on findings of the enquiry committee which failed to comply with the provisions of R. 1707 (d) is illegal and can be set aside in exercise of powers under Art. 227 of the Constitution. **(1962) 1 Lab LJ 517: 1961 BLJR 791: AIR 1962 Pat 209 (210) (Pr 3) (DB).**

——**Art. 227 — Order passed in flagrant violation of law.**

High Court has ample authority under Art. 227 to interfere where the inferior Court or tribunal has passed an illegal order, ignored clear and mandatory provisions of a statute or acted in flagrant violation of law. **AIR 1956 Pepsu 83 (85, 86) (Pt B) (Prs 5, 8) (DB).**

——**Arts. 227, 226** — Income-tax Act (1961), sections 210 and 211 — Notice for payment of advance tax — Provisional assessment made does not render notice ipso facto invalid — Application under Arts. 226 and 227 rejected. See Ibid, Art. 226. **(1964) 66 Pun LR 972.**

——**Art. 227** — Revision filed before Financial Commission — No period of limitation prescribed by law — Revision dismissed as filed beyond 90 days of the communication of the Order — Order not actually communicated — Revisional order is vitiated — Order set aside — Case remanded under Art. 227 of the Constitution. See Sales-tax — East Punjab General Sales-tax Act (46 of 1948), S. 21 (3). **(1961) 63 Pun LR 495.**

3 (m). Patently erroneous decisions.
(i) Patent errors — Test of.
(ii) Errors of law apparent on record.
(iii) Patent errors of fact.

3 (m). Patently erroneous decisions.

——**Art. 227** — Powers of High Court under — Extent — Decision of Returning Officer — Interference with in writ jurisdiction — Power to correct decision which is patently wrong. See Ibid, Art. 226. **AIR 1963 Bom 183 (DB).**

——**Art. 227** — Writ petition under — Error not apparent on face of record in circumstances of case — High Court declined to interfere. See **Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (1948), S. 63. 1963 Mah LJ (Notes) 71 (Bom).**

——**Art. 227** — Termination of service of employee under standing orders on ground of superannuation — Application by employee to Labour Court challenging such order —No previous application to employer as required by proviso to S. 31 (3) read with R. 34 — Labour Court has no jurisdiction to entertain application — Order of termination set aside by Labour Court — Revisional jurisdiction of Industrial Court — Order of Labour Court confirmed by Industrial Court— Order is patently erroneous — Order quashed. See M. P. Industrial Relations Act (28 of 1960), S. 31 (3). **AIR 1964 Madh Pra 156 (DB).**

——**Art. 227** — Certiorari when can be issued — 'Error on the face of record' — What is. See Ibid, Art. 226. **1963 Jab LJ 795.**

——**Art. 227** — Powers of High Court — Error on face of record — High Court when will or will not interfere. See Ibid, Art. 226. **AIR 1962 Madh Pra 12 (DB).**

——**Art. 227** — Discharge of workman — Claim against employer for 14 days' wages, leave wages and gratuity — Enforcement of claim — Refusal by Industrial Court — Application under Art. 227, Constitution of India — No error apparent on face of record —Maintainability. See Bombay Industrial Relations Act (11 of 1947), S. 78 (1) (c). **1959 MPC 641.**

——**Art. 227 — Order of Master on question of court-fee.**

The jurisdiction of the High Court under Art. 227 cannot be invoked to set aside or correct an order passed by the Master on the original side in proceedings preferred on appeal against a decree judgment on the original side in the matter of court-fee payable on the memorandum of appeal against which order there is no appeal under the Court-fees Act. There is no error apparent on record to justify interference under Art. 227. **(1957) 2 Mad LJ 387: 70 Mad LW 841: 1957 Mad WN 600: AIR 1958 Mad 242 (243) (Prs 4, 6).**

——**Art. 227** — Error apparent on face of record — Revenue case — Interference. See Ibid, Art. 226. **AIR 1955 NUC (Nag) 1428 (DB).**

——**Art. 227** — Error apparent on face of record — Interference. See Ibid, Art. 226. **1961 BLJR 550.**

——**Art. 227** — Error apparent on face of record — Interference. See Ibid, Art. 226. **1958 Cr LJ 69: AIR 1958 Pat 7 (DB).**

——**Art. 227** — Error apparent on face of record. See Industrial Disputes Act (1947), S. 2 (rr). **(1963) 65 Punj LR 593.**

——**Art. 227** — Certiorari — Error not apparent on face of record — Interference not desirable— Powers of High Court under Art. 227 — Civil P. C. (1908), S. 115. See Ibid, Art. 226. **(1961-62). 20 FJR 270: (1961) 2 Lab LJ 615 (Punj).**

——**Art. 227** — Error apparent on face of decision— Dictum laid down in AIR 1954 SC 215, Foll. **(1958) 60 Pun LR 650.**

3 (m) (i). Patent errors — Test of.

——**Art. 227 — Order when can be said to be erroneous on its face.**

When an inferior tribunal gives grounds of its order or makes what is commonly known as a speaking order and these grounds are untenable in law, the order is erroneous on its face.

Failure by Revenue Tribunal while rejecting petition for eviction of tenant, to consider real and substantial matters in controversy and

to assign reasons for their order — Order suffers from error apparent on the face of the record. **AIR 1964 Andh Pra 528 (529, 530) (Pt A) (Prs 6, 7).**

——**Art. 227**— Error apparent on face of record. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 64 (3). **AIR 1954 Bom 511 (DB).**

——**Art. 227 — Error apparent on face of record — Test of — Order of Labour Court —Order of discharge interpreted as order of dismissal — Held there was manifest error apparent on face of record —Order set aside under Art. 227.**

The test that the error should be self-evident and should not need an elaborate examination of the record may be satisfactory as a working test of an error apparent on the face of record in a large majority of cases. AIR 1961 SC 970, Rel. on.

Thus where an order discharging an employee proceeded to order payment of 13 days' wages in lieu of notice, and though there was nothing on the record which would justify the Presiding Officer of the Labour Court in thinking that the manager did not see any distinction between the word 'discharged' and 'dismissed', he held that the said order of discharge was in fact an order of dismissal for misconduct which disentitled the employee for receiving any gratuity.

Held, that there was a manifest error which was apparent on the face of the record and that there was no reason why the High Court when finding such error, should not interfere in the exercise of its powers under Art. 227 of the Constitution. **(1961) 2 Guj LR 649 : (1961) 2 Lab LJ 40 : (1961-62) 20 FJR 477 : AIR 1962 Guj 33 (39) (Pt C) (Prs 17, 18, 19) (DB).**

——**Art. 227** — Scope and applicability — Court or tribunal approaching matter in wrong manner — Exercise of powers under Art. 227 — (Tenancy Laws — Kanoon Ryatwari; Gwalior; State, Samvat 1974; Ss. 137 and 163). **AIR 1957 Madh Bha 79 (82) (Pt C) (Pr 6) (DB).**

——**Art. 227** — Error apparent on face of record — Inherent lack of jurisdiction in Tribunal in passing certain order — Objection to jurisdiction though not taken before Authority relief in writ-petition is not barred. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 22. **1965 Cur LJ 872 (Punj).**

—— **Arts. 227, 226**—Displaced Persons (Compensation and Rehabilitation) Act (1954), Ss. 19 and 40 —Displaced Persons (Compensation and Rehabilitation) Rules, 1955, R. 102 (d) — Cancellation of erroneous allotment — Power of Managing Officer and Chief Settlement Commissioner — Failure to exercise such power — Constitutes error, apparent on face of record. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 19. **(1963) 65 Punj LR 59.**

3 (m) (ii). Errors of law apparent on record.

——**Arts. 227 and 226** — Error of law apparent on face of record — Order as to applicability of S. 50, Administration of Evacuee Property Act — (Administration of Evacuee Property Act (1950), S. 50 (2)). See Ibid, Art. 226. **AIR 1959 All 574.**

——**Art. 227** — Findings arrived at on considerations extraneous to issue — Nature of error — Powers of High Court in such cases. See Minimum Wages Act (1948), S. 3. **AIR 1960 Assam 97 (DB).**

——**Art. 227** — Error of law apparent on face of record — Order held liable to be set aside. See Maharashtra Co-operative Societies Act (24 of 1961), S. 2 (13). **AIR 1965 Bom 191 (DB).**

——**Art. 227** — Powers of High Court — Labour Commissioner or Industrial Court acting on consideration wholly irrelevant under S. 16 — Finding is perverse — Order liable to be a set aside. See C. P. and Berar Industrial Disputes Settlement Act (23 of 1947), S. 16. **1960 Nag LJ (Notes) 72.**

——**Art. 227** — Tribunal not setting aside arbitration on ground of bar of limitation — Whether an error which entitles interference under Art. 227. See Bombay Co-operative Societies Act (7 of 1925), S. 54-A. **AIR 1957 Bom 178 (DB).**

——**Art. 227** — Bengal Public Demands Recovery Act (1913), Ss. 7, 8 — Rule 75 — Certificate debtor setting property upon tenant after receipt of notice under S. 7 — Settlement is void — Creation of tenancy is transfer of property — Certificate purchaser gets property free of such encumbrance — Revenue Board holding contrary commits error of law — High Court will quash order under Art. 227 of Constitution. See Bengal Public Demands Recovery Act (1913), S. 7. **AIR 1965 Cal 492 (DB).**

——**Art. 227** — Powers under, scope of — Error on face of record — Interference under Art. 227 — Bengal Public Demands Recovery Act (1913), Ss. 53, 27—Jurisdiction of Revenue Board under S. 53 — Refusal to interfere with rejection of application under S. 27 — Error held apparent on face of record. **69 Cal WN 7: (1965) 58 ITR 579: AIR 1965 Cal 492 (496) (Pt A) (Prs 21, 22, 23).**

——**Art. 227** — Order under S. 32-G (4) of Bombay Tenancy and Agricultural Lands Act (67 of 1948) passed without considering provisions of law — Order disclosed error of law apparent on face of record and must be set aside. **(1965) 6 Guj LR 810: ILR (1965) Guj 941.**

——**Art. 227** — Applicability — Certiorari — Error of law — Error apparent on face of record. See Ibid, Art. 226. **AIR 1961 Him Pra 2.**

——**Art. 227 — Decision of lower Court based on faulty grounds — Error of law apparent on face of record — High Court can interfere.**

If an inferior Court or tribunal sets out the reasons for its order, the High Court will consider them and see whether those grounds are sound in law or wrong and if unsound, will quash the order. Such faulty grounds, on which the order is based, are errors of law apparent on the face of the record, though they may not be errors of jurisdiction and the High Court will exercise its supervisory jurisdiction under Art. 227 of the Constitution, not only to set right errors of jurisdiction, but to correct errors of law apparent on the face of the record as well, in appropriate cases. **1961 Ker LT 743: 1961 Ker LJ 1150.**

——**Art. 227** — Orders under Rent Control legislation — Orders passed under misconception and without any contention. See Ibid, Art. 226. **AIR 1955 NUC (Madh Bha) 3708 (DB).**

——**Art. 227 and Penal Code, S. 430** — Offence under S. 430, Indian Penal Code — Diminution of water supply to be proved — Unless mischief by accused proved his intention it need not be considered — Additional District Judge arriving at erroneous conclusion with regard to crime — Error not said to be apparent on record nor is it error of jurisdiction — Power under Art. 227 cannot be invoked. AIR 1953 Nag 89 (FB), Foll.; AIR 1958 SC 398 and AIR 1957 SC 264, Rel. on. **1963 MPLJ (Notes) 216.**

——**Art. 227 — Wrong decision of Board of Revenue — Powers of superintendence by High Court.**

Khan J.:— Where the decision of the Board of Revenue which is the highest judicial authority for revenue Courts is found to propagate and perpetuate a serious error of law which has been committed in derogation of well-recognized principles, it is the duty of the High Court to exercise its powers of superintendence. **1960 MPC 329: 1960 MPLJ 861: 1960 Jab LJ 882.**

——**Art. 227** — Error of law — Question of financial capacity of firm to pay higher wages to employees in industrial establishment at Madras — Tribunal not giving any value to award on ground that award was based on alleged admission not in fact made.

Held, there was no error of law. See Industrial Dispute. **(1958) 15 FJR 25 (Mad).**

——**Art. 227** — Error of law — Refusal to rely on admission as a piece of evidence — Not an error of law. **(1964) 2 Mys LJ 394: AIR 1965 Mys 258 (259) (Pt B) (Pr 4) (DB).**

——**Art. 227 — Error of law — Evidence Act (1872), S. 114 — Failure to draw presumption.**

Before any presumption can be drawn under S. 114 of the Evidence Act that a communication posted by the petitioner must have reached the R. T. A. there must be clear and satisfactory proof that the petitioner had posted his written representation, having addressed the same to the R. T. A. When there is no such proof in the case it cannot be said that the tribunal has committed any error of law in not drawing the presumption under S. 114 and in coming to the conclusion that the petitioner had failed to establish that he had made any written representation. **(1964) 2 Mys LJ 394: AIR 1965 Mys 258 (259) (Pt C) (Pr 5) (DB).**

——**Art. 227** — Notice terminating tenancy stating that tenancy rights cease from date of notice—It is invalid in view of proviso in sub-s. (1) of Section 14, Bombay Tenancy and Agricultural Lands Act, 1948 — Order of tribunal holding it so — No error apparent on face of record. **37 Mys LJ 82: ILR (1959) Mys 150: AIR 1959 Mys 108 (111, 112) (Pt B) (Pr 7) (DB).**

——**Art. 227** — Error apparent on face of record — Question of limitation not pleaded before the inferior tribunal — Omission of the inferior tribunal to consider — Does not constitute an error of law apparent on the face of the record — Orissa Tenants Relief Act (5 of 1955), S. 9 (1). AIR 1960 SC 137, Rel. on. **(1962) 28 Cut LT 482: ILR (1962) Cut 200.**

——**Art. 227** — Powers of High Court — Order of Assistant Collector of Central Excises giving reasons for not allowing entire claim on account of storage losses under Rule 49 of Central Excise Rules (1944) — Collector agreeing with his decision but not giving elaborate reasons — No error of law on face of record — Interference by High Court. See Ibid. Art. 226. **AIR 1957 Pat 650 (DB).**

——**Art. 227 — Decision of Financial Commissioner in flagrant violation of S. 12, Limitation Act — Competency of petition under Art. 227 — (Limitation Act (1908), S. 12) — (Tenancy Laws — Punjab Tenancy Act (14 of 1887), S. 84).**

Where the Financial Commissioner in revision under S. 84, Punjab Tenancy Act, does not accept the law as stated in S. 12, Limitation Act and refuses to apply the provisions of that section on unsustainable grounds, his dicision is clearly in flagrant violation of S. 12, Limitation Act and a petition under Art. 227 is competent in respect of that decision. AIR 1953 SC 58, Applied. **ILR (1954) Patiala 294: AIR 1954 Pepsu 173 (174) (Pt D) (Pr 6).**

——**Art. 227** — Certiorari — Error on face of record — Returning officer rejecting nomination paper of A on ground of arrears of rent payable to Gram Panchayat for lands in his possession vested in Gram Panchayat — On election petition, Tribunal, though finding land in question included in Khasra belonging to Gram Panchayat holding that the land could not belong to Panchayat without authority of law and setting aside election on ground of improper rejection of nomination paper — Tribunal failing to take notice of Rule 16 (ii) of Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, under which land was reserved for common pool and rent was payable to Gram Panchayat — Error of law being apparent on face of order of Tribunal, it must be set aside — Panchayats — Punjab Gram Panchayat Act 1952 (4 of 1953), S. 13 (b) and (c) (as amended by Punjab Act 26 of 1962). **1965 Cur LJ 865 (Punj).**

——**Art. 227** — Error of law apparent on face of record — Error grave and material one occasioning manifest failure of justice — High Court is not only competent but is under duty to interfere — Tribunal after holding appeal incompetent deciding the matter on merits — High Court is bound to interfere. **ILR (1965) 2 Punj 485.**

——**Art. 227** — Certiorari — Grounds on which writ can be issued — Mistake not apparent on face of record — Errors in appreciation of documentary evidence — Writ cannot be issued. See Ibid. Art. 226. **AIR 1961 Punj 569.**

[**Reversed** on another point in AIR 1964 Punj 313.]

3 (m) (iii). Patent errors of fact.

——**Art. 227** — Scope — Interference with question of fact — Error apparent on face of record. See Ibid. Art. 226. **AIR 1955 Assam 148 (DB).**

——**Art. 227** — Orders of Election Tribunal — Interference under Arts. 226 and 227 — Question of applicability of S. 117, Representation of the People Act — Judgment of Election Tribunal involving not only finding of fact but also containing errors apparent on face of record — Case fit for interference. See Ibid. Art. 226. **AIR 1964 Bom 107 (DB).**

——**Art. 227 — Power of superintendence—Error apparent on face of record — Application by landlord under S. 34, Bombay Tenancy and Agricultural Lands Act before Mamlatdar — Application allowed — Appeal to Assistant Collector disposed of on preliminary ground — Decision reversed by Revenue Tribunal in revision — Effect — Proper order — (Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 34).**

Under Art. 227 every High Court has superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and in the exercise of this power High Court has jurisdiction to interfere where there is an error apparent on the face of the record. There was an application filed by a landlord under S. 34, Bombay Tenancy and Agricultural Lands Act, 1948, before a Mamlatdar for recovering possession of his lands from his tenant for bona fide personal cultivation. The Mamlatdar ordered the tenant to hand over possession to the landlord. On the tenant appealing to the Assistant Collector, the Assistant Collector held that the respondent had failed to establish a relationship of landlord and tenant between the parties, that therefore, the provisions of the Act did not apply and that accordingly the respondent was not entitled to recover possession. The landlord went in revision before the Bombay Revenue Tribunal and the Tribunal reversed the Assistant Collector's order. The effect was that the Mamlatdar's order was restored.

Held, that there was an error apparent on the face of the order of the Revenue Tribunal, in that the Revenue Tribunal overlooked an important fact that the finding of the Mamlatdar that the lands were required by the landlord for bona fide personal cultivation, which was a finding of fact, was not examined and its correctness was not tested. As the Revenue Tribunal did not remand the matter back to the Assistant Collector for recording a finding on the above mentioned question of fact, the order of the Revenue Tribunal could not be sustained and must be quashed. **58 Bom LR 144: ILR (1956) Bom 232: AIR 1956 Bom 560 (561, 562) (Prs 3, 5) (DB).**

——**Art. 227** — Madhya Bharat Revenue Administration, and Ryotwari Land Revenue and Tenancy Act (66 of 1950), S. 39 (2) — No power in Board to interfere with concurrent finding of fact — Patent error — Interference under Art. 227 of Constitution. See Tenancy Laws—Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act (66 of 1950), S. 39 (2). **1956 MBLJ (HCR) 1475.**

——Art. 227 — Power of High Court — Decision of Tribunal without evidence — Interference.

Where a decision is reached by the Tribunal of a Labour Court on the evidence which is so little as to be practically non-existent, the High Court will be justified under Art. 227 in interfering with its decision. AIR 1958 SC 398, Disting. **1959 Mad WN 183: (1959-60) 16 FJR 1: 72 Mad LW 211: (1959) 1 Lab LJ 397: ILR (1959) Mad 623: (1959) 1 Mad LJ 213.**

——**Art. 227** — Finding of fact — Election tribunal — No error apparent on the face of record — Finding will not be disturbed. See Ibid, Art. 226. **ILR (1962) Cut 217.**

——**Arts. 227 and 226** — Certiorari — Finding of fact reached on evidence cannot be disturbed — Interference permissible only when error of law is apparent on the face of the record and not when the error is of fact howsoever grave it may be. AIR 1964 SC 477, Foll. **(1965) 67 Punj LR 1143: ILR (1966) 1 Punj 71: AIR 1966 Punj 365 (368, 369) (Pt C) (Pr 8).**

——**Art. 227** — Errors of fact — Power of High Court to interfere is infinitesimally small—(Civil P. C. (1908), S. 115). **AIR 1955 NUC (Punj) 116.**

3 (n). Contravention of principles of natural justice.

(i) Administrative orders.
(ii) Orders of contractual domestic tribunals.
(iii) Orders made in departmental enquiry.
(iv) Proceedings under Sea Customs Act.
(v) Disciplinary proceedings of University.
(vi) Proceedings under Motor Vehicles Act.

3 (n). Contravention of principles of natural justice.

●——**Art. 227** — Rules of natural justice not contravened — Tribunal's view of the matter not acceptable to the Court — Whether a ground for interference. See Ibid, Art. 226. **AIR 1958 SC 398.**

——**Art. 227** — Amendment of decree radically changing its texture — Allowed without notice to affected party — Effect — Sale in execution of such amended decree void — High Court can interfere under Art. 227, Constitution of India. See Civil P. C. (1908), S. 152. **AIR 1962 Andh Pra 134.**

——**Art. 227** — Board of Revenue refusing to adhere to their own precedents in administering taxing statute viz., Sales Tax Act— Absence of reason or circumstances to justify the change of mind — **Held** that they acted arbitrarily and in violation of natural justice and hence their order was liable to be set aside. **67 Cal WN 179: AIR 1963 Cal 409 (416) (Pt C) (Pr 26) (DB).**

——**Art. 227** — Orders under Municipal Act — Interference — Resolution to split up holding — Notice to owner — Section whether gives power to split up without notice — Objection to splitting up if can be taken under S. 148 — Validity of S. 129. See Municipalities — Bengal Municipal Act (15 of 1932), S. 129. **AIR 1958 Cal 151.**

——**Art. 227** — Violation of principles of natural justice—Absence of right of appeal against certain order—No violation of principle of natural justice —No appeal provided against order of Board of Revenue under R. 27 of Hyderabad Tenancy and Agricultural Lands Rules (1950) — No grievance can be made of it — (Tenancy Laws — Hyderabad Tenancy and Agricultural Lands Rules (1950), R. 27) — (C. P. Code (1908), S. 96). **AIR 1955 NUC (Hyd) 2367 (DB).**

——**Art. 227** — Power of superintendence — Flagrant violation of laws or disregard of fundamental principles of natural justice can be corrected — Government bound to give possession to applicant — Tenants inducted by Government resisting restoration — Revenue Minister cannot order Collector to inquire into respective rights, as executing Court — Such order will be contrary to natural justice. **AIR 1955 NUC (Hyd) 417 (DB).**

——**Art. 227** — Natural justice — Order dissolving Board of Directors — Opportunity to file objections given — Order not justiciable. See Co-operative Societies Act (2 of 1912), S. 38-A (1) (M. P. Amendment). **1960 Jab LJ 88.**

——**Art. 227** — Natural justice — Petitioner's name struck off from certificate proceeding — No notice given to him of appeal — No hearing given to him in appeal — Additional Collector's order in appeal making him liable for certificate demand is illegal. See Constitution of India, Art. 226. **1961 BLJR 442.**

——Art. 227 — Natural justice — (Panchayats — Bihar Panchayat Raj Act (VII of 1948), Ss. 70 and 73) — (Justice, equity and good conscience — Natural justice).

Pending proceedings in appeal before the Full Bench, the accused moved the Sub-divisional Magistrate under S. 70, Bihar Gram Panchayat Act for the withdrawal of the case. The Sub-divisional Magistrate ordered stay of proceedings before the Full Bench but subsequently, on the application of the complainant, vacated the order of stay. When in appeal, the Full Bench convicted the accused, he made an application under S. 73 (3) to set aside that order on the ground of miscarriage of justice. The Magistrate dismissed the application on the ground that he had no jurisdiction to interfere after the decision of the Full Bench had been pronounced. The accused moved the High Court under Art. 227.

Held, that, in the circumstances, the effect of the order passed by the Sub-divisional Magistrate directing the Full Bench to proceed with the appeal was to dismiss the application under S. 70. Although the refusal of the Magistrate to consider the application under S. 73 was erroneous, the High Court would not interfere as he failed to show as alleged by him that his application under S. 70 was disposed of without hearing him. **1957 Cri LJ 1163: 1957 BLJR 482: AIR 1957 Pat 550 (555) (Pt B) (Pr 5) (DB).**

——Art. 227 — Allotment of land under Administration of Evacuee Property Act — Subsequent order to dispossess allottees — No right of hearing given under Act — Hearing should be given

on principles of natural justice — Principles of natural justice — Right of hearing.

Although under the Administration of Evacuee Property Act or the rules framed thereunder, a person is not entitled as a matter of right to be heard before any order is passed by the Custodian General with respect to the allotment of land, yet on the principles of natural justice, a proper hearing must be given before deciding any matter. **1965 Cur LJ 628 (Punj).**

——**Art. 227** — Jurisdiction under when can be invoked — Violation of principles of natural justice, or manifest injustice, necessary. See Ibid, Art. 226. **AIR 1964 Punj 455 (DB).**

——**Art. 227** — Order passed for taking over management of company — No opportunity given to company to show cause against action—Legality. See Industries (Development and Regulation) Act (1951), S. 18-A. **AIR 1964 Punj 368.**

——**Arts. 227, 226**—Property notified as evacuee property denotified by Government—Sale of property by owner after denotification — Government assuring purchaser that order restoring property to the vendor will not be cancelled and that the sale in favour of the purchaser would remain unaffected — Subsequent order passed by Government cancelling the order of restoration without notice to the purchaser — Order must be quashed on the ground of non-issue of notice to purchaser—As the rights of the purchaser in the property were being adversely affected by the impugned order principles of natural justice required that the purchaser should have been given a reasonable opportunity of being heard against the proposed order. See Ibid, Art. 226. **(1961) 63 Punj LR 893.**

——**Art. 227** — Judicial proceedings — Proper notice to parties — Necessity — Rules of natural justice — Duty of Courts and tribunals to follow. See Ibid, Art. 226. **AIR 1960 Punj 41.**

3 (n) (i). Administrative orders.

——**Art. 227** — Scope — Income-tax Act (1922), S. 33-A — Order under S. 33-A correcting error Committed by I. T. O. — Order being an administrative order will not be interfered with because party had not been heard. See Ibid, Art. 226. **AIR 1964 Assam 136 (DB).**

——**Art. 227** — Rules of natural justice are attracted only when the function is quasi-judicial and not administrative. See Ibid, Art. 226. **1965 MP LJ 108: 1965 Jab LJ 161.**

——**Art. 227** — Administrative order — Decision of Excise Commissioner regarding confirmation or refusal to confirm sale of liquor shop is an administrative decision — Auction purchaser is not entitled to hearing before Commissioner refuses to confirm the auction sale. See Ibid, Art. 226. **1964 MPLJ 237.**

——**Art. 227 — Powers of High Court — Power of superintendence — Appeal against executive order treated as Revenue appeal — Interference.**

Where an appeal to the Chief Commissioner who was also the Revenue Tribunal, against an executive order was registered as Revenue appeal but no date was fixed for hearing and the order for notice to file objections was endorsed on the memo of appeal itself.

Held, that in the circumstances the matter should be taken to have been treated on executive side and as such the petition under Art. 227 was incompetent. **AIR 1958 Manipur 41 (44) (Pt B) (Pr 14).**

3 (n) (ii). Orders of contractual domestic tribunals.

——**Art. 227** — Contractual domestic tribunal — Decision vitiated by disregard of principles of natural justice — Decision can be declared void under Art. 227. (1919) 2 Ch. 276 and AIR 1961 Ker 265, Rel. on. **(1961) 2 Lab LJ 562: ILR (1961) 1 Ker 447: 1961 Ker LT 290: 1961 Ker LJ 389: AIR 1961 Ker 282 (287) (Pt B) (Pr 7) (DB).**

——**Art. 227 — Proceeding being against natural justice — Civil P. C. (1908), S. 115.**

One H made a will by which he left the whole of his estate to a relation of his C. H belonged to a village which had a Co-operative Society of which it was claimed all the inhabitants of the village were members. In accordance with the rules of this Society the question, whether a will had been made by H or not and whether it was genuine or otherwise, was referred to arbitration. The arbitrators gave an award that the will was not proved and dismissed the claim of C. Under Rules 35 and 36 of the Society an appeal was taken to the Managing Committee of the Society which consisted amongst others of very close relations of C and his friends and which set aside the award of the arbitrators and held that the will was valid.

Held, that the proceedings taken before the arbitrators, were so much against natural justice that they could not be enforced. The conduct of the case and the decision were against all causes of justice and certainly against natural justice, and the Court would be prepared to set aside the order of the Tribunal even under Art. 227 of the Constitution. **AIR 1952 Punj 67 (68) (Pt B) (Prs 7, 9).**

3 (n) (iii). Orders made in departmental enquiry.

——**Art. 227** — Certiorari and Mandamus — Order of dismissal under Railway Rules for taking bribe — No evidence adduced legal or otherwise to prove guilt of petitioner — Order based on conjecture and surmises violates principles of natural justice. See Ibid, Art. 226. **1964 Cal LJ 89.**

——**Art. 227** —Natural justice — Employees transfered to different place not joining at place of transfer — Notice to show cause for misconduct — Enquiry held at place of transfer — Employees refusing to attend — Dismissal —Enquiry held at place different from place of employment is against principles of natural justice — Orders of dismissal are illegal — Absence of standing orders is immaterial. See C. P. and Berar Industrial Disputes Settlement Act (1947), S. 16. **1961 NLJ (Notes) 61 (Bom).**

——**Art. 227** — Departmental enquiry — Petitioner requiring copies of certain documents before replying to charges — Petitioner informed about offices where documents were available for his inspection — No prejudice held was caused to him. See Ibid, Art. 226. **ILR (1965) 1 Punj 651: 67 Pun LR 404: AIR 1966 Punj 175.**

3 (n) (iv). Proceedings under Sea Customs Act.

——**Art. 227** — Principles of natural justice — Sea Customs Act (1878), S. 182. See Ibid, Art. 226. **(1964) 68 Cal WN 974.**

——**Art. 227**—Order passed under S. 167 (8), Sea Customs Act in violation of natural justice. See Sea Customs Act (1878), S. 167. **AIR 1957 Pat 508 (DB).**

3 (n) (v). Disciplinary proceedings of University.

——**Arts. 227, 226** — Academic body — Action of — Use of unfair means in University Examination

— Summary enquiry by Academic Council and debarring of examinee — No violation of principles of natural justice — No interference in writ petitions — Principles. See Ibid, Art. 226. **AIR 1960 All 642.**

——**Art. 227** — University — Misconduct by college student — Disciplinary proceedings — Principles of natural justice — Principal recording student's statement, admitting allegations —Tutor, who witnessed incident, identifying student — Student not demanding cross-examination of witnesses or permission to produce witnesses — University ordering cancellation of result on basis of principal's report — Student alleging violation of principles of natural justice — **Held,** there was no violation. See Ibid, Art. 226. **AIR 1964 Punj 456 (DB).**

——**Arts. 227 and 226** — Natural justice — Use of unfair means at examination — Inquiry proceedings — Proceedings are of quasi-judicial nature — Regulations of University not prescribing any procedure — Principles of natural justice should be followed. See Ibid, Art. 226. **AIR 1964 Punj 327.**

——**Art. 227** — Natural justice—Order disqualifying petitioner from examination — Questionnaire served on petitioner by University and answered by him — Petitioner not demanding at the time of answering it, that he should be told what the evidence was —No motive adduced to witnesses who deposed against him — Held, the order was not illegal as violative of the principles of natural justice. See Ibid, Art. 226. **1963 Cur LJ 537 (Punj).**

3 (n) (vi). Proceedings under Motor Vehicles Act.

——**Art. 227** — Application for permit — Failure to hear representations — Duty of Appellate Authority. See Motor Vehicles Act (1939), (as adopted in Madhya Bharat) S. 57 (5). **AIR 1955 NUC (Madh B) 3370 (DB).**

——Art. 227 — Power of superintendence—Scope of — Motor Vehicles Act (1939), S. 64.

In a case arising under the Motor Vehicles Act, the Appeal Board took into account two reports against the petitioner with regard to his fitness for operating road transport vehicles, namely, the report of the Additional District Magistrate and the report of the Block Development Officer. It was also complained on behalf of the Petitioner that these two reports were not before the Regional Transport Authority at the time the permit was given to the petitioner. The two reports were not read out by the Appeal Board at the time of the hearing of the appeal in presence of the parties.

Held, that the appellate authority should give a real and effective opportunity to the petitioner to deal with the reports or meet the relevant allegations made therein : hence, the order of the Appeal Board was vitiated in law and must be set aside in exercise of the authority under Art. 227 of the Constitution. AIR 1957 SC 232, Rel. on. **1961 BLJR 265.**

——**Art. 227** — Claims Tribunal — Powers of — S. 110-C, Motor Vehicles Act, does not clothe Tribunal with all powers of civil Court so as to attract provisions of Order 16, Civil P. C. — Rules of natural justice to be complied with — Order disallowing production of witness —Order held contravened rules of natural justice — Order quashed under Art. 227 of the Constitution. See Motor Vehicles Act (1939), S. 110-C. **AIR 1965 Punj 477.**

3 (o). Cases where the High Court may not interfere.

●——**Art. 227** — Replacement of two out of five panchas — Objection not taken under R. 34-D — Writ petition — No interference. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), Section 94. **1955 Cri LJ 313 : AIR 1955 All 122 (FB).**

——**Art. 227** — Munsiff's jurisdiction to quash decree — Interference by High Court. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 85. **AIR 1955 NUC (All) 1502.**

——**Art. 227** — Order in question supportable on another ground — Interference. See Panchayats — U. P. Panchayat Raj Act (1947), S. 85. **AIR 1953 All 180.**

——Art. 227 — Election petition — Orders of Election Tribunal — Jurisdiction of High Court to interfere under Art. 227 — Nature of — No interference in cases of interlocutory orders — Representation of the People Act (1951), Ss. 90, 116-A.

It is now a settled law that the mere fact that the Tribunal has come to an erroneous decision or that the High Court on the material before it could have or would have come to a different conclusion, would not be a sufficient ground for interference under Art. 227 with the order of the Tribunal, unless the Tribunal has failed to exercise a jurisdiction vested in it or has omitted to exercise a jurisdiction which it ought to have exercised or there has been a capricious or arbitrary exercise of jurisdiction : AIR 1955 SC 233, Rel. on.

Thus when the Election Tribunal had jurisdiction to decide whether the particular amendment should or should not be allowed or a particular portion of the pleadings be omitted or struck off, even though the decision of the Tribunal in these respects may not appear to be correct, that by itself will not call for interference by the High Court, under Art. 227 of the Constitution unless the orders are shown capricious or arbitrary. Further the High Court in such cases will not interfere by way of a writ under Art. 227 of the Constitution with interlocutory orders of an Election Tribunal disallowing amendments on an election petition or striking out paragraphs for vagueness, except in very exceptional cases, as such matters could be agitated in appeal from the final order of the Tribunal under S. 116-A of the Representation of the People Act. **(1963) 1 An WR 238.**

——**Art. 227** — Revision under — Powers of High Court in — Two methods of computing damages that could be adopted under S. 10 (d) of the Telegraph Act, 1885 — One of these adopted by District Judge —High Court will not interfere. **1961 An LT 752 : (1961) 2 An WR 218 : AIR 1962 Andh Pra 58 (60) (Pt A) (Pr 4).**

——**Art. 227** — Order holding that Income-tax officer was not entitled to protection of Section 54 Income-tax Act — Petition under Art. 227 by Income-tax Officer after disposal of suit in which he was compelled to produce Income-tax return — Object of revision simply to get decision of High Court on construction of S. 54, Income-tax Act — **Held,** there was no ground for interference. **(1958) 1 An WR 513 : (1958) 34 ITR 212 : AIR 1959 Andh Pra 468 (469) (Pt B) (Pr 3).**

——**Art. 227** — Question of fact — Interference — Decision of Special Assistant Agent in appeal — Interference by Agent in further appeal — No error of law or fact committed by Agent—Interference under Art. 227 to direct Agent to review his order. See Andhra Pra Agency Rules, R. 47. **AIR 1957 Andh Pra 1041.**

——**Art. 227** — One of findings doubtful — Case decided on other findings not challenged — Decision will not be set aside. **AIR 1954 Assam 88 (89) (Pr 1) (DB).**

——**Art. 227** — Appellate Order of Deputy Commissioner under Assam Adhiars Protection and Regulation Act (XII of 1948) — Deputy Commissioner not acting either in excess of jurisdiction or in abuse of powers vested in him by Act — No interference — Power under article not a substitute for powers enjoyed by High Court under S. 115, Civil P. C. See Tenancy Laws—Assam Adhiars Protection and Regulation Act (XII of 1948), S. 9. **AIR 1954 Assam 73.**

——**Art. 227** — Construction of document — Two views possible — View of the Tribunal neither patently unsound nor erroneous — High Court will not exercise its jurisdiction under the Article. 68 Bom LR 146, Rel. on. **(1961) 2 Guj LR 505.**

——**Art. 227** — Order for eviction passed under Cl. 9 of Travancore-Cochin Building (Lease and Rent Control) Order (1950) — Can be executed under S. 14 — Order by lower Court holding it so — Even if that Court is wrong High Court will not interfere with it when it is manifestly just to substitute an order which will be unjust. See Houses and Rents — Kerala Building (Lease and Rent Control) Act (16 of 1959), S. 14. **ILR (1963) 1 Ker 402.**

——**Arts. 227, 226** — Mandamus — Contractual rights — Enforcement or prevention of breach of — Mining lease under Mineral Concession Rules, 1960 — Direction cannot be issued under Art. 226 or 227 for enforcing rights under the lease or preventing a breach thereof—Civil P. C. (1908), S. 9. See Ibid, Art. 226. **AIR 1964 Madh Pra 42.**

——Art. 227 — Applicant availing himself of provisions of statute — Whether can challenge its constitutionality.

Where the applicant allowed the Collector to take possession of his property and when he felt dissatisfied with the compensation awarded by him he proceeded under the provisions of the Nagpur Improvement Trust Act and appeared before the Tribunal to have the compensation enhanced and succeeded to a certain extent in having the compensation increased, it is proper for the Court to decline to consider the constitutionality of the Statute at the instance of the applicant who has availed himself of its provisions to his advantage. **ILR (1951) Nag 818: 1951 NLJ 463: AIR 1951 Nag 90 (91) (Pt C) (Pr 7) (DB).**

——**Art. 227** —Order as to costs — Revision against pending — High Court if would interfere on an application under Arts. 226 and 227. See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction Control) Act (1947), S. 18-A. **AIR 1955 NUC (Pat) 2151 (DB).**

——**Art. 227** — Power of superintendence — When exercised — Sub-Registrar's order refusing registration of will on ground of denial of execution — Application under S. 73 (1), Registration Act (1908), against Sub-Registrar's order — Registrar while setting aside order, erroneously describing proceedings before him as appeal though appeal does not lie on ground of denial of execution — Registrar has plenary powers under S. 30 of Act to receive and register documents — Registration itself does not affect right to challenge validity of document (here will) — As no injustice is caused by error in describing proceedings as appeal and as Registrar was acting within jurisdiction, High Court cannot interfere under Art. 227. **67 Punj LR 326: AIR 1965 Punj 378 (378) (Pr 3).**

——Art. 227 — Power of superintendence —Cases where High Court will not interfere — Conviction by Special Tribunal under Defence of India Act, 1962 — Findings of fact — No right of appeal or revision — Findings cannot be reopened under Art. 227 — Defence of India Act (1962), S. 18 (2).

In those cases in which there is no right of appeal or revision under S. 18 (2), Defence of India Act, 1962, against an order of conviction of the Special Tribunal, it is not open to the High Court, under Art. 227 of the Constitution, to go into sufficiency or otherwise of the evidence on which the conviction proceeds and re-open the findings of fact recorded by the Tribunal when it is not a case of total absence of evidence: **66 Pun LR 1120: 1965 (1) Cri LJ 205: ILR (1965) 1 Punj 8: AIR 1965 Punj 86 (87, 88) (Pt B) (Prs 6-a, 7-a).**

——**Art. 227** — Scope — Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 33 — Displaced person has no legal right to allotment of land at particular place and of particular type — Scheme prepared by department for their own guidance categorising lands into 3 blocks — Department's refusal to allot to petitioner land in block designated as special block under scheme on the ground that he had a house in the Basti, infringes no legal rights and causes no injustice to him — Hence, his application under Article cannot succeed. See Ibid, Art. 226. **1964 Cur LJ 99 (Punj).**

——**Art. 227** — Evacuee Interest (Separation) Act (1951), S. 10, Cls. (b) and (c) and 2 (d) (iv) — Evacuee Interest (Separation) Rules (1951), R. 11-B, Proviso, Expl. (1), Cls. (c) and (e) — Constitution of India, Arts. 226, 227 — Mortgagees in possession claiming evacuee property under S. 10, Cl. (b) must also be sitting allottees — Scope of Cl. (c) of S. 10 — Competent officer on review refusing to order transfer of evacuee property to mortgagees in possession on ground that mortgagees were not sitting allottees — Mortgagees moving High Court under Arts. 226 and 227 of Constitution — Petitioners held not entitled to claim property simply on payment of difference between assessed price and mortgage money not being sitting allottees — Case held not fit for interference under Art. 226 or 227. See Evacuee Interest (Separation) Act (1951), Sec. 10, Cl. (b). **(1963) 65 Punj LR 1093.**

——**Art. 227** — Applicability — Application under for recovery of rent — Rent not paid within time fixed by Assistant Collector — Appellate Court cannot extend the time — Provisions of S. 148, Civil Procedure Code, not attracted — Action of Commissioner and Financial Commr. not outside scope of their jurisdiction—No error apparent on face of record — Cases do not come within ambit of Art. 227. See Tenancy Laws — Punjab Security of Land Tenures Act (10 of 1953), section 14-A (ii). **(1962) 64 Punj LR 855.**

——**Art. 227** — Industrial disputes — Preliminary issue — Decision of preliminary issue along with merits — Labour Court has jurisdiction to order — No interference. See Ibid, Art. 226. **(1962-63) 23 FJR 204 (Punj).**

——**Art. 227** — Decision of Revenue Tribunal under S. 23 (c), Saurashtra Land Reforms Act — Finding that unregistered partition deed could be looked into for collateral purpose of showing character of possession — No interference under Art. 226 or 227. See Ibid, Art. 226. **AIR 1955 NUC (Sau) 1459 (DB).**

——Art. 227 — Scope of powers under.

When there is no absence or excess of jurisdiction and the complaint relates only to the error in the matter of exercise of the jurisdiction and

there is no irregularity in procedure or any error apparent on the face of the record, then the powers of superintendence under Art. 227 should not be exercised. **(1963) Ker LT 378: AIR 1953 Trav-Co. 541 (542) (Pt C) (Pr 4).**

Interference at interim stage of proceedings.

●——**Art. 227** — Sale of goods — Works contract — Contract for installation of coke oven battery and by-products plant for all inclusive price — Whether entire and indivisible — Material supplied in execution of contract if amounts to sale and liable to sales-tax —Initiation of proceedings by issue of notice under S. 13 (5) — Jurisdiction of High Court to interfere by appropriate writ. See Sales-tax — Bihar Sales-tax Act (XIX of 1947), S. 2 (g). **AIR 1961 SC 1615.**

——**Art. 227** — Criminal P. C. (1898), S. 561-A — Interference by High Court at an interlocutory stage — (Constitution of India, Arts. 226 and 227). See Criminal P. C. (1898), S. 561-A. **AIR 1953 All 630.**

——**Art. 227** — Powers of High Court — Interference at interim stage. See Ibid, Art. 226. **AIR 1958 Madh Pra 168 (DB).**

3 (p). Interlocutory orders.

——**Art. 227** — Debt Laws — U. P. Encumbered Estates Act (1934), Ss. 45 and 46—Relative scope and distinction — Case before Special Judge pending — Order of Special Judge, sending order to compensation officer under S. 70 of Zamindari Abolition and Land Reforms Act — Revision — Application under Arts. 226 and 227—Competency — Constitution of India, Arts. 226 and 227 — (Tenancy Laws — U. P. Zamindari Abolition and Lands Reforms Act (1 of 1951), S. 70). See Ibid, Art. 226. **1958 All LJ 844.**

——**Art. 227** — Civil P. C. (1908), S. 115 — Interlocutory orders in excess of jurisdiction or otherwise coming within ambit of S. 115, can be interfered with — Referring matter back to arbitrator — Order will be interfered with — Ram Labhaya Acting C. J. — Powers under Art. 227 are wider than under S. 115. (Arbitration Act (1940), S. 16). See Civil P. C. (1908), S. 115. **AIR 1955 Assam 61.**

——**Art. 227 — Interference — Application under — Challenging certain principle laid down by lower Court affecting rights of parties held maintainable — (Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), Ss. 25 and 10).**

Where the Revenue Tribunal by its remand order directed the Mamlatdar to determine reasonable rent and to decide the application of the party under S. 10 of the Bombay Tenancy and Agricultural Lands Act.

Held, that by its remand order the Tribunal laid down the principle which the Mamlatdar would follow namely that merely because the agreed rent was tendered to the landlord under S. 25 (1) of the Act it could not be said that the landlord had not recovered the rent so as to bring him within the mischief of S. 10. It was this principle which affected the rights of the parties and which was challenged by the landlord by the petition under Art. 227 and hence the petition was maintainable. **61 Bom LR 289: ILR (1959) Bom 569.**

——**Art. 227** — Interlocutory orders — Interference with. See Civil P. C. (1908), S. 115. **1955 Cri LJ 181 : AIR 1955 Bom 61 (DB).**

——**Art. 227** — Interlocutory orders — Question whether decision is 'a case decided' — Effect of Art. 227 of the Constitution on the question. See Civil P. C. (1908), S. 115. **AIR 1954 Kutch 53.**

——**Art. 227** — Civil P. C. (1908), S. 115 — Interlocutory orders in arbitration proceedings started with intervention of Court — Revision — Arbitration Act (1940), S. 23. See Civil P. C. (1908), S. 115. **(1963) 65 Pun LR 318.**

——**Art. 227** — Interlocutory order —Interference by High Court permissible. See Civil P. C. (1908), S. 115. **(1962) 64 Punj LR 387.**

——**Art. 227** — Scope — Interlocutory order — High Court can revise under Art. 227 of the Constitution. See Civil P. C. (1908), S. 115. **AIR 1960 Punj 407 (DB).**

3 (q). Discretionary matters.

(i) Discovery and inspection.
(ii) Stay of proceedings.
(iii) Amendment of pleadings.
(iv) Other cases of discretionary orders.

3 (q). Discretionary matters.

——**Art. 227**—Exercise of discretion going beyond statutory provisions. See Ibid, Art. 226. **AIR 1956 All 594.**

——**Art. 227** — Power under article will not be exercised for interfering with discretionary orders of Court. **AIR 1952 All 788 (792) (Pt B) (Pr 15).**

——Art. 227 — Interference with discretionary matters —(Merchant Shipping Act (1923), S. 253).

If the law confers discretion upon a Court or Tribunal it is for that Court or Tribunal to exercise its discretion. It is not for the High Court to exercise the discretion for it; unless the High Court is satisfied that the discretion was exercised arbitrarily or capriciously, it will not interfere under Art. 227.

Where in a formal investigation held by the Court under Part VI of the Merchant Shipping Act into the shipping casualty resulting in loss of cargo, the insurance companies with whom the cargo was insured made an application to the Court to be made parties to the proceedings so that they may be able to lead evidence which was in their possession and the Court rejected the application :

Held, that the order of the Court could not be looked upon as exercise of discretion and that the matter must go back to the Court to exercise its discretion as best it thought fit. **ILR (1955) Bom 443 : 57 Bom LR 186 : 1955 Cr LJ 1039 : AIR 1955 Bom 241 (247, 248) (Pt B) (Prs 15, 18) (DB).**

——**Art. 227** — Discretion exercised neither arbitrarily nor capriciously — Erroneous conclusion if sufficient to interfere. See Ibid, Art. 226. **AIR 1958 Mys 26 (DB).**

——Art. 227 — Powers of High Court — Election petitions — Interference with interlocutory orders — (Civil P. C. (1908), S. 115 and O. 14, R. 2).

If a High Court comes to the conclusion that an inferior Court or tribunal has not allowed its discretion to run in the grooves indicated therefor either by law or by judicial precedents it is at liberty to interfere either under S. 115, C. P. Code or under Art. 227 of the Constitution. Where in holding that certain issues should not be tried as preliminary issues the election tribunal appears not only not to have exercised its discretion according to established rules of law but in an arbitrary manner, a clear duty devolves on the High Court to interfere even at that stage and not to wait until the petition is finally decided. **60 Punj LR 282: (1958-59) 14 ELR 412: ILR (1958) Punj 1776: AIR 1958 Punj 409 (416) (Pt C) (Pr 27) (DB).**

——**Art. 227** — Discretionary order — Interference. See Industrial Disputes Act (1947). S. 10. **AIR 1959 Tripura 8.**

3 (q) (i). Discovery and inspection.

——**Art. 227** — Discovery and inspection—Powers of Election Tribunal — Interrogatories — Scope and ambit of — Principles — Election challenged on ground of disqualification under S. 7 (d) — Interrogatories asking whether opposite party had certain subsisting contracts with State Government — Tribunal held was not justified in refusing leave. See Representation of People Act (1951), S. 92 (a). **AIR 1963 Pat 235 (DB).**

——**Art. 227** — Commissions of Inquiry Act (1952) S. 4 — Procedure regarding inspection of documents — High Court would not decide at what stage documents should be shown to petitioners. See Commissions of Enquiry Act (1952), S. 4. **AIR 1960 Punj 86.**

3 (q) (ii). Stay of proceedings.

——**Art. 227** — Decree for Rs. 52,000 — Pending appeal in High Court, stay of execution of decree granted by Single Judge on condition to deposit in Court Rs. 20,000 — Stay order was passed by competent Court and could not be challenged on ground that condition imposed was heavy. See Ibid, Art. 226. **1965 Ker LT 167: 1965 Ker LJ 194: (1965) 2 Ker LR 440: AIR 1966 Ker 141 (DB).**

——**Art. 227** — Interim protection from arrest in execution of decree against debtor pending his application for adjudication — Inherent power— Refusal to grant protection — Not revisable either under S. 115, Civil P. C. or Art. 227 of the Constitution. See Provincial Insolvency Act (1920), S. 5. **1961 Ker LJ 1272.**

——**Art. 227** — Order of appellate authority under Motor Vehicles Act — Refusal to stay operation of R. T. A.'s decision — Interference under article. See Ibid, Art. 226. **AIR 1965 Madh Pra 142 (DB).**

——**Art. 227 — Order of Appellate Authority under Motor Vehicles Act — Interference under Article when open.**

Where in passing the order refusing to stay the operation of the decision of the R. T. A. and in making an interim order in positive terms, the Appellate Authority under the Motor Vehicles Act approached the matter entrusted to it in an arbitrary manner and against all legal principles, the case is clearly one which calls for interference under Art. 227 of the Constitution. It is no doubt in the discretion of the Appellate Authority whether to grant a stay or make any interim order in an appeal pending before it. But the discretion has to be exercised according to the settled legal practices and not contrary to them. AIR 1954 SC 215, Foll. **1965 MPLJ 417: 1965 Jab LJ 583: AIR 1965 Madh Pra 142 (144) (Pt B) (Pr 7) (DB).**

——**Art. 227** — Criminal P. C. (1898), S. 344 — Stay of criminal proceedings — Question of discretion — Interference with — (Constitution of India, Art. 226). See Criminal P. C. (1898), S. 344. **AIR 1953 Mad 439.**

3 (q) (iii). Amendment of pleadings.

——**Arts. 227, 226** — Tribunal allowing party to add to his case — Interference by High Court. See Ibid, Art. 226. **AIR 1957 Bom 46.**

——**Art. 227** — Applicability — Revision — 'Case decided' connotation of — Order refusing to amend a pleading under O. 6, R. 17 is revisable under S. 115 — Such an order is revisable under Art. 227 of the Constitution as well. See Civil P. C. (1908), S. 115. **AIR 1964 Cal 439 (DB).**

3 (q) (iv). Other cases of discretionary orders.

——**Art. 227** — Tribunal not allowing new ground to be raised — No remedy under Art. 226 or 227. See Ibid, Art. 226. **AIR 1955 NUC (Assam) 1301 (DB).**

——**Art. 227 — Applicability — Labour Appellate Tribunal wrongly refusing adjournment — Appellant virtually not represented — Appeal dismissed — Interference — High Court's powers.**

Undoubtedly the question whether adjournment in a case before a Court should be granted to enable the party to make an effective representation is essentially one of discretion of the Court before which the proceeding is pending. Normally the High Court will not interfere with an order passed by that Court refusing to grant an adjournment.

Where, however, the Labour Appellate Tribunal sent a notice to the Union that their appeal will be placed for hearing at a very short notice, it could hardly be said to be an intimation. And if on the date of hearing the joint secretary of the Union puts in an application for adjournment the Appellate Tribunal instead of granting an adjournment dismissed the appeal, the order is incompetent, inasmuch as the order was not even passed on merits after considering the judgment of the Industrial Tribunal.

In such a case High Court will interfere under Art. 227 and set aside the orders of the Appellate Tribunal and normally direct the rehearing. **59 Bom LR 261: (1957) 2 Lab LJ 245: ILR (1957) Bom 412: AIR 1957 Bom 142 (143, 144) (Pt A) (Prs 2, 3) (DB).**

——**Art. 227** — Interference in discretionary matters — Exercise of discretion under S. 33, Industrial Disputes Act (1947) — Interference by Appellate Tribunal. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 7. **AIR 1954 Bom 342 (DB).**

——**Art. 227** — Order for demolition of building by local authority — Act being judicial act opportunity should be given to owner to show cause against passing of order — Commissioner after giving notice and hearing owner passing order for demolition on the basis that he has no discretion in the matter— Held, that he failed to exercise the discretion vested by law in him. See Municipalities — Calcutta Municipal Act (1923), S. 363. **(1965) 69 Cal WN 249.**

——**Art. 227 — Interference with discretionary orders — Eviction proceedings under S. 5 Calcutta Thika Tenancy Act — Application by third party for impleading him as defendant — Refusal by Court to exercise discretion under O. 1, R. 10, C. P. Code, suo motu — High Court cannot compel the Court to implead him as a party — Tenancy Laws — Calcutta Thika Tenancy Act (W. B. 2 of 1949), Ss. 5, 34 and R. 12.**

By virtue of R. 12 framed under the Calcutta Thika Tenancy Act, prima facie an application under O. 1, R. 10, C. P. Code, can be filed for impleading a third person as a party to a proceeding under the Thika Tenancy Act. But when the application for impleading of a third person in an eviction proceeding under the Act has been made by the third party himself and the Court has refused to proceed suo motu in the matter, the High Court cannot, in a petition by such person under Art. 227 of the Constitution, compel the Court to implead him as a party defendant. **(1961) 65 Cal WN 1126.**

——**Art. 227** — Case before Union Bench —Transfer application rejected by Magistrate — Revision — Power of High Court to interfere — Superin-

tending jurisdiction. See Bengal Village Self-Government Act (5 of 1919), S. 66. **1957 Cri LJ 441 : AIR 1957 Cal 221 (DB).**

——Art. 227 — Civil Procedure Code (1908), Section 115 and O. 40, R. 2 — Order disclosing misconception on part of Judge as regards Court's power to vary order fixing receiver's salary —Interference with order.

Where an order disclosed a misconception on the part of the Judge that the Court had no jurisdiction once salary of the receiver was fixed under O. 40. R. 2, to vary the salary so fixed, on a petition against the order purporting to be one under S. 115, Civil Procedure Code and under Art. 227 of the Constitution.

Held, that under S. 115 the High Court undoubtedly had powers to interfere with the order, and, in any event, the facts of the case pre-eminently called for the High Court's interference under Art. 227. **58 Cal WN 193: ILR (1955) 1 Cal 237: AIR 1953 Cal 574 (578) (Pt D) (Pr 16).**

——Art. 227 — Question of reinstatement is a matter within the discretion of labour Court — Exercise of discretion not perverse and arbitrary — Discretion not interfered with under Art. 227. See Industrial Disputes Act (1947), S. 15. **1965 Ker LJ 1180.**

——Art. 227 — Discretionary power of Registrar of Co-operative Societies in revision — Exercise of — Cannot be assailed in proceeding under Art. 227 — M. B. Co-operative Societies Act (M. B. 9 of 1955), S. 75.

The power of the Registrar of Co-operative Societies to call for the record at the instance of a person aggrieved is discretionary. If he refuses to interfere in a revision filed by the aggrieved party by the decision of the Assistant Registrar, the propriety of his discretion cannot be assailed in a petition filed before the High Court under Art. 227 of the Constitution. **1964 MPLJ (Notes) 219.**

——Art. 227 — Deficient court-fee — Time given by decree expiring — Refusal to extend time — Revision. See Civil P. C. (1908), S. 115. **AIR 1957 Madh Pra 92.**

——Art. 227 — Termination of services — Compensation instead of reinstatement ordered — High Court will not interfere with discretion under Art. 226 of the Constitution. See Industrial Disputes Act (1947), S. 25-F. **(1963) 1 Mys LJ 547 (DB).**

——Arts. 227, 311 — Mala fide removal from service.

It is not open to the petitioner to question the opinion of the Public Service Commission. A candidate for employment cannot insist that he should be considered suitable and that an order should be made in his favour. The opinion of the Commission or of the Government or Transport Authority on the point of suitability of a candidate is not a matter which can be canvassed in a Court of law. The plea that the petitioner's removal was not bona fide has no force. **ILR (1955) Nag 187 : 1955 Nag LJ 304 : AIR 1955 Nag 163 (166) (Pt C) (Pr 10) (DB).**

——Art. 227 — Industrial Tribunal setting aside award and recommending a fresh reference — Failure by Government — Writ to Government to make a reference—Issue of. See Ibid, Art. 226. **AIR 1952 Pat 447 (DB).**

——Art. 227 — Administration of Evacuee Property Act (1950), S. 6 — Power of custodian to issue instructions — Refusal to confirm sale — Assistant custodian instead of exercising his own discretion acting according to custodian's instruction — Legality of order — Interference by High Court. See Administration of Evacuee Property Act (1950), S. 6. **AIR 1959 Punjab 222.**

——Art. 227 — Custodian of Evacuee property excusing delay in filing revision — Order if can be interfered under. See Ibid, Art. 226. **AIR 1955 NUC (Punj) 4016.**

——Art. 227 — Civil P. C. (1908), S. 115 — Objection to jurisdiction not decided as preliminary issue — Court exercising discretion to try case as whole — Interference under power of superintendence where there is obvious error in procedure resulting in the parties being involved unnecessarily into considerable expenses. See Civil P. C. (1908), S. 115. **AIR 1953 Sau 30.**

3 (r). Subsequent events.

——Art. 227 — Order of authority not challengeable on any valid grounds according to law then prevailing — Interference with order on the ground of subsequent amendment in law. See Tenancy Laws — Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act (99 of 1958), S. 38. **AIR 1965 Bom 76.**

——Art. 227 — Review — Order passed in accordance with law — Accepted view of law changing by new decision — Old order cannot be reviewed. See Ibid, Art. 226. **1960 MPLJ (Notes) 2.**

——Art. 227 — Change in law during pendency of application — (Houses and Rents — C. P. Code and Berar Letting of Houses and Rent Control Order (1949), Cl. 13 (3) (vi), (as amended in 1952).

The proceeding under Art. 227 is not in continuation of the application under the Rent Control Order or of the appeal therefrom, because the proceeding is not in the nature of an appeal. In the proceedings under Art. 227, what the High Court has to ascertain is whether the inferior tribunal (here, the appellate authority) did apply the law which was in force when it decided the matter before it. If it is found that it did apply the law, the matter would end there. If, however, it is found that it did not apply the law, the High Court would interfere. But in deciding whether to interfere or not the Court would be guided by the law in force at the time of the appellate decision. The change which the law underwent after the decisions of the appellate authority can have no relevance in determining whether the decision of the appellate authority was right or wrong.

The fact, therefore, that the clause entitling the landlord to recover possession from his tenant on the ground of bona fide need for business was deleted from the Rent Control Order during the pendency of his application under Art. 227, against the decision of the appellate authority, does not affect the applicant's rights. Misc. Petn. No. 131 of 1952, dated 24th September, 1952 (Nag), Distinguished. **1953 Nag LJ 419 : ILR (1953) Nag 741: AIR 1953 Nag 271 (272) (Pt B) (Pr 5) (DB).**

——Art. 227 — Change in law during pendency of writ petition — Change is of no consequence and cannot be taken into consideration in deciding writ petition. See Ibid, Art. 226. **AIR 1965 Punj 21.**

——Arts. 227, 226 — Assessment proceedings — Assessee a coal agent — Assessment years for 1949-50 to 1955-56 — Decisions by S. C. after assessment had become final that coal agents were not "dealers" — Writ petition for quashing assessment orders and for refund of payment of Sales-tax — Maintainability. See Ibid, Art. 226. **(1965) 67 Pun LR 1185.**

3 (s). Nature of orders that can be passed by the High Court.

——**Art. 227** — Scope — Order in writ petition declaring certain provisions of statute unconstitutional and quashing certain orders passed thereunder — Application for certificate for leave to appeal to Supreme Court pending — Power of High Court to grant interim relief in form of stay order. See Civil P. C. (1908), O. 45, R. 13. **AIR 1957 All 505 (DB).**

——**Art. 227 — Power of superintendence — Nature and extent of — Application for certificate for leave to appeal to Supreme Court from an order in writ petition pending — Power of High Court under Art. 227 to pass stay order.**

After the express grant of power to issue a writ the power of superintendence conferred under Art. 227 must be deemed to relate to administrative matters. Whatever superintendence it can exercise in judicial matters would now be exercised through the issue of an appropriate writ under Art. 226. Therefore, an order of an inferior Court or tribunal cannot be interfered with under Art. 227. Hence, where the High Court declares certain provisions of an Act as unconstitutional and as a consequence quashes certain orders of the State authorities passed under the Act, and the State files an application for leave to appeal to the Supreme Court under Art. 133, and pending that application prays for a stay order of the High Court, Art. 227 cannot be relied upon for the grant of interim stay. AIR 1934 All 585 and AIR 1935 All 599, Rel. on.

Per Beg, J.: (Contra)— The power of superintendence granted to the High Court under Art. 227 is extensive enough to cover not only the administrative but also the judicial power. AIR 1952 All 788 and AIR 1957 All 414 (FB), Rel. on. **(1957) All WR (HC) 268: AIR 1957 All 505 (519, 526) (Pt P) (Prs 23, 62) (DB).**

——**Arts. 227, 226** — Scope and Applicability — Motor Vehicles Act (1939), S. 47 — Words "public interest" — Meaning — Power of Transport authority to grant or refuse permit —Order rejecting petition on ground beyond S. 47 — Quashing of order and issue of proper direction— (Words and Phrases). See Constitution of India, Art. 226. **AIR 1956 All 594.**

——**Art. 227 — Powers of superintendence — U.P. Panchayat Raj Act — Interference with order under.**

Where a case has been dealt with in a most unsatisfactory manner by the Sub-Divisional Magistrate acting under U. P. Panchayat Raj Act, the High Court has under its powers of superintendence under Art. 227 of the Constitution to direct the case to be reheard and decided properly. **1952 AWR (HC) 4: 1952 ALJ 148: 1952 Cr LJ 1268: AIR 1952 All 787 (788) (Pt B) (Prs 4; 5).**

——**Art. 227**—Civil P. C. (1908), S. 115 —Illegal exercise of jurisdiction—Error in excluding evidence under S. 33, Evidence Act — Interference — High Court's power of superintendence — Power to correct the error—(Constitution of India, Art. 227) — (Evidence Act (1872), S. 33). See Civil P. C. (1908), S. 115. **AIR 1957 Andh Pra 378.**

——**Art. 227** — Order to rectify error committed by lower Court. See Criminal P. C. (1898), section 369. **1952 Cri LJ 1276: AIR 1952 Assam 156 (DB).**

——**Art. 227** — Order staying proceedings pending in inferior criminal Court till final decision in Civil Court. See Criminal P. C. (1898), S. 561-A. **1952 Cri LJ 654: AIR 1952 Assam 78 (DB).**

——**Art. 227** — High Court can uphold lower Court's conclusion altogether on new and different grounds which emerge from record. **61 Bom LR 1156: 1959 Nag LJ 436: ILR (1959) Bom 1699.**

——**Art. 227** — Scope — Effect of coming into force of S. 33, Industrial Disputes (Amendment and Misc. Prov.) Act on 1st September, 1956 — Proceeding pending before Appellate Tribunal — Appeal already decided — Application under Art. 227 pending and decided after 1st September, 1956 — Appeal, if can be remanded to Appellate Tribunal — Whether powers of High Court curtailed. See Industrial Disputes (Amendment and Miscellaneous Provisions) Act (1956), S. 33. **AIR 1957 Bom 142 (DB).**

——**Arts. 227 and 226** — Exercise of jurisdiction under Articles — Power to quash orders and pass substantive orders in their place. See Ibid, Art. 226. **AIR 1957 Bom 46.**

——**Art. 227** — Order of Commissioner dismissing petition under S. 27 of Bengal Public Demands Recovery Act on one ground—Order affirmed by Revenue Board but on another ground—Commissioner's order merges with order of Revenue Board and does not exist—Order of Revenue Board set aside under Art. 227 — Order cannot be maintained on grounds on which it was passed by Commissioner. AIR 1963 SC 1124, Rel. on. **69 Cal WN 7: (1965) 58 ITR 579: AIR 1965 Cal 492 (498) (Pt C) (Pr 33) (DB).**

——**Art. 227** — Proceedings for fixation of fair rent under Malabar Tenancy Act by tenant — Tenant dissatisfied with decisions of rent Court and appellate authority filing petition under Art. 227 of the Constitution challenging their decision — Petition cannot be said to be proceedings for fixation of fair rent — High Court accepting grievance of petitioner — Proper direction that can be given by the High Court. See Tenancy Laws — Kerala Tenants and Kudikidappukars Protection Act (7 of 1963), S. 2 (ii). **AIR 1964 Ker 127.**

——**Art. 227 — Power to pass substantive order.**

In a petition under Article 227 of the Constitution, High Court cannot only quash the decision of the inferior tribunal but also issue further directions in the matter or pass a substantive order in place of the order which it has quashed. **1965 MPLJ 417: 1965 Jab LJ 583: AIR 1965 Madh Pra 142 (145) (Pt C) (Pr 8) (DB).**

——**Art. 227** — Criminal P. C. (1898), S. 344 — Stay of Criminal Proceedings — Jurisdiction of High Court. See Criminal P. C. (1898), S. 344. **AIR 1953 Mad 439.**

——**Art. 227** — Stay of criminal case pending suit — Criminal case under S. 494, I. P. C. pending — Subsequent filing of civil suit — Identity of subject-matter — Criminal case stayed. See Criminal P. C. (1898), S. 439. **(1963) 1 Cri LJ 129 (Manipur).**

——**Arts. 227, 226** — Prayer to issue Mandamus for refund of sales-tax illegally levied — No specific prayer for quashing orders of assessment— Mandamus not issued — Orders quashed — (Sales-tax — Madras General Sales-tax Act (9 of 1939), S. 18-A). See Ibid, Art. 226. **AIR 1960 Mys 93 (DB).**

——**Art. 227** — Power of superintendence includes power to set aside orders of tribunals in appropriate cases. **ILR (1954) Patiala 1: AIR 1953 Pepsu 133 (140; 141) (Pt I) (Pr 20) (DB).**

——**Arts. 227, 226** — Court will not pass any order which will for all practical purposes be a dead letter. See Ibid, Art. 226. **1965 Pun LR (Sup) 464.**

——**Art. 227** — Jurisdiction — Nature and scope — Petition under Art. 227 — Grant of relief in the nature of writ of certiorari — Permissibility — Omission to implead authority whose orders sought to be assailed — Not fatal. See Ibid, Art. 226. **AIR 1962 Punj 117.**

——**Art. 227 — Error on face of record.**

Article 227 undoubtedly furnishes the High Court with the requisite authority in an appropriate case to substitute its own order in place of or to vary an unjustifiable order of any tribunal exercising authority within its territorial jurisdiction. The High Court is invested with judcial superintendence over the acts or decisions of not only those Courts which are under its appellate jurisdiction but also of tribunals over which it has no administrative control but which are functioning within the territorial jurisdiction of the High Court.

Where the Board of Revenue awarded a decree for general damages which it had no competence to give in the circumstances of the case, the decision of the Board in question disclosed a patent error of law manifest on the very face of the record and the High Court was entitled to interfere with a writ to set right the error. **1957 Raj LW 81: ILR (1956) 6 Raj 877: AIR 1957 Raj 39 (41, 42, 43) (Pt B) (Prs 12, 13, 16, 19) (DB).**

——**Art. 227** — Power of High Court to grant sanction under S. 92, C. P. Code. See Ibid, Art. 226. **AIR 1954 Trav-Co 331 (DB).**

——**Art. 227 — High Court's power to substitute its order in place of tribunal's order.**

The High Court can substitute its own order in place of the order of a tribunal acting under its power of superintendence over it given by Art. 227. However, this power should only be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority. AIR 1954 SC 215, Foll. **AIR 1954 Vin Pra 34 (35) (Pt C) (Pr 7).**

4. Power whether includes power to transfer.

●——**Art. 227—Power of High Court to transfer case.**

Per Srinivasachari, J. :— Though under Art. 227 the High Court has powers of superintendence over Commission appointed to enquire succession it being only a tribunal within the meaning of Art. 227, the High Court could not direct the transfer of the case pending before the Commission to any other authority. Tahira Begum v. Hyderabad State. **AIR 1953 Hyd 105 (110b) (Pt E) (Pr 16) (FB).**

——**Art. 227** — Powers of High Court — Trial before Gram Panchayat — Application for transfer. See Ibid, Art. 226. **1959 Cr LJ 1099: AIR 1959 Pat 423.**

——**Art. 227** — Civil P. C. (1908), Ss. 151 and 24 — Application for transfer — Whether lies under the article. See Civil P. C. (1908), S. 151. **AIR 1957 Pat 198.**

5. High Court.

See also Ibid, Art. 228.

——**Art. 227 —High Court — Board of Revenue if included in.**

The High Court referred to in Art. 227 of the Constitution is the High Court referred to in Article 214, every Judge of which is appointed by the President of the Union under Art. 217 and as such would not include the Board of Revenue. **1952 AWR (Rev) 41: 1951 RD 281: 1952 ALJ (Rev) 33.**

——**Art. 227 — Scope of the power of superintendence — Interference with the decision of the Appellate Authority under East Punjab Urban Rent Restriction Act.**

Since the passing of the Constitution of India, the Judicial Commissioner's Court of the Himachal Pradesh has the jurisdiction in exercise of its power of superintendence under Art. 227 of the Constitution, to interfere with the decision of the Appellate Authority under the East Punjab Urban Rent Restriction Act despite the finality given to that decision under S. 15 (4) of the Act. **AIR 1951 Him Pra 72 (73) (Pt A) (Pr 3).**

6. "All Courts and tribunals".

(a) "Courts."

(b) "Tribunals."

(c) All tribunals exercising judicial or quasi-judicial functions are amenable to supervisory jurisdiction.

(d) Custodian of evacuee property.

(e) Authorities under Rent Control Acts.

(f) Revenue Courts and Tribunals.

(g) Election Tribunal.

(h) Authority under Motor Vehicles Act.

(i) Authority under Payment of Wages Act.

(j) Industrial Tribunals and Labour Courts.

(k) Decision of authority under Minimum Wages Act.

(l) Nyaya Panchayats.

(m) Collector acting under Land Acquisition Act.

6. "All Courts and tribunals"

——**Arts. 227, 225, 226, and 311** — Applicability— Petitioner serving in saraf-e-khas army in former Hyderabad State—Order of dismissal passed by H. E. Nizam in his private capacity after accession of State to Indian Union — Writ Petition— Maintainability — Art. 311, not applicable. See Ibid, Art. 225. **ILR (1962) Andh Pra 278.**

——**Art. 227 — Courts and tribunals — (Debt laws — Hyderabad Jagirdar's Debt Settlement Act (12 of 1952), S. 9) — Debt Settlement Board—If subject to jurisdiction under Art. 227.**

Sub-s. (1) of S. 9 of the Hyderabad Jagirdars' Debt Settlement Act, 1952 provides that a Board constituted under S. 4 of that Act for the settlement of debts 'shall, in all proceedings under the Act, be subject to the control of the High Court'. It is also well settled that under Art. 227, the High Court has a judicial power of revision. Hence an order passed by a Debt Settlement Board is open to revision by the High Court under Art. 227. **1957 Andh LT 235: ILR (1957) Andh Pra 299: (1958) 1 Andh WR 192.**

——**Art. 227 — Powers of superintendence — Courts not subject to appellate jurisdiction of High Court.**

Under Art. 227 of the Constitution, it is not a necessary condition for the exercise of the powers of superintendence that the Court or tribunal whose judgment or order is in question should be subject to the appellate jurisdiction of the High Court. It would follow that even if the judgment or order of a Court or tribunal functioning within the territorial limits of the jurisdiction of the High Court is made final by statute and even if the Court itself is not subject to the appellate jurisdiction of the High Court, its judgments or orders may be interfered with in the exercise of the powers of superintendence of the High Court. The effect of Art. 227 is that not

only it restores to the High Court the jurisdiction that was taken away by S. 224 (2), Government of India Act, 1935, but it enlarges the powers of superintendence which the High Court exercised under S. 107 of the Government of India Act, 1915. This power is obviously not limited to administrative matters only. **52 Cri LJ 966: ILR (1951) 3 Assam 181: AIR 1951 Assam 106 (112, 115) (Pt E) (Prs 39, 59) (DB).**

——**Art. 227** — Execution proceeding transferred to Collector under S. 68, Civil Procedure Code — Order made by Collector — Revision of order under S. 115 — Competency — Power of Superintendence of High Court under Art. 227. See Civil P. C. (1908), S. 70. **AIR 1956 Kutch 15.**

——**Arts. 227, 226** — Quasi-judicial order — Mineral Concession Rules (1960), R. 54 — Order of Central Government in revision under R. 54, setting aside order of State Government refusing renewal of petitioner's mining lease and directing State Government to renew same — Order is quasi-judicial and State Government is bound by directions of Central Government — Order not complied with, by State Government — Application lies under Arts. 226 and 227 for direction to State Government commanding it to carry out order of Central Government and to renew lease. See Ibid, Art. 226. **AIR 1965 Madh Pra 159 (DB).**

——Art. 227 — Order of a Judge of High Court — Revision against — Competency.

Art. 227 is confined to subordinate Court and a judge of the High Court as such is not a Court subordinate to the High Court. Hence a civil revision petition is not competent against an order of a Judge of the High Court under that article: AIR 1953 Mad 832, Foll. **(1957) 1 Mad LJ 364: AIR 1957 Mad 582 (583) (Pt A) (Pr 1) (DB).**

——Art. 227 (1) — Power of Superintendence — Extent of.

The power of the High Court under Art. 227 (1) is confined to subordinate Courts and judicial and quasi-judicial tribunals which are also subordinate to it. A Judge of the High Court is not as such subordinate to the High Court. **1953 Mad WN 433: (1953) 2 MLJ 108: ILR (1954) Mad 211: AIR 1953 Mad 832 (832) (Pr 2) (DB).**

——Art. 227 — Administrative and judicial control over tribunal.

All agencies whether Courts or not, performing the duty of deciding disputed questions of right between parties on behalf of and under the sanction of the State and in accordance with State-made laws are placed under the administrative and judicial control of the High Court. Thus, the High Court has got revisional jurisdiction under Art. 227 by way of superintendence over the judicial work of a duly constituted tribunal, like the Deputy Registrar under the Co-operative Societies Act. **1953 Cri LJ 636: 65 Mad LW 1229: AIR 1953 Mad 362 (364, 365) (Pt C) (Prs 8, 9).**

——Art. 227 — Jurisdiction of the High Court under to revise the order of a tribunal — Scope.

Art. 227 of the Constitution is very wide in terms and confers on the High Court powers of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. The Article restores the power that had previously been vested in the High Court under S. 107, Government of India Act (1919) and does away with the restriction that had been introduced by the Government of India Act, S. 224 (2). The High Court in exercising the power of superintendence can revise the order passed by a tribunal. 54 CWN 445; 54 CWN 934, Relied on. **18 Cut LT 279: AIR 1953 Orissa 254 (254) (Pt A) (Pr 2).**

——**Art. 227** — Powers of superintendence — Order with regard to management of property attached under S. 145 (4) Criminal P. C. — Revision under power of superintendence. See Criminal P. C. (1898), S. 145 (4). **1955 Cri LJ 387: AIR 1955 Pat 92.**

——Art. 227 — Tribunal after making final order ceasing to function — Power of superintendence can still be exercised.

The power of superintendence of the High Court is not taken away as soon as the Court or Tribunal ceases to function or is abolished. It cannot be said with any justification that a wrong order, despite the fact that it is without jurisdiction and has resulted in grave miscarriage of justice, cannot be interfered with or that the mischief done cannot be remedied simply because the Court or Tribunal is no longer functioning. **ILR (1954) Patiala 387: AIR 1954 Pepsu 118 (122) (Pt G) (Pr 16) (DB).**

——Art. 227 — "All Courts and tribunals".

Article 227, for the first time confers on the High Court the authority to exercise powers of superintendence over tribunals other than regular Courts and to that extent the scope of S. 107, Government of India Act, 1915, has been extended. **61 Pun LR 315: ILR (1959) Punj 859: AIR 1959 Punj 291 (293) (Pt B) (Pr 5) (DB).**

——Art. 227 — Judicial superintendence over tribunals over which High Court has no administrative control.

The High Court is invested with judicial superintendence over acts or decisions which are under its appellate jurisdiction but also of tribunals over which it has no administrative control but which are functioning within the territorial jurisdiction of the High Court. **1956 Cri LJ 270: 1956 Raj LW 105: ILR (1956) 6 Raj 90: AIR 1957 Raj 39 (41, 42, 43) (Pt B) (Prs 12, 13, 16, 19) (DB).**

6 (a). "Courts."

●——**Arts. 227, 226** — Court and tribunal — Criminal P. C. (1898), Ss. 195, 476 and 476-B — Appeal under S. 476-B, when lies — Offence under S. 193, Penal Code, must be in relation to "judicial proceeding" and before "Court" — Returning officer deciding on validity of nomination paper under S. 36 (2), Representation of the People Act is not "Court" — (Representation of the People Act (1951), Ss. 36 (2) and 36) — (Words and Phrases — "Court" — What constitutes) — (Words and phrases — "Judicial proceedings") See Criminal P. C. (1898), S. 195. **AIR 1956 SC 153.**

——Art. 227 — Registrar of Co-operative Societies is not a Court.

Registrar and Assistant Registrar of Co-operative Societies are arbitrators according to the Co-operative Societies Act and it would be a misnomer to call them a Court. **1962 All Cri R 45: 1962 All WR (HC) 38: 1962 All LJ 57: 1963 (1) Cri LJ 507 (511) (Pr 8).**

[**Overruled** on another point in AIR 1965 All 263 (FB)]

——**Art. 227 and Sch. 7 List. 2 Entry 3** — Contempt of Courts Act (1952), S. 3 — "Court" is not synonymous with "tribunal" — (Words and Phrases — "Courts" and "Tribunals"). See Contempt of Courts Act (1952), S. 3. **AIR 1956 All 258.**

——Arts. 227, 235 and 311 — "Court" — Inquiry against District Judge — Power of High Court to hold — (Madras Civil Services (Classification, Control and Appeal) Rules (1953), R. 17) — (Public Servants (Inquiries) Act (1850), S. 3).

Under Art. 227 (1), every High Court has the power of superintendence over all the Courts and tribunals throughout the territories in relation to which it exercises jurisdiction, which is both administrative and judicial. If Art. 227 is read with Art. 235 which also vests control in the High Court over subordinate Courts, there is no doubt whatever that the High Court has not only powers of superintendence over the Court subordinate to it, but also of control over all these Courts which include the District Court. Both in Arts. 227 and 235, the word 'Court' not only includes the person presiding over that Court, but also all the functionaries of that Court and any matters pertaining thereto.

The High Court in exercise of its powers of superintendence and control of the Courts subordinate to it and by virtue of the rules having the force of law under the proviso to Art. 309 read with Art. 313, is vested with the power to hold an enquiry into the conduct of judicial officers and to determine provisionally the punishment which should be imposed prior to their being afforded a reasonable opportunity of showing cause under Art. 311 of the Constitution. The essential element in the awarding of penalties and punishments against public servants is not as to who conducts the enquiry, but whether the person has been given the opportunities referred to above and that the enquiry is fair and unbiased. **AIR 1959 Andh Pra 497 (501) (Pt C) (Pr 6) (DB).**

——Art. 227 — Power of superintendence over special Courts.

The Courts under the Assam Prohibition Act (23 of 1947) cannot be regarded as special Courts in any sense. They are Courts under the Cr. P. C. Further Art. 227, Constitution of India, makes no distinction between ordinary and special Courts and brings all Courts except Courts constituted under any law relating to the Armed Forces subject to the power of superintendence conferred on the High Courts. The powers of superintendence vesting in the High Court therefore, can certainly be exercised in suitable cases in respect of orders passed under that Act. 22 Pat 175, AIR 1946 PC 169, Dist. AIR 1933 Bom 1, Rel. on. **ILR (1951) 3 Assam 181: 52 Cri LJ 966: AIR 1951 Assam 106 (110) (Pt D) (Pr 24) (DB).**

——Art. 227 — Proceedings under Bengal Public Demands Recovery Act — Powers of High Court.

A certificate officer under the Bengal Public Demands Recovery Act is a Court and his proceedings are subject to the power of superintendence under Art. 227.

Where the Certificate Officer acted in excess of his jurisdiction and also acted in flagrant violation of some of the mandatory provisions of the Public Demands Recovery Act it was held that the entire proceeding before the Certificate Officer was without jurisdiction and must be quashed in exercise of powers under Art. 227. **58 Cal WN 573: AIR 1954 Cal 355 (361) (Pt K) (Prs 38, 39) (DB).**

——Art. 227 — 'Court' — Meaning of — Assistant Registrar exercising powers of Registrar under S. 48 of Bihar and Orissa Co-operative Societies Act (1935) is a Court and subordinate to High Court. See Contempt of Courts Act (1952), S. 3. **1965 (1) Cri LJ 748: AIR 1965 Pat 227 (DB).**

——Art. 227 — 'Court' — Claims officer under Bihar Land Reforms Act (1947), S. 17 whether Court subordinate to High Court under S. 115, Civil P. C. — Jurisdiction of High Court to exercise jurisdiction under Art. 227. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 14. **1959 Pat LR 297.**

——Art. 227 — Court — Election Commissioner.

An Election Commissioner is a Court within the meaning of Art. 227 and in a fit case the High Court would interfere under Art. 227 with the decision of the Election Commissioner. AIR 1954 Pat 65 and AIR 1953 Cal 731, Foll. **1955 BLJR 243: AIR 1955 Pat 368 (369) (Pt B) (Pr 5) (DB).**

——Art. 227 — "Superintendence" in article includes power to deal with contempt of Court not punishable by the Court itself — Commissioner appointed under Public Servants Inquiries Act is a Court. **53 Pun LR 178: 52 Cri LJ 950: AIR 1951 Punj 49 (51) (Pt C) (Pr 5) (DB).**

[**Overruled** in AIR 1956 SC 66]

6 (b). "Tribunals."

●**——Art. 227** — 'Tribunal' — Meaning of — Test to determine — State Government exercising appellate jurisdiction under Rule 6 (5) and (6) of Punjab Welfare Officers Recruitment and Conditions of Service Rules (1952) is a 'tribunal'. See Ibid, Art. 136 (1). **AIR 1965 SC 1595.**

——Art. 227 — Order of Magistrate passed under S. 87 of the Madras Hindu Religious and Charitable Endowments Act (19 of 1951) — If revisable by High Court under Criminal P. C.—Application under Art. 227 — Maintainability. **(1958) 1 Andh WR 263.**

——Art. 227 — Tribunals acting under Madras Estates Abolition Act — Duty to follow decisions of High Court — (Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 8).

Tribunals acting under the provisions of the Madras Estates Abolition Act should, and are bound to follow, the decisions of the High Court especially when those decisions determine the tenure of the very village which the tribunal has to deal with. The tribunals are subject not only to the administrative but also the judicial control of the High Court under Art. 227 and they are bound by the decisions of the High Court. **1955 Andhra WR 251: AIR 1955 Andhra 240 (240) (Pt B) (Prs 8, 9).**

——Art. 227 — Court-fees Act (7 of 1870), S. 4 — Debt Laws — Displaced Persons (Debts Adjustment) Act (1951), S. 4 — Tribunal appointed under S. 4, Displaced Person (Debts Adjustment) Act — Power of superintendence of High Court. See Court Fees Act (1870), S. 4. **AIR 1956 Bom 563.**

——Art. 227 — Bombay Industrial Relations Act (1947), S. 95-A — Power of judicial supervision of High Court over tribunals — Duty of tribunals to follow law as laid down by High Court. See Bombay Industrial Relations Act (11 of 1947) S. 95-A. **AIR 1955 Bom 369.**

——Art. 227 — Opinion of Advisory Board under S. 11 of Preventive Detention Act (1950) — Not subject to revision under Art. 227.

The Advisory Board does not give any decision which by its own force is binding, particularly when it reports that there is in its opinion sufficient cause for the detention of the person concerned. Though the Advisory Board may be assessing the materials before it more or less like a tribunal still it is not a tribunal and it is the subjective satisfaction of the Board that is report-

ed to the Government. The opinion of the Advisory Board is not, therefore, subject to revision by the High Court under the provisions of Art. 227 of the Constitution. **1962 (1) Cri LJ 279: AIR 1962 Cal 119 (121) (Pt C) (Pr 7) (DB).**

——**Art. 227** — Registrar acting as Taxing Officer if tribunal subject to superintendence of High Court. See Court Fees Act (1870), S. 5. **AIR 1959 Cal 317 (DB).**

——**Art. 227** — Tribunal — Meaning of — It means person or body other than Court for deciding rights between parties in accordance with rules having force of law — Conciliation Board under Bargadar's Act, is tribunal — Tenancy Court W. B. Bargadars Act (2 of 1950), S. 6). **AIR 1955 NUC (Cal) 2074 (DB).**

——**Art. 227 — "Tribunal".**

The Commissioner acting under Bengal Wakf Act acting as tribunal both as regards procedure and subject-matter of dispute — He is subject to superintendence of High Court under Art. 227. **ILR (1955) 2 Cal 445: 58 Cal WN 266: AIR 1954 Cal 149 (151) (Pt C) (Pr 5) (DB).**

——**Art. 227 — "Tribunal" — Conciliation Board and Appellate Officer — Tenancy Laws — W. B. Bargadars Act, S. 9 (1).**

The Bhagchas Conciliation Board and the Appellate Officers under the W. B. Bargadars Act are both tribunals within the meaning of Art. 227 of the Constitution, and as such they are subject to the judicial superintendence of the High Court. S. 9 (1) of the W. B. Bargadars Act, which provides that no award or order of a Board or an Appellate Officer shall be questioned in any "Court" which under S. 2 (e) includes the High Court, cannot prevail against the Constitution.

In the case of tribunals, the power of the High Court under Art. 227 at least includes power to require that the facts shall be fully investigated and fairly found and when found, fairly considered after giving the parties a proper opportunity to explain them. **56 CWN 124: AIR 1952 Cal 526 (528, 529) (Pt A) (Prs 12, 15) (DB).**

——**Art. 227 — Powers of High Court — Nature, scope and extent — "Tribunal" — Meaning of.**

Per Chakravartti, J.:— The word "tribunal" in Art. 227 of the Constitution means a person or a body, other than a Court, set up by the State for deciding rights between contending parties in accordance with rules having the force of law and doing so, not by way of taking executive action but of determining a question. The effect of the addition of the word "tribunal" to the word "Court" in the Article and the removal of the bar against revision of judgments in exercise of the power of superintendence is that all agencies, whether Courts or not, performing the duty of deciding disputed questions of right between parties on behalf of and under the sanction of the State and in accordance with State-made laws, are placed under the administrative and judicial control of the High Court.

Per Mookerjee, J.:— Under Art. 227 of the Constitution every High Court has power of superintendence over all judicial and quasi-judicial bodies within its territorial limits in respect of both judicial and administrative matters. But only where grave injustice has occurred or is likely to occur by reason of some mistake committed by the inferior judicial or quasi-judicial bodies and the municipal law provides no adequate remedy the High Courts are entitled and indeed bound to intervene under the Article and correct the mistake and grant appropriate relief. **56 CWN 124: AIR 1952 Cal 526 (531) (Pt B) (Pr 29) (DB).**

——**Art. 227 — Powers of superintendence — Statutory Tribunal not administering laws correctly.**

Where a Tribunal has been set up under a Special Act, it is the duty of the High Court to see, in the exercise of its power of superintendence that such tribunal acts within the limits of the statute creating it, and applies correctly and properly the laws it is authorised to administer. Where both the Board and the Appellate Officer were applying and administering, not S. 5 (1) (a), W. B. Bargadars Act, 1950, but that section with certain supplementary provisions added to it by themselves, the High Court is entitled to correct such an error in the exercise of its powers under Art. 227 of the Constitution. **56 CWN 320: 89 Cri LJ 196: AIR 1951 Cal 574 (576) (Pt B) (Pr 10) (DB).**

——**Art. 227 — Tribunal — Bhagchas Conciliation Board and Appellate Officers are tribunals — High Court has power of superintendence over them.**

The Bhagchas Conciliation Board established under S. 6 of the West Bengal Bargadars Act, 1950, has to hear applications and decide them according to law. It has to give the parties an opportunity of putting forward their contentions and there can be no doubt whatsoever that a Bhagchas Conciliation Board is a tribunal which has to exercise its functions judicially. The Appellate Officer hears appeals from the Board and it is equally clear that he is a tribunal if not a Court. As both are tribunals the High Court has power of superintendence over them under Art. 227 of the Constitution. **56 Cal WN 23: AIR 1951 Cal 138 (139) (Pt A) (Prs 9, 10) (DB).**

●——**Art. 227 — Applicability — Special Tribunal constituted under Special Tribunal Regulation — Powers to transfer under Art. 227 — Criminal P. C. (1898) S. 526.**

Article 227 of the Constitution is applicable to the Court of the Special Tribunal constituted under the Special Tribunals Regulation and the powers of superintendence conferred on the High Court are sufficiently wide to include the principles laid down in S. 494, Hyderabad Criminal P. C. (corresponding to S. 526, Indian Criminal P. C.) Mohd. Abdul Roof v. State of Hyderabad, **1952 Cri LJ 273: ILR (1951) Hyd 342: AIR 1951 Hyd 50 (50) (Pt A) (Pr 3) (FB).**

——**Art. 227** — Contractual domestic tribunal — Decision vitiated by disregard of principles of natural justice — Can be declared void under Art. 227. **ILR (1961) 1 Ker 447: 1961 Ker LT 290: 1961 Ker LJ 389: (1961) 2 Lab LJ 562: AIR 1961 Ker 282 (287) (Pt B) (Pr 7) (DB).**

——**Art. 227** — Magistrate acting under S. 87 is tribunal within Art. 227 of Constitution. See Madras Hindu Religious and Charitable Endowments Act (XIX of 1951), S. 87. **1955 Cri LJ 323: AIR 1955 Mad 72 (DB).**

——**Art. 227** — Government or the Disciplinary Proceedings Tribunal — It falls within Art. 227. See Ibid, Art. 226. **AIR 1951 Mad 882 (DB).**

——**Art. 227** — Scope of — Order of ad hoc Tribunal. See Ibid, Art. 226. **AIR 1954 Orissa 67 (DB).**

——**Art. 227 — Tribunal — Judge appointed for conducting enquiry under S. 22 of Bombay District Municipal Act.**

A Judge appointed for conducting an enquiry under S. 22 of the Bombay District Municipal Act (as applied to Saurashtra) is a tribunal within the

meaning of the term in Art. 227 of the Constitution. **AIR 1951 Sau 15 (15, 16) (Prs 3, 4) (DB).**

6 (c). All tribunals exercising judicial or quasi-judicial functions are amenable to supervisory jurisdiction.

●——**Art. 227** — Conditions for invoking Art. 136 (1) — Distinction between quasi-judicial and executive decision — "Tribunal' contemplated by Art. 136 (1) — Comparison with Arts. 226 and 227 — Industrial Disputes Act (1947), S. 10-A — Decision of arbitrator acting under — Appeal under — Appeal under Art. 136 (1) — Not competent — Arbitrator is not a Tribunal, although his decision is quasi-judicial — Positions of Industrial Tribunal and private arbitrator under Arbitration Act compared. See Ibid, Art. 136 (1). **AIR 1963 SC 874.**

●——**Art. 227** — Excise authorities mentioned in Eastern Bengal and Assam Excise Act (1 of 1910) — Excise appellate authority — Whether merely an administrative body which had no judicial or quasi-judicial functions — Power of supervision and control by High Court. See Eastern Bengal and Assam Excise Act (1 of 1910), S. 9. **AIR 1958 SC 398.**

——**Art. 227** — Excise Appellate Authority — Not merely administrative body — Exercises quasi-judicial functions in deciding appeals — Powers of High Court. See Eastern Bengal and Assam Excise Act (1 of 1910), S. 9 (2). **AIR 1957 Assam 182 (DB).**

——**Art. 227** — Quasi-judicial order — Order of State Government removing President of Municipality from office is quasi-judicial. See Ibid, Art. 226. **AIR 1965 Bom 187.**

——**Art. 227** — High Court has power of superintendence over arbitrators functioning under Section 10-A — Arbitrator acts as quasi-judicial body — His orders can be corrected by writ of certiorari. See Industrial Disputes Act (1947), S. 10-A. **AIR 1962 Bom 274 (DB).**

——**Art. 227 — Power of superintendence over tribunals — Nature of such tribunals — Tribunal set up under Merchant Shipping Act if Tribunal subject to jurisdiction of High Court — (Merchant Shipping Act (1923), S. 249).**

Since the Constitution makers have conferred jurisdiction upon the High Court over tribunals, their intention was clear that the jurisdiction of the High Court should be very wide, and wherever the High Court found a tribunal exercising judicial functions, the High Court could control that tribunal if in exercising those judicial functions it erred or went wrong.

The real question that has got to be decided in order to determine whether a tribunal comes within the jurisdiction of the High Court under Art. 227 is whether the statute, which sets that tribunal imposes upon it the duty to act judicially. if that duty is cast upon the tribunal, then the High Court can and will exercise its jurisdiction under Art. 227.

It is not necessary that the decision of the tribunal should have a binding effect and can be enforced and executed. Even if the decision of the tribunal does not decide any question which affects the rights of the parties, the mere fact that the duty is cast upon it to act judicially is sufficient to bring it within the jurisdiction of the High Court: AIR 1950 SC 188 and AIR 1950 SC 222: 1950 SCJ 451: (1950) 2 MLJ 703, Rel. on. AIR 1952 Cal 526 and AIR 1953 Mad 362, Dissented from.

Even an administrative tribunal, if it is bound in law to act judicially, would come within the purview of Art. 227. (1952) 2 QB 413, Ref.

The Tribunal set up under the Merchant Shipping Act is a judicial or a quasi-judicial tribunal which would attract the application of Art. 227 and in respect of which the jurisdiction of the High Court can be invoked under that Article.

What distinguishes a quasi-judicial tribunal from a judicial tribunal is the absence in the former of a decision which disposes of the whole matter by a finding upon the facts in dispute and the application of the law of the land to the facts so found. In so far as there is an investigation under Chap. VI of Merchant Shipping Act into a shipping casuality, the formal investigation must be regarded a quasi-judicial inquiry. The sole ground of incapacity in the tribunal to finally adjudicate upon a matter under enquiry before it cannot justify the view that the enquiry is purely administrative. **ILR (1955) Bom 443: 57 Bom LR 186: 1955 Cri LJ 1039: AIR 1955 Bom 241 (242, 246, 247, 249, 250) (Pt A) (Prs 2, 9, 10, 12, 14, 21, 22) (DB).**

——**Art. 227** — Magistrate refusing to make order for demolition of structure — High Court upholding Magistrate's order in revision — Order is binding on all authorities and tribunals including Commissioner of Corporation over which High Court exercises powers of superintendence. See Municipalities—Calcutta Municipal Act (3 of 1923), S. 363. **(1965) 69 Cal WN 249.**

——**Art. 227** — Orissa Hindu Religious Endowments Act (2 of 1952), Ss. 44 (1), 41, 74 (3) — Judicial and quasi-judicial tribunals — Distinction between — Commissioner acting under S. 44 — Nature of decision — Appeal heard by Single Bench — Applicability of Cl. 10 L. P. — (Letters Patent (Patna) (1916), Cl. 10. See Orissa Hindu Religious Endowments Act (2 of 1952), S. 44 (1). **AIR 1959 Orissa 98.**

——**Arts. 227, 226** — Special Assistant Agent exercising powers under Agency Tracts Interest and Land Transfer Act exercises judicial functions — ((Madras Agency Tracts Interest and Land Transfer Act (1 of 1917), S. 4 (2). See Ibid, Art. 226. **AIR 1953 Orissa 238 (DB).**

——**Art. 227** —District Judge as persona designata acting as election tribunal — Nature of functions performed by — If he is amenable to judicial superintendence under Art. 227. See Municipalities — Orissa Municipal Act (23 of 1950), S. 21. **AIR 1952 Orissa 244 (DB).**

——**Arts. 227, 226** — Civil P. C. (1908), S. 92 — Function of Advocate-General under S. 92, Civil P. C. — Nature of — Judicial or administrative — Order refusing permission to sue — Interference under Arts. 226 and 227. See Ibid, Art. 226. **AIR 1956 Pepsu 65.**

——**Art. 227** — Decisions of quasi-judicial tribunals — Duty of High Court to protect rights of Indian citizens. See Ibid, Art. 226. **AIR 1960 Punj 278.**

●——**Art. 227 — Orders under Ss. 21 and 23, Punjab Gram Panchayat Act — Whether judicial and revisable — (Panchayats — Punjab Gram Panchayat Act (4 of 1953)).**

Per Full Bench.— A Gram Panchayat while proceeding under Ss. 21 and 23 of the Act is acting judicially and therefore, a petition challenging its orders under either of those sections would lie to the High Court under Art. 227 of the Constitution of India.

The Gram Panchayat acting under S. 21 of the Act, would appear to have all the attributes of a judicial tribunal. The crucial test, is whether the

statute which sets up the tribunal imposes upon it the duty to act judicially and if such a duty is cast upon the tribunal then the High Court is empowered to exercise its jurisdiction over that tribunal under Art. 227. AIR 1955 Bom 241, Rel. on. Narain Singh Hira Singh v. The State, **1958 Cr LJ 1120: 61 Punj LR 93: ILR (1958) Punj 696: AIR 1958 Punj 372 (375, 376) (Pt A) (Prs 8, 9, 10) (FB).**

● ——**Art. 227—Tribunal under S. 6 of Abducted Persons (Recovery and Restoration) Act (1949).**

(Per Bhandari and Khosla JJ.):— The Tribunal constituted under Section 6 of the Abducted Persons (Recovery and Restoration) Act is subject to the general supervision of the High Court by virtue of Art. 227 of the Constitution inasmuch as the Tribunal performs quasi-judicial functions, for it makes an enquiry into the status of an individual. Ajaib Singh v. State of Punjab, **ILR (1962) Punj 381: 54 Pun LR 260: 1952 Cri LJ 1313: AIR 1952 Punj 309 (321, 335) (Pt J) (Prs 49, 155) (FB).**

[Reversed on another point in AIR 1953 SC 10]

——**Arts. 227, 226** — Civil P. C. (1908), S. 92 — Advocate-General acting under S. 92 — Nature of his function is not judicial or quasi-judicial — No question of revision under Art. 227 or issuing writ under Art. 226 arises. See Ibid, Art. 226. **AIR 1955 Raj 166 (DB).**

6 (d). Custodian of evacuee property.

——**Art. 227 — Jurisdiction of High Court — Decision of Custodian under S. 48 (2) of Administration of Evacuee Property Act — (Administration of Evacuee Property Act (1950), S. 48 (2)).**

When a Court or a Tribunal with a limited jurisdiction is set up, ordinarily it is the duty and the function of the higher Court to see that the Court or Tribunal of limited jurisdiction functions within the jurisdiction conferred upon it. It is a condition precedent to the exercise of a power of the Custodian under sub-s. (2) that the sum with regard to which he gives his decision or determination must be a sum due under the provisions of the Act. As under Art. 227 of the Constitution every tribunal is subordinate to the High Court, the High Court has the power to examine the decision of the Custodian from the point of view of deciding whether he has acted within jurisdiction. **ILR (1956) Bom 865: 58 Bom LR 779: AIR 1956 Bom 652 (654) (Pt C) (Pr 3) (DB).**

——**Art. 227 — Tribunal — Meaning — Custodian of Evacuee Property is Tribunal.**

The word 'Tribunal' used in Art. 227 is a general term and it includes a Court of justice or in other words, every Court of Justice or a Court can be described as a tribunal, but every tribunal is not necessarily a Court. Since the legislature has used both the words together their intention appears to be that the word tribunal should have a wider meaning than Court or Court of justice. Probably it would be permissible to think that it is used in the popular sense, meaning a person or body of persons having authority to hear and decide disputes so as to bind the disputants.

Apart from the administrative and executive functions that the Custodian is to perform, it is also a part of his duty to work as a tribunal in the sense mentioned above and accordingly in respect of what he does as a tribunal he is amenable to the jurisdiction of the High Court under Art. 227. **3 Pepsu LR 347: AIR 1952 Pepsu 82 (84, 85) (Pt E) (Prs 8, 9) (DB).**

——**Art. 227 — Power of High Court — When to be exercised — Order of Custodian held proper — Administration of Evacuee Property Act (1950), S. 10.**

In so far as the Custodian and his subordinates have to decide questions relating to the respective rights of the parties that appear before them they are tribunals and the High Court has power of superintendence over them under Art. 227 of the Constitution. This power includes the power to interfere with their orders in appropriate cases. The power of superintendence is, however, not a power given to the Court to correct errors and the power should be exercised only in cases where the Courts have clearly done something which they were not intended to do and it must be used to keep the Courts within the bounds prescribed by law for such Court: Civ. Misc. No. 1 of 1950, Rel. on.

Thus where the custodian passed an order of allotment and for possession of certain evacuee property, but subsequently finding that the property was in possession of certain tenants of the evacuees who could not be ejected therefrom except in due process of law, the custodian set aside the order and restored the possession to the tenant:

Held, that the custodian's latter order merely rectified the mistake made by his department, which it was open for him to do, and not being a wrong or erroneous order could not be interfered with under Art. 227. **AIR 1952 Pepsu 16 (16, 17) (Pr 2).**

6 (e). Authorities under Rent Control Acts.

● ——**Art. 227** — East Punjab Urban Rent Restriction Act (1959)—Rent Controller and District Judge exercising jurisdiction under Act — They are at least tribunals even if they are not Courts. Waryam Singh v. Amarnath. **1953 All WR (HC) 665 : 1953 All LJ 696 : AIR 1954 SC 215 (216, 217) (Pt A) (Pr 12).**

——**Art. 227 — Decisions of appellate tribunals under Rent Control Acts — Civil P. C. (1908), Section 115.**

Decisions given by appellate tribunals under the Rent Control Acts are not revisable by the High Court under S. 115, Civil P. C. but the Chief Judge of the Small Cause Court Calcutta hearing an appeal from the decision of the Rent Controller is a tribunal functioning in an area over which the High Court exercises jurisdiction and an application under Art. 227 to revise the order of the Chief Judge would lie. **55 Cal WN 287: AIR 1952 Cal 290 (290) (Pt A) (Pr 2) (DB).**

——**Art. 227** — Jammu and Kashmir Constitution Act (14 of 1996), S. 64 — High Court has power of superintendence over Court of Rent Controller — (Houses and Rents — Jammu and Kashmir Houses and Shops Rent Control Act (S. M. 2009), S. 21) — (Letters Patent (Jammu and Kashmir), S. 22. See J. and K. Constitution Act (14 of 1996), S. 64. **AIR 1955 J and K 29.**

——**Art. 227 — 'Tribunal' — Allotment of house by Rent Controller — District Judge hearing appeal against order is tribunal subject to High Court's jurisdiction under Art. 227—(Houses and Rents — M. B. Sthan Niyantran Vidhan (Sm. 2006), Ss. 9 and 13).**

The decision of the Rent Controller as to whether a particular house should be allotted to a particular person is no doubt an administrative decision. But in arriving at that decision he has to act judicially and in accordance with the provisions of S. 13. He would therefore, be a tribunal within the purview of Art. 227.

The District Judge hearing an appeal under S. 9 against the order of the Rent Controller allotting the house, if not a Court, is certainly a judicial tribunal subject to the jurisdiction of the High Court under Art. 227. AIR 1950 SC 188 and AIR 1950 SC 222, Applied. **1956 MBLJ 1267: AIR 1957 Madh Bha 11 (11) (Pt A) (Pr 3) (DB).**

——Art. 227 — Interference with findings of Rent Controller.

It is within the jurisdiction of the Rent Controller and the Deputy Commissioner to decide whether A never became the sub-tenant of B and whether B never sub-let house to him as special tribunals constituted for the purpose of deciding cases arising between landlords and tenants, and it is not open to the High Court in exercise of the extraordinary jurisdiction given to the High Court by Art. 227 to set aside their decision. **ILR (1952) Patiala 345: AIR 1952 Pepsu 174 (175) (Pt A) (Pr 4).**

——Art. 227 — Powers of High Court under.

The Deputy Commissioner when he hears appeals from the order of the Rent Controller under the Patiala and East Punjab States Union Urban Rent Restriction Ordinance is without doubt a tribunal. So far as the Controller is concerned his functions are entirely judicial, and the High Court has power of superintendence over them by virtue of Art. 227 of the Constitution. The power under Art. 227 should be exercised in exceptional cases. Where both the Controller and the Deputy Commissioner ignored the express provisions of law, i.e. Section 13 (2) proviso of the Ordinance which means that they omitted or refused to exercise jurisdiction which the law gave them, it is the duty of High Court to set aside their orders. (The matter however having come up before the High Court under Art. 227 it was doubtful whether the High Court could do exactly what an appellate Court or a Court of revision could do. Accordingly, the High Court allowed the petition to the extent that it quashed the order of the Deputy Commissioner and sent back the case to him with the direction that he should accept the petitioner's appeal from the order of the Rent Controller and order the ejectment of the tenant from the house in question. 3 Pepsu LR 347, Rel. on. **ILR (1952) Patiala 345: AIR 1952 Pepsu 174 (177, 178) (Pt C) (Pr 11).**

——Art. 227 — Proceedings under Punjab Urban Rent Restriction Act. See Civil P. C. (1908), Section 151. **ILR (1957) Punj 611.**

6 (f). Revenue Courts and Tribunals.

——Art. 227 — Tribunal — Revenue Divisional Officer acting under S. 13, Madras Act (2 of 1894).

The Revenue Divisional Officer cannot be said to be acting as a Tribunal in registering the name of the minor as the holder of the office under S. 13 of the Act (Act 2 of 1894). He merely accepts the name submitted by the proprietor and enters it in official records for the purpose of evidence. He is not the appoining authority, the appointing authority, as is clear from the provisions of Section 10 being the proprietor himself. Article 227 of the Constitution confers jurisdiction only in respect of Courts and Tribunals unlike Art. 226 which refers to any person or authority. **1955 Andhra WR 290: AIR 1955 Andhra 192 (194) (Pt D) (Pr 4).**

——Art. 227 — Tribunal — Revenue Commissioner sitting as appellate or revisional tribunal falls under Art. 227 — (Bhopal Land Revenue Act (4 of 1932), S. 38). **AIR 1955 NUC (Bhopal) 1784.**

——Art. 227 —Orders of Mamlatdar and Collector under Mamlatdar's Courts Act — Interference with under Art. 227 of Constitution. See Bombay Mamlatdar's Courts Act (2 of 1908), S. 19 **AIR 1954 Kutch 47.**

——Art. 227 — Power of superintendence — Board of Revenue under Madhya Bharat Land Revenue and Tenancy Act (66 of 1950) — If a tribunal subject to the High Court's superintendence under Art. 227 — Power of the State Legislature to take away powers given under Art. 227 — M. B. Act (66 of 1950), S. 147 — Validity.

In the exercise of its judicial functions, the Board of Revenue under the M. B. Act (66 of 1950), is tribunal subject to the superintendence of the H. C. under Art. 227 of the Constitution. The power of superintendence under this Article includes not only superintendence on administrative points but superintendence on judicial side also. This power of superintendence is not restricted to cases of non-exercise or illegal exercise of jurisdiction but extends also to cases where there has been an obvious miscarriage of justice because a Court or tribunal has approached the matter entrusted to it in an arbitrary or despotic manner and against all rules of natural justice. But the power cannot be exercised to disturb a decision of a Court or a tribunal merely because it has misconceived a point of law or come to a wrong decision on the facts.

The right given to the High Court under Art. 227 cannot be taken away by any State Legislature. So Section 147 of the M. B. Act (66 of 1950) cannot be construed so as to take away this power and if it does take it away, to that extent it is ultra vires. **MBLJ 1952 (Civ) 94: AIR 1952 Madh Bha 51 (51, 52, 53) (Prs 3, 4, 5, 15) (DB).**

——Arts. 227, 226 — Order of Revenue Court refusing to declare petitioner as occupancy tenant — Interference — (Tenancy Laws — C. P. Tenancy Act (1 of 1920), S. 41). See Ibid, Art. 226. **AIR 1956 Nag 65 (DB).**

——Art. 227 — Decision of Board of Revenue.

The High Court can exercise its general power of superintendence under Art. 227, over the Board of Revenue and under appropriate circumstances an order of the Board of Revenue can be interfered with by the High Court, if special circumstances are made out for such interference. AIR 1952 Vindh Pra 10, Ref. **AIR 1953 Raj 86 (87) (Pt A) (Pr 3) (DB).**

——Arts. 227 and 226 — Applicability — Chief Court of Rewa holding the claim to lie in Revenue Courts — Decision of the Board of Revenue — Cognisable only by a civil Court — Conflict of jurisdiction — No other remedy — Relief under extraordinary powers — Art. 227 applies — J. C.'s Court's powers to resolve the conflict.

A suit for eviction of tenants from buildings used by an agriculturist and also the surrounding lands was instituted in a civil Court which was ultimately directed by the Chief Court of Rewa to be filed in a Revenue Court. The matter was decided by the D. C. and the decision was confirmed by the Revenue Commissioner but the Board of Revenue finally ordered the matter could be decided only by a civil Court. The plaintiff applied under Arts. 226 and 227 for a direction.

Held, (i) Art. 226 does not apply to the instant case. Art. 227 gives formal expression to the powers of the J. C.'s Court to be exercised in its extraordinary supervisory jurisdiction, which power can be exercised over the Board of Revenue also. The only limitation is that it should be exercised in very exceptional circumstances

where the grievance of a party has no other remedy provided for. (AIR 1952 Vin Pra 10, Rel. on; AIR 1952 All 788, Ref.).

(ii) In view of S. 239 (9) of Rewa Land Revenue and Tenancy Code (corresponding to S. 289 of the U. P. Tenancy Act) the highest Court of general jurisdiction could resolve the conflict of jurisdiction. The Durbar of Rewa State was competent previously and it can now be exercised by the J. C.'s Court.

(iii) The civil Courts have general jurisdiction to decide all civil disputes except in so far it is ousted by special statutes as in the cases of disputes made triable by the Board of Revenue and its subordinate Courts. Civil Courts have got the residuary jurisdiction. Hence the highest Court of general jurisdiction has to decide, in a matter of conflict of jurisdiction, whether it should itself exercise the jurisdiction or the Special Court should exercise it. (AIR 1918 Mad 786; AIR 1940 Rang 84; AIR 1941 Lah 234, Ref. to.).

In any view the order of the Board was not correct in view of the order of Chief Court and, therefore, the Board had to be directed to treat as final the decision of the Chief Court that the matter was triable by a Revenue Court. **AIR 1952 Vin Pra 74 (75, 76) (Prs 3, 4, 5, 8).**

——Art. 227 (1) (2) and (3) — Courts and Tribunals — Power of superintendence, if extends over Board of Revenue.

The Sub-article (1) of Art. 227 enunciates a general principle whereas the sub-articles (2) and (3) describe some, but certainly not the only ways in which the superintendence may be exercised. These are not exhaustive, but are specially mentioned because of their practical importance in the case of the Courts directly subordinate to the High Court. The specific mention of certain forms of superintendence in (2) and (3) does not, however, in any manner qualify the general powers of superintendence provided in the subarticle (1). The High Court has, therefore, powers of superintendence over the Board of Revenue. **AIR 1952 Vin Pra 10 (10, 11) (Pt B) (Prs 4, 6).**

6 (g). Election Tribunal.

——Arts. 227 and 329 — Power of superintendence over Election Tribunals.

No provision in the Constitution except Art. 329 can be said to take away the power of superintendence which the High Court exercises under Art. 227 over an Election Tribunal when once it has been constituted to hear a petition. Subclause 4 of the Art. 227 excludes only Tribunals constituted by or under any law relating to the Armed Forces and therefore no weight can be attached to the contention that the power of superintendence does not extend over tribunals created under the provisions of the Constitution itself and consequently over an Election Tribunal created under part 15 of the Constitution.

It is no doubt settled that Art. 329 (b) ousts the jurisdiction of the Courts with regard to matters arising between the 'commencement of the polling and the 'final selection'. But Art. 324 and the preamble to Act 43 of 1951 show that the superintendence of the work of the Election Tribunals has not been vested in the Election Commission. Had that been the intention, Art. 324 (1) would have been differently worded and instead of specifying that the power included the power of appointment of Election Tribunals for a particular purpose, the Article could have easily stated that the sphere of superintendence included decision of doubts and disputes arising out of or in connection with elections. The words used in Art. 324 are 'doubts and disputes arising out of or in connection with elections and not in the course of the election' and therefore, it is clear that the process of election comes to an end with the declaration of the result of the polling and does not cover the adjudication of disputes 'arising out of or in connection with' elections.

To accept the contention that, since under cl.(c) of Section 98 of Act 43 of 1951 the Tribunal may not only declare the result of the returned candidate to be void, but may also declare the petitioner or any other candidate to have been duly elected in certain cases, the result of the election is not finally declared and the final selection not known till the result of the election petition is announced and, as such, all proceedings before the Election Tribunal must be deemed to be proceedings in election and subject to the supervision of the Election Commission and therefore, the extraordinary powers conferred under Art. 227 cannot be exercised would create an anomaly in that the Supreme Court while acting under the powers conferred on it by Art. 71 (1) would be subject to the superintendence of the Election Commission, a state of affairs which could never have been intended.

Further, in cases in which election petitions are presented, there is no extension of the period, as visualised by S. 153, Representation of the People Act, 1951, by which the elections have to be completed. In those cases the Election Commission itself holds that election is completed as soon as the result of the polling is announced and publishes the names of the members elected to the State Legislative Assembly who are for all purposes treated as duly elected. There can be no 'elected person' till the process of election has been completed.

Therefore, Art. 329 (b) does not bar the jurisdiction of the High Court to exercise supervision over an Election Tribunal constituted after the declaration of the election result to decide disputes connected with the election or arising out of the same. **1953 AMLJ 1: AIR 1954 Ajmer 33 (35, 36) (Pt C) (Prs 8, 10, 11, 12, 13, 14, 15, 18).**

——Arts. 227 and 241 — Power of superintendence — Extent of — Election tribunals — (Elections).

Election Tribunals are subject to the superintendence of the High Court under Art. 227 and the superintendence is both judicial as well as administrative. **AIR 1959 Him Pra 25 (28) (Pt D) (Pr 20).**

——Art. 227 — Powers of High Court.

In the exercise of powers conferred by Art. 227 of the Constitution, the Court of the Judicial Commissioner, Himachal Pradesh, can interfere with the orders and decisions of Election Tribunals, functioning within the jurisdiction of that Court. AIR 1954 SC 215 and AIR 1955 SC 233, Rel. on. **AIR 1958 Him Pra 26 (29) (Pt C) (Pr 27).**

——Art. 227 — Election — Revision — Election Tribunal is Court subordinate to the High Court. See Contempt of Courts Act (1952), S. 3. **1960 Cr LJ 484 : AIR 1960 Madh Pra 115 (DB).**

——Art. 227 — Panchayats — Madras Village Panchayats Act (1950), Section 19 (1) — Election petition — District Munsiff enquiring into election petition acts as persona designata — Revision under S. 115, Cvil P. C., does not lie from his order — Civil P. C. (1908), S. 115 . See Panchayats — Madras Village Panchayats Act (10 of 1950), S. 19 (1). **AIR 1960 Mad 353.**

——**Art. 227** — Writ against decision of Election Tribunal. See Ibid, Art. 226. **AIR 1954 Nag 166 (DB).**

——**Art. 227 — Election tribunal — Superintendence over.**

The language of Art. 227 is comprehensive enough to enable the High Court to exercise its powers of superintendence over the election tribunal appointed under the Representation of the People Act, 1951. **ILR (1953) Cut 682: AIR 1954 Orissa 67 (68) (Pt A) (Pr 4) (DB).**

——**Art. 227** — Interference with decision of Election Tribunal. See Municipalities — Orissa Municipal Act (23 of 1950), S. 18 (2) (b). **AIR 1953 Orissa 313 (DB).**

——**Arts. 227 (1), 226 and 245 (1)**—Municipalities—Orissa Municipal Act (23 of 1950), Ss. 21, 22, 23 — District Judge as persona designata acting as Election Tribunal performs judicial function and comes under powers of judicial superintendence of High Court under Art. 227 (1) of Constitution. See Municipalities — Orissa Municipal Act (1950), S. 21. **AIR 1952 Orissa 244 (DB).**

——**Art. 227 — Election Tribunal.**

An Election Tribunal is undoubtelv a 'Tribunal' over the proceedings of which the High Court has the power of superintendence under Art. 227 of the Constitution. **ILR (1954) Patiala 387: AIR 1954 Pepsu 118 (121) (Pt D) (Pr 10) (DB).**

——**Art. 227** — Power of superintendence —Election Tribunal is Court of Justice amenable to control of High Court. **ILR (1954) Patiala 1: AIR 1953 Pepsu 133 (135, 136) (Pt A) (Pr 2) (DB).**

——**Art. 227 — Election Commissioner.**

The Election Commissioner is a Tribunal with all the trappings of a Court and he exercises judicial as distinct from administrative functions. **AIR 1955 Trav-Co 24 (25) (Pt A) (Pr 4) (DB).**

6 (h). Authority under Motor Vehicles Act.

——**Art. 227** — Government acting under S. 64A, Motor Vehicles Act (1939). is tribunal. See Ibid, Art. 226. **AIR 1957 Andh Pra 739.**

● ——**Art. 227 — "Tribunal" Commissioner of Division exercising appellate functions under Motor Vehicles Act.**

The Commissioner of a Division hearing an appeal from a decision of the Regional Transport Authority granting a stage carriage permit under the Motor Vehicles Act is a "tribunal" within the meaning of Art. 227 of the Constitution. Sabitri Motor Service, Ltd. v. Asansol Bus Association, **ILR (1951) 2 Cal 437: 55 CWN 81: AIR 1951 Cal 255 (257) (Pt C) (Pr 13) (SB).**

——**Art. 227** — Applicability — Order passed by Transport Appellate Tribunal in exercise of jurisdiction as a judicial body. See Ibid, Art. 226. **AIR 1953 Vin Pra 49.**

——**Art. 227** — Judicial authority — Appellate Tribunal under Motor Vehicles Act — High Court's power of superintendence over. See Motor Vehicles Act (1939), S. 64. **AIR 1953 Vin Pra 41.**

6 (i). Authority under Payment of Wages Act.

——**Art. 227 — Applicability — Decision under Payment of Wages Act (1936).**

As a matter of practice all decisions under the Payment of Wages Act must be challenged, if at all, under Art. 227 of the Constitution of India. AIR 1955 Bom 460, Foll. **AIR 1956 Bom 391 (392) (Pt A) (Pr 2) (DB).**

——**Art. 227 — Decisions under Payment of Wages Act.**

As a matter of practice, all decisions under the Payment of Wages Act if they are to be challenged at all should be challenged under Art. 227. **(1955) 1 Lab LJ 555: (1955-56) 9 FJR 311: 57 Bom LR 887: ILR (1955) Bom 814: AIR 1955 Bom 460 (463) (Pt B) (Pr 11) (DB).**

——**Art. 227** —Authority under Payment of Wages Act, is not Court subordinate to High Court — Decision of Authority — When can be interfered with under Art. 227. See Civil P. C. (1908), S. 115. **AIR 1961 Punj 154.**

6 (j). Industrial Tribunals and Labour Courts.

——**Art. 227** — Decision of Labour Court — Dismissal of employee held wrongful — Interference by High Court — Principle. See Ibid, Art. 226. **(1960) 1 Andh WR 133: AIR 1960 Andh Pra 526 (DB).**

——**Art. 227 —Tribunal — Order of Govt. under S. 8 Industrial Disputes Act, if can be challenged.**

Per Ram Labhaya, J.: The powers of superintendence under Art. 227 can be exercised over Courts and Tribunals. The Provincial Government when it acts under S. 8 is not a superior tribunal directing transfer of a case from one subordinate tribunal to another and as such its action, even if wrong, is not open to challenge under Art 227. **ILR (1951) 3 Assam 147: 3 FJR 195: AIR 1951 Assam 96 (99, 100) (Pt D) (Prs 19, 20) (DB).**

——**Art. 227** — Industrial Tribunal is such tribunal as is contemplated in Art. 227. **54 Cal WN 784: 86 Cal LJ 152: (1950-51) 2 FJR 81: AIR 1950 Cal 457 (462) (Pt D) (Pr 49) (DB).**

6 (k). Decision of authority under Minimum Wages Act.

——**Arts. 227, 226** — Minimum Wages Act (1948), S. 20 —Order under — High Court can interfere — (Civil P. C. (1908), S. 115). See Minimum Wages Act (1948), S. 20. **AIR 1960 Assam 123.**

——**Art. 227** — Scope —High Court can interfere with orders of Authority under Minimum Wages Act. See Ibid, Art. 226. **ILR (1961) 2 Ker 637.**

6 (l). Nyaya Panchayats.

● ——**Art. 227**—Nyaya Panchayat established under U. P. Panchayat Raj Act — Is a Court subordinate to High Court within S. 3 — Supervisory jurisdiction of High Court is sufficient test of judicial subordination. (Majority view) AIR 1957 All 495, **Overruled.** See Contempt of Courts Act (1952), S. 3. **1962 (2) Cri LJ 1: AIR 1962 All 315 (FB).**

——**Art. 227 — "Court subordinate" — Essentials of subordination — Arts. 227 and 228 —(Civil Procedure Code (1908), S. 115).**

One of the constitutional requirements of a subordinate Court is that it must be presided over by a person appointed by the Governor in accordance with the rules made by him after consultation with the High Court. If a local Act such as the Zamindari Abolition and Land Reforms Act, does not intend that persons appointed to preside over Courts created by it are required to be appointed in accordance with the rules made by the Governor after consultation with the High Court, it means that it does not intend the new Courts to be subordinate Courts, at least within the meaning of the Constitution. A Court does not become subordinate to the High Court merely because it is under its supervisory jurisdiction. The provisions of Art. 237 show that magisterial Courts are not subordinate Courts within the meaning of Ch. VI. If they are not subordinate Courts, other Courts created under local and spe-

cial Acts, such as Zamindari Abolition and Land Reforms Act, alsi are not subordinate Courts. **1958 All WR (HC) 330 : (1957) 2 Lab LJ 225 : AIR 1957 All 495 (501) (Pt B) (Pr 5).**

(**Overruled** in AIR 1962 All 315 (FB).)

——Art. 227 — U. P. Panchayat Raj Act (26 of 1947), S. 85 (5) — Proceedings of Panchayati adalat or orders passed in revision — Power to interfere.

Springing as the power this article does from the Constitution, which is the parent of all Acts and statutes in India, the fact that the judgment or order of a Court or tribunal has been made final by an Act or the fact that the body performing judicial functions is special tribunal constituted under a statute cannot be set up as a bar to the exercise of the power by the High Court. Therefore, notwithstanding the provisions of S. 85 (5), U. P. Panchayat Raj Act the High Court can exercise its powers of superintendence over proceedings of Panchayati Adalat or any order passed in revision therefrom. **1952 All WR (HC) 547 : 1952 Cri LJ 1282 : 1952 All LJ 493 : AIR 1952 All 788 (792, 793) (Pt B) (Prs 14, 15, 17).**

——Art. 227 — Nyaya Panchayats under Act 1 of 1947 — C. P. and Berar Panchayats Act (1 of 1947), S. 83 (3).

The High Court has no power of revision having regard to S. 83 (3) of the Central Provinces and Berar Panchayats Act, 1946 (1 of 1947). But where the offence was committed on the 11th June 1950, the High Court undoubtedly has power of judicial superintendence over the Nyaya Panchayat tribunals exercising powers under the Act, having regard to Art. 227 (1) of the Constitution. **1952 Nag LJ 503 : 1953 Cri L Jour 251 : ILR (1952) Nag 936 : AIR 1953 Nag 14 (15) (Pt A) (Pr 2) (DB).**

6 (m). Collector acting under Land Acquisition Act.

——Art. 227 — Tribunal — Land Acquisition Act (1894), S. 11 — Collector making award not a tribunal but acts as officer of Government.

No application under Art. 227, of the Constitution of India, is maintainable against the Collector's award under S. 11, Land Acquisition Act. The Collector while making an award under section 11 of the Land Acquisition Act acts merely as an officer of the Government making enquiries in order to determine what money the Government would offer to the persons whose land is acquired. He neither acts as a tribunal, nor a judicial officer : ILR 30 Cal 36 and ILR 32 Cal 605 (PC) and AIR 1961 SC 1500, Rel. on. AIR 1951 Cal 258 (SB) and AIR 1952 Orissa 98, not good law in view of AIR 1961 SC 1500. The award merely becomes a final and conclusive evidence as between the Collector and a person whose land is acquired regarding the three matters referred to in S. 12, but it is not a decree. **AIR 1965 Cal 638 (639, 640) (Prs 1, 2) (DB).**

——Art. 227 — Collector dealing with reference is a tribunal — Hence is subject to jurisdiction of High Court within Art. 227 — Land Acquisition Act (1894), S. 18.

The Collector, in making or refusing the reference particularly in refusing it on ground of limitation is certainly acting judicially or, at least, quasi-judicially and would come within the term 'tribunal' under Art. 227 of the Constitution. Thus he is amenable to the jurisdiction of High Court under Art. 227. 12 CWN 241: AIR 1952 Cal 526; 16 CWN 327 and AIR 1962 Orissa 98, Foll. **(1962) 66 Cal WN 446 : 1964 Cal L Jour 114.**

7. Revision and power of superintendence.

——Art. 227 — Registrar and Assistant Registrar of Co-operative Societies — They cannot be said to be subordinate to High Court assuming they are Courts — Word "subordination" used in article cannot have different meaning from the word "subordination" and is not synonymous with it. **1962 All LJ 57 : 1963 (1) Cri L Jour 507 (511) (Pt 8).**

[**Overruled** on another point in AIR 1965 All 263 (FB).]

——Arts. 227, 234, 237 and 228 — Court whether becomes Subordinate Court merely because it comes under supervisory jurisdiction of High Court — Essentials of — (Civil P. C. (1908), Sections 115 and 3). See Ibid, Art. 234. **AIR 1957 All 495.**

[**Overruled** by AIR 1962 All 315 (FB).]

——Art. 227—Bar of revisional jurisdiction of High Court under S. 115, C. P. Code—Jurisdiction under Art. 226 or 227 if can be invoked. See Municipalities — U. P. Municipalities Act (2 of 1916), S. 23. **AIR 1955 NUC (All) 2681.**

——Art. 227 — Court subordinate — Meaning — Collector acting under Madras Hereditary Village Office Act and the appellate authority acting under Rule 38 thereunder — Are civil Courts and Courts subordinate to High Court within the meaning of S. 115 Civil P. C. See Civil P. C. (1908), S. 115. **AIR 1963 Andh Pra 37.**

——Art. 227 — Article not intended to be substitute for revisional jurisdiction of High Court. **AIR 1958 Assam 77 (78) (Pt B) (Pr 1) (DB).**

●**——Art. 227 — Powers of revision — Taken away by statute — Order in appeal under S. 9, Assam Adhiars Protection and Regulation Act.**

Since the jurisdiction of the High Court under Art. 227 of the Constitution is extraordinary, it should not serve ordinarily as a substitute for revisional jurisdiction in cases where the revisional jurisdiction has been taken away from the High Court by a competent Legislature, though even in such cases absence, excess or abuse of jurisdiction will justify interference. The Assam Adhiars Protection and Regulation Act, 1948, does not provide for a remedy by way of revision. Where the Deputy Commissioner has given certain reasons for his decision in an appeal preferred under S. 9 of that Act, the High Court will not consider whether the reasons are right or wrong in the exercise of its extraordinary jurisdiction under Art. 227 of the Constitution. Jagat Chandra De v. Gopalram Das. **ILR (1952) 4 Assam 478 : AIR 1952 Assam 166 (167) (Pr 2) (FB).**

——Art. 227 — High Court's power of revision — Scope of, S. 115, Civil P. C. See Civil P. C. (1908), S. 115. **AIR 1962 Cal 597 (DB).**

——Art. 227 — Revision of appellate orders — Revision lies under S. 115, Civil P. C. and not under Art. 227 of the Constitution. See Payment of Wages Act (1936), S. 17. **AIR 1963 Madh Pra 25 (DB).**

●**——Art. 227** — Nature of jurisdiction under — It is not original but revision. : See Ibid, Art. 133. **AIR 1960 Pat 361 (FB).**

——Art. 227 — Civil P. C. (1908), S. 115 — Respective scope.

The ultimate basic purpose and object of these two provisions is not materially different, for they are both designed to clothe the High Court with power to set right the orders of the subordiate Tribunals and Courts, if there is inter alia a jurisdictional infirmity resulting in failure of justice. **ILR (1965) 2 Punj 485.**

——**Art. 227** — Applicability — Petition under S. 115, Civil P. C. (1908), and Art. 227 of Constitution challenging order of Authority under Payment of Wages Act — Authority not being subordinate to High Court, S. 115, Civil P. C. or S. 44, Punjab Courts Act not applicable—Petition though not maintainable under S. 115, Civil P. C. can be treated as one under Art. 227 of Constitution. See Civil P. C. (1908), S. 115. **AIR 1964 Punj 242 (DB).**

——**Art. 227 — Power of High Court — Order under S. 15, Payment of Wages Act.**

The High Court has, apart from S. 115, Civil Procedure Code, power to examine the legality of the order under S. 15, Payment of Wages Act and it is competent to interfere if the order could not have been legally made and was outside the jurisdiction of the authority concerned. **(1961) 1 Lab LJ 627 : 1960-1 Fac LR 381 : 62 Pun LR 359 : ILR (1960) 2 Punj 129 : (1960-61) 19 FJR 4 : AIR 1960 Punj 375 (375) (Pt A) (Pr 2) (DB).**

——**Art. 227** — Jurisdiction of High Court—Order of sentence under Punjab Gram Panchayat Act — High Court's revisional powers under S. 439, Criminal Procedure Code and Arts. 227 and 226 of the Constitution — Finality of orders under Act. See Panchayats — Punjab Gram Panchayat Act (4 of 1953), S. 66. **AIR 1960 Punj 160.**

——**Art. 227 — Decree passed by Civil Court in small cause jurisdiction — Revision against — Power of High Court.**

Even though S. 115, Civil P. C. cannot be invoked to correct grave illegalities that may be committed by subordinate Courts in the trial and disposal of Small Cause suits, the High Court can rectify such errors and illegalities in the exercise of the general power of superintendence over all subordinate Courts as conferred by Art. 227 of the Constitution.

The power conferred by this Article, though very wide, cannot be freely used as a general revisory jurisdiction. On the other hand, such power will be exercised only in exceptional cases and to prevent the perpetration of illegal or unauthorised acts by subordinate tribunals, resulting in a miscarriage of justice. **1952 Ker LT 538 : AIR 1953 Trav-Co 41 (43) (Pt D) (Pr 5) (DB).**

8. Power conferred is not an appellate power.

——**Art. 227** — Exercise of jurisdiction under — Court does not function as Court of appeal — Punishment awarded by academic council — Court whether can look into propriety of order. See Ibid, Art. 226. **AIR 1960 All 642.**

——**Art. 227 — High Court does not act as Court of Appeal.**

The High Court under Art. 227 does not act as a Court of appeal and consequently a mere error in the decision of the inferior tribunal cannot be a ground of interference. **AIR 1964 Andh Pra 528 (530) (Pt A) (Pr 7).**

——**Art. 227** — Powers of High Court under — Power under Art. 227 is not substitute for ordinary revisional or appellate powers — (Hyderahad Debt Conciliation Act (1 of 1349 F), S. 22). **AIR 1955 NUC (Hyd) 2963 (DB).**

——**Art. 227 — Jurisdiction of High Court — Nature and extent of.**

Proceedings under Art. 227 of the Constitution cannot really be equated to an appeal (to the Supreme Court) permitted under Art. 136 of the Constitution. It is a revisional jurisdiction that can be exercised by the High Court in proceedings under Art. 227 of the Constitution. In exercising that jurisdiction the High Court does not convert itself into a Court of appeal. **(1958) 2 Lab LJ 602: 71 Mad LW 679: (1958-59) 15 FJR 25: 1958 Mad WN 732: (1959) 1 Mad LJ 235: 1959 Mad LJ (Cri) 241.**

——**Art. 227** — Interference — Powers of High Court — Not appellate. See Ibid, Art. 226. **AIR 1958 Mys 26 (DB).**

●——**Arts. 227 and 226 — Does not give power to hear appeal where it does not lie.**

Per Hidayatullah, J.:— The power of superintendence which is given by Art. 227 is a power merely to correct errors of jurisdiction. This visitorial power has never been understood to give to the High Court a power to hear appeals where such appeals do not lie. Nor does it give a power to substitute a decision which the High Court thinks is correct, in place of the decision of the inferior Court or tribunal.

Similarly Art. 226 does not give the High Court a power of appeal where the statute specifically bars such an appeal. Bhailal Jagadish v. Additional Deputy Commissioner, Akola, **ILR (1952) Nag 839: 1952 Nag LJ 613: AIR 1953 Nag 89 (92, 94) (Pt C) (Prs 11, 25) (FB).**

——**Art. 227 — Nature of jurisdiction under.**

For purposes of Art. 227 the High Court is neither a Court of Appeal nor a Court of Revision from the orders of the tribunals. It can interfere only in those cases where the tribunal has acted without jurisdiction or there is a mistake apparent on the record or its decision is opposed to natural justice.

Where appellate authority while hearing an appeal from the decision of the Rent Controller had jurisdiction to decide whether rent was payable in advance or monthly and whether the petitioner was entitled to have the amount that he had paid over and above the fair rent accounted towards the rent due from him, his decision cannot be interfered with under Art. 227. AIR 1953 Assam 35, Diss from. **ILR (1953) Patiala 396: AIR 1954 Pepsu 58 (58) (Pr 3).**

——**Art. 227** — Power of High Court under article is different from power that Court of appeal or revision possesses. **AIR 1954 Pepsu 17 (Pt A) (Pr 3).**

——**Art. 227** — High Court does not act under article either as a Court of appeal or as a Court of revision. **AIR 1953 Pepsu 133 (141) (Pt J) (Pr 21) (DB).**

——**Art. 227 — Power of Superintendence under — Nature and use of.**

The power of superintendence over Courts and tribunals does involve power to interfere with their decisions in appropriate cases, but it is quite different from the power that is possessed by an appellate Court and further, being an extraordinary power it should be exercised most sparingly. AIR 1951 Cal 193, Relied on.

Held the case was not one in which the exercise of power was called for. **3 Pepsu LR 347: AIR 1952 Pepsu 82 (85) (Pt F) (Prs 10, 11) (DB).**

——**Arts. 227, 226** — Notaries Act (1952), S. 15—Notaries Rules (1956), R. 13 (12) — Infraction of rules — Quantum of punishment for — Government alone is competent to decide — Court cannot act as Court of appeal for determining quantum, in petition under Arts. 226, 227 of Constitution. See Notaries Act (1952), S. 15. **AIR 1965 Punj 220.**

——**Art. 227 — Supervisory or revisional power — Its exercise — Its limits — Difference between this and appellate power.**

Supervisory or revisional power is considered to be a power vesting in the higher or superior tribunal to satisfy itself about the soundness or correctness of the order of the inferior tribunal. One usually accepted difference between the two powers (appellate and supervisory) appears to be that an appeal confers a right on the aggrieved party to complain in the prescribed manner to the higher forum whereas the supervisory or revisional power has for its object the right and responsibility of the higher forum to keep the subordinate tribunals within the bounds of laws. The latter power, therefore, can always be exercised suo motu in order to see that the subordinate tribunals do not transgress the limits of law and keep themselves within the power conferred on them. In order to perform this function in the interests of administration of law, it must be held to be implicit that the supervisory tribunal must also act within the legal limits of the statutory provisions, for the proper administration of which it has been vested with the supervisory power. **ILR (1962) 1 Punj 285: AIR 1962 Punj 94 (100) (Pt D) (Pr 12).**

——**Art. 227** — Powers of High Court— In the proceedings under Arts. 226 and 227 the High Court does not act as a Court of appeal and would not interfere where the subordinate tribunal had acted within its jurisdiction. See Ibid, Art. 226. **AIR 1962 Punj 93.**

——**Art. 227 — Power of superintendence—Limits.**

The power of superintendence under Art. 227 of the Constitution is not the same as is exercisable by a Court of appeal but should be confined to keeping the subordinate Courts and other tribunals within the narrow limits which the law prescribes for them. It does not give the High Court the power to interfere in every case but in cases which would be proper for exercising the powers of issue of mandamus. 33 C 68; AIR 1933 Cal 132 and AIR 1951 Cal 193, Rel. on. **53 PLR 175: AIR 1951 Punj 108 (109) (Pr 7).**

9. Other remedy open.

(a) Jurisdiction under Article not barred by existence of another remedy.
(b) Impugned order open to revision.
(c) Relief obtainable by suit.
(d) Availability of remedy under Art. 226.

9. Other remedy open.

——**Art. 227** — Power under article should not ordinarily be exercised if any other remedy is available. **1958 All LJ 315: 1958 All WR (HC) 445 : AIR 1958 All 456 (464) (Pt A) (Pr 36) (DB).**

——**Art. 227** — Other remedy open. See Panchayast—U. P. Panchayat Raj Act (26 of 1947), S. 85. **AIR 1955 NUC (All) 1175.**

——**Art. 227** — Powers of superintendence — Exercise of — Other remedies open — Order supportable on another ground — Interference. See Panchayats — U. P. Panchayat Raj Act, S. 85. **AIR 1953 All 180.**

——**Art. 227 — Other remedy open — Exercise of jurisdiction under Art. 227.**

If any relief in respect of an injury can be claimed by another provision of the law, the High Court would not exercise its jurisdiction under Art. 227 of the Constitution to grant such relief. **1952 All LJ 647: 1952 All WR (HC) 638: 1952 RD (HC) 372: AIR 1953 All 55 (57) (Pt B) (Pr 9) (DB).**

——**Art. 227** — Other remedy open to party — Power under article should not be exercised. **1952 Cri LJ 1282: 1952 All LJ 493: 1952 All WR (HC) 547 : AIR 1952 All 788 (792, 793) (Pt B) (Prs 14, 15).**

——**Art. 227** — Right to obtain remedy under article depends on there being no other remedy — Further the remedying of the wrong must be essential to prevent very serious results. **1952 All LJ 283: 1952 All WR (HC) 239: AIR 1952 All 750 (Prs 5, 6) (DB).**

——**Art. 227 — Power of superintendence — Scope.**

The superintendence referred to in Art. 227 of the Constitution of India does not invest the High Court with an unlimited prerogative to interfere in cases where a wrong decision has been arrived at either in fact or in law and the powers contained therein must be restricted to cases of grave dereliction of duty and flagrant abuse of any fundamental principles of law. The right to obtain relief under it depends further on the conditions that no other remedy is available to the applicant and the remedying of the wrong is essential in order to prevent very serious results. **1952 ALJ 180 : 1952 AWR (HC) 106 : 1952 Cri LJ 1176 : 1952 RD (HC) 180 : AIR 1952 All 526 (527) (Pt A) (Pr 3).**

——**Art. 227** — Other remedy open — Interference by High Court. See Ibid, Art. 226. **AIR 1958 Assam 77 (DB).**

——**Art. 227** — Power of superintendence — 'Superintendence' is of wide connotation — It should be invoked generally only where there is no other remedy available. **1956 Andh LT 61: (1956) 29 ITR 222: 1956 Andh WR 729: AIR 1957 Andh Pra 672 (674) (Pt B) (Pr 5) (DB).**

——**Art. 227** — Appeal against revised assessment order dismissed — Application for review dismissed — Express remedy under Section 23 (1) not availed of — Writ petition challenging the order not entertained. See Ibid, Art. 226. **1963 Mah LJ (Notes) 25.**

——**Art. 227** — Other remedy open — Interference — Grounds. See Ibid, Art. 226. **(1958) 60 Bom LR 210.**

——**Arts. 227 and 226 — Other adequate legal remedy — Effect.**

If the law provides adequate legal remedy, which remedy is as efficacious as the remedy which the High Court can give under the Constitution, then the petitioner must exhaust that remedy before he comes to the High Court for the exercise of its special jurisdiction under Arts. 226 and 227.

Thus where a dismissed police constable instead of going to the appellate Tribunal which the Police Act sets up comes to the High Court by an application under Art. 227 by way, as it were, of a short circuit the High Court cannot permit the petition to do that. **AIR 1956 Bom 545 (548) (Pt D) (Pr 9) (DB).**

——**Art. 227** — Order dismissing application under S. 15 (2) for want of sufficient cause — Remedy against lies only under Arts. 226 and 227. See Payment of Wages Act (1936), S. 17. **AIR 1954 Bom 537 (DB).**

——**Art. 227** — Another remedy open — Remedy under Art. 227. See Ibid, Art. 226. **AIR 1951 Bom 423 (DB).**

——**Art. 227** — Alternative remedy under S. 33 of Lunacy Act — S. 33 only applies to an admitted lunatic detained under Ss. 14, 15 or 17 and not otherwise. **67 Cal WN 297: (1963) 1 Cri LJ 579: AIR 1963 Cal 261 (273) (Pt O) (Pr 46) (DB).**

——**Art. 227 — Exercise of power under.**

Under Art. 227 every High Court has power of superintendence over all judicial and quasi-judi-

cial bodies within its territorial limits in respect of both judicial and administrative matters. However unlimited the control may be in its scope and extent, its exercise should be judicially restrained. For ordinary cases the normal remedies under the municipal laws are available and it is only wise that the field pertaining to such remedies should be left untouched by the constitutional powers under Art. 227. Only, therefore, where grave injustice has occurred or is likely to occur by reason of some mistake committed by the inferior judicial or quasi-judicial bodies and the municipal law provides no adequate remedy the High Court are entitled—and indeed bound — to intervene under Art. 227 and correct the mistake and grant appropriate relief. Where again gross violation of some statutory provision has been made by the inferior bodies and against such violation no adequate remedy is to be found in municipal law the High Courts ought to interfere, in appropriate cases, under the said Article. **56 Cal WN 124: AIR 1952 Cal 526 (531, 532) (Pt B) (Pr 29) (DB).**

●——**Art. 227** — Election dispute — Remedy provided by way of election petition — Writ will not be issued. Hari Prasad v. State of M. P., **1959 MPC 355: 1959 Jab LJ 414: 1959 MPLJ 669: AIR 1959 Madh Pra 343 (347) (Pt B) (Pr 25) (FB).**

——**Art. 227** — Other remedy open — Interference. See Ibid, Art. 226. **AIR 1958 Madh Pra 224 (DB).**

——**Art. 227** — Other remedy open — Issue of writ. See Civil P. C. (1908), S. 115. **AIR 1958 Manipur 20.**

——**Art. 227** — Jurisdiction of High Court — Nature of — Other remedy open — Writ petition not maintainable. See Ibid, Art. 226. **(1963) 5 Orissa JD 97.**

——**Art. 227** — Power of High Court — Writ petition under — Scope of — Alternative remedy open — Petition not maintainable. See Ibid, Art. 226. **(1963) 5 Orissa JD 97.**

——**Art. 227** — Writ — Maintainability of petition — Other remedy open — Matter to be decided controversial — Writ application is not appropriate. See Ibid, Art. 226. **1964 Cri LJ 492 (Pat).**

——**Art. 227 — Power under — When to be exercised—Other adequate remedy available—Power would not ordinarily be exercised — Bihar Panchayat Raj Act (VII of 1945), Ss. 62 and 67 — Order of conviction by Gram kutchery under S. 379, Penal Code — Petition under Art. 227 for quashing order on ground that complaint disclosed offence also under S. 144, Penal Code, not cognisable by Gram Kutchery — Remedy of appeal under S. 67 held available — Petition held not maintainable — Criminal P. C. (1898), Section 28.**

The power under Art. 227 is an extraordinary power to be used most sparingly and the High Court would ordinarily refuse to exercise this power where some other adequate remedy is available to the applicant. In order to invoke the jurisdiction of the High Court under Art. 227, it is necessary to show that the impugned order or decision is without jurisdiction or against principles of natural justice or involves non-exercise or illegal exercise of jurisdiction or a graver dereliction of duty or flagrant violation of the law as distinct from erroneous decision or irregularity in procedure or discloses an error of law manifest on the face of the order. The exercise of jurisdiction under Art. 227 does not mean exercising the power of appeal or revision on questions of fact and law.

A complaint was filed before the Sarpanch of the Gram Kutchery alleging that on 11-7-62 at about midnight the accused persons armed with lathis and bhalas went to the orchard of the complainant while he was asleep and plucked mangoes and on alarm being raised by him, they ran away with a number of mangoes. The bench of the Gram Kutchery convicted the petitioner along with other accused under Section 379, I. P. C. The petitioner filed a petition under Art. 227 challenging the validity of the order of conviction on the ground that the bench of the Gram Kutcherry was not competent to try the case because the allegation made in the complaint disclosed an offence under Section 144, I. P. C. also which was not cognizable by a bench of the Gram Kutchery. At no stage of the proceeding the petitioner raised any objection regarding the jurisdiction of the Gram Kutchery.

Held, that the allegation in the complaint may not necessarily lead to the conclusion that the accused went armed for the purpose of assaulting or committing any act of violence against the complainant. A plain reading of the complaint as a whole clearly showed that the main allegation against the petitioner was that he along with others went to the orchard of the complainant to commit theft and that he did it. That being so, it could not be said that the bench of the Gram Kutchery clutched the jurisdiction in this case by ignoring the fact that a graver offence under Section 144, I. P. C. was committed. Further, the remedy by way of appeal before the Full Bench of the Gram Kutcherry was available to the petitioner under Section 67 and, therefore, jurisdiction under Art. 227 could not be invoked. **1964 BLJR 230.**

——**Art. 227** — Availability of other remedy — Other remedy not pursued — Effect. See Ibid, Art. 226. **1955 Cri LJ 501: AIR 1955 Pat 118 (DB).**

——**Art. 227** — Alternative remedy availed of. See Ibid, Art. 226. **AIR 1954 Pat 476 (DB).**

——**Art. 227** — Other remedy open — Employees Provident Funds Act (1952), Ss. 16 (b) and 19-A — Reference of dispute under S. 19-A, to Central Government pending — Petition under Arts 226 and 227 not maintainable till decision of disputes — Proceedings for recovery of contributions not to be started till final decision. See Ibid, Art. 226. **(1960) 1 Lab LJ 489 (Punj).**

9 (a). Jurisdiction under Article not barred by existence of another remedy.

——Arts. 227, 226 — Existence of alternative remedy — Exercise of jurisdiction under Arts. 227 and 226.

The power under Art. 227 can be exercised in circumstances in which a writ could be issued under Art. 226. It is a settled law that a writ under Art. 226 can be issued in suitable cases where there exists an error apparent on the face of the record. Consequently the High Court can exercise its jurisdiction under Art. 227, even though an alternative remedy by way of revision was available to the applicant. **AIR 1963 All 280 (281) (Pt B) (Pr 7).**

——Art. 227 — Powers under — When should be exercised — Error capable of correction by Court of appeal — Trial of suit at wrong place—Interference under article. See Ibid, Art. 226. **AIR 1951 All 514 (DB).**

——**Art. 227** — Existence of alternative remedy no bar to jurisdiction, particularly when interference with impugned decision would save costs and avoid further judicial proceedings. See Ibid, Art. 226. **1965 Mah LJ (Notes) 62.**

——**Art. 227** — Wrong acceptance of nomination paper in an election to Municipal Corporation — Writ petition challenging the same — Alternative remedy open — No bar to issuance of a writ under the article. See Ibid, Art. 226. **AIR 1963 Bom 183 (DB).**

——**Art. 227 — Other remedy open — Petitioner challenging acquittal of respondent — Remedy is under Sec. 417 (3) or S. 439, Criminal Procedure Code and not under Art. 227 — (Criminal Procedure Code (1898), Ss. 417 (3) and 439).**

The petitioner applied under Art. 227, Constitution of India challenging the acquittal of the respondent.

Held, that the petitioner's remedy was to apply to the High Court under S. 417 (3), Criminal Procedure Code or under S. 439 and that the High Court would not interfere under Art. 227. **1958 Nag LJ (Notes) 59 (Bom).**

——**Arts 227, 14** — S. 207-A, Criminal P. C. — Order of commitment made under — Relief by way of application for revision and under S. 561-A available — Accused can also move High Court under Art. 227 — (Criminal P. C. (1898), Sections 207-A, 215, 439, 561-A). See Constitution of India, Art. 14. **AIR 1956 Bom 695.**

——**Art. 227** — Dismissal of police constable — Remedy by way of appeal to appellate tribunal set up under Police Act available — Application under Art. 227 will not be permitted. **AIR 1956 Bom 545 (548) (Pt D) (Pr 9) (DB).**

——**Art. 227** — Other remedy open — Institution keeping alleged lunatic not on ground of any reception order or inquisition order under Lunacy Act but even from before through the improvised and illegal procedure of a guardian pretending to act for the lunatic and admitting him to the institution — **Held,** S. 83 of the Lunacy Act would not give complete relief. **67 Cal WN 297: 1963 (1) Cri LJ 579: AIR 1963 Cal 261 (273) (Pt M) (Pr 46) (DB).**

——**Art. 227 — Alternative remedy — Must be speedy.**

Even where there is an alternative remedy it has to be sufficiently speedy. Proceedings in Habeas Corpus and under Art. 227 of the Constitution are certainly speedier than any alternative remedies under the Lunacy Act. AIR 1954 Cal 355 and AIR 1953 Mad 362, Rel. on. **67 Cal WN 297: (1963) 1 Cri LJ 579: AIR 1963 Cal 261 (273) (Pt P) (Pr 46) (DB).**

——**Art. 227** — Rules under — Defence of India Act — Acquisition of land — Compensation — Arbitration — Awarding of interest on compensation — Other remedy by way of appeal open — Does not bar application under Art. 227. See Defence of India Act (1939), S. 19 (1) (f). **(1962) 66 Cal WN 412.**

——**Art. 227** — Power of superintendence by High Court — Existence of alternative remedy by way of appeal — No bar to exercise of power. **(1960) 64 Cal WN 663.**

——**Art. 227**—Declaration regarding ceasing of interest of a tenant — Conditions to be fulfilled before making — Order under S. 16 (3) — When can be interfered with under Art. 227 of the Constitution — Existence of other remedy — No bar to exercise of jurisdiction under article. See Houses and Rents — West Bengal Premises Tenancy Act (12 of 1956), S. 16. **(1960) 64 Cal WN 663.**

——**Art. 227** — Scope of jurisdiction — Other remedy open — Defendant not appealing against order under S. 14 (4), West Bengal Premises Rent Control Act, striking out his defence — High Court will not interfere under Art. 227 — (Houses and Rents — West Bengal Premises Rent Control Act (1950), S. 14 (4)). **AIR 1955 NUC (Cal) 4852 (DB).**

——**Art. 227 — Other remedy open.**

The existence of an alternative remedy, like a suit, does not preclude the High Court from exercising the powers under Art. 227 of the Constitution of India, provided that alternative remedy is not as speedy or effective as an application under Art. 227. AIR 1953 Mad 362, Rel. on. **58 Cal WN 573: AIR 1954 Cal 355 (361) (Pt L) (Pr 38) (DB).**

——**Art. 227** — Other remedy by way of revision open — Order of Land Acquisition Collector rejecting petition under S. 18, Land Acquisition Act — No bar to exercise of power under Arts. 226 and 227. See Ibid, Art. 226. **AIR 1963 Him Pra 1.**

——**Arts. 227, 226** — Order of Rent Controller — Jurisdiction of High Court before Constitution — Position after Constitution — (Hyderabad High Courts Act, S. 17). See Ibid, Art. 226. **AIR 1953 Hyd 67 (FB).**

——**Arts. 227, 226** — Scope — Merits of the best judgment assessment cannot be considered in proceedings under Arts. 226 and 227 — An assessment under Section 19 of the M. P. General Sales Tax Act is appealable under Section 38 and the assessee-petitioner should have canvassed the merits of the assessment by filing an appeal before the competent authority. See Ibid, Art. 226. **1962 MPLJ 825.**

——**Art. 227** — Alternative remedy no bar to petition. **1962 MPLJ (Notes) 126.**

——**Art. 227** — Alternative remedy of appeal available — Appeal filed — Petition if lies. See Ibid, Art. 226. **1960 Jab LJ 1090.**

——**Art. 227** — Appealable order — Writ against. See Ibid, Art. 226. **AIR 1958 Madh Pra 236 (DB).**

——**Arts. 227, 226** — Alternative remedy by way of regular suit not equally convenient or beneficial or effective — Application under Arts. 226 and 227 is maintainable. See Ibid, Art. 226. **AIR 1953 Ori 238 (DB).**

——**Art. 227** — Assessment to Sales Tax not challenged under Sales Tax Act — Challenge to legality or correctness of order dismissed by certificate authorities — Application under Art. 227 against the order — Orders of sales authorities if can be challenged in the proceedings. See Ibid, Art. 226. **AIR 1952 Orissa 231 (DB).**

——**Arts. 227, 226** — Powers under — When exercised stated — Effective and adequate remedy available — Power under Arts. 227 and 226 may be exercised — Power is discretionary — C. P. Code (1908), S. 115. **AIR 1955 NUC (Pepsu) 2514.**

——**Art. 227** — Other remedy open — Power of High Court to interfere — Extent — Existence of alternative remedy not per se constitutional bar to exercise of writ jurisdiction. See Ibid, Art. 226. **AIR 1965 Punj 170 (DB).**

——**Art. 227** — Alternative remedy — Registration Certificate sought to be cancelled under S. 7 (4) of Punjab General Sales Tax Act (46 of 1948) on grounds not covered by S. 16 of the Act — High

Court can interfere although alternative remedy was available under Act. See Ibid, Art. 226. **1965 Cur LJ 317: 16 STC 406: 68 Punj LR 447.**

——**Art. 227** —Advance tax notice under S. 210 of the Income-tax Act (1961) demanding payment of Advance tax within the prescribed time — Petitioner neither complying with notice nor applying for remedies available under Income-tax Act — **Held,** High Court will not interfere with impugned notice in writ proceedings — Income-tax Act (1961), Ss. 210 and 211. See Ibid, Art. 226. **(1964) 66 Pun LR 972.**

——**Art. 227 — Another remedy is no absolute bar.**

An alternative remedy does not operate as an absolute bar to relief from the High Court under Art. 227. **61 Punj LR 529: AIR 1960 Punj 41.**

——**Art. 227** — Failure of Rent Controller to pass order for ejectment when there was tenant's non-compliance with S. 13 (2) (i) — High Court's power of interference when the matter had not been to the proper appellate authority. See Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (2) (i). **AIR 1954 Punj 231.**

9 (b). Impugned order open to revision.

——**Art. 227** — Forum for revision provided — Improper application — Jurisdiction under Art. 227. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 85. **AIR 1955 NUC (All) 346.**

——**Art. 227 — Power of High Court to revise orders passed under Agency Rules — R. 59 of the Agency Rules — Whether bar to entertain a revision by High Court under Art. 227.**

Counsel's mistake in wrongly noting the Hearing date in his diary, is a sufficient cause for restoration of the case to file. AIR 1929 Lah 69, Foll.

But the provisions of Civil P. C. do not apply to Agency Tracts as is clear from a reading of subsection (3) of S. 1 Civil P. C. (1908) read with the Agency Rule 26 (2). 34 MLJ 473, Foll. Remedy provided under Rule 59 of the Agency Rules is only for a reference to the High Court by the Provincial Government and the Provincial Government cannot finally dispose of the case. As such the High Court is entitled to interfere under Art. 227 of the Constitution which corresponds to S. 107 of the Government of India Act, in a fit and proper case. **(1958) 1 Andh WR 213.**

——**Art. 227 — Alternate remedy — Assessment of sales tax — Board of Revenue arbitrarily disallowing deductions in respect of sales to registered dealers — Petition under Art. 227 — Reference under S. 21 of Bengal Finance (Sales Tax) Act not an alternate remedy.**

Where the Board of Revenue arbitrarily disallows deductions in respect of sales to registered dealers, the remedy provided by Section 21 of the Bengal Finance (Sales Tax) Act, 1941 of making reference to the High Court is in no sense a remedy, alternative to the remedy that Art. 227 of the Constitution provides and even apart from that, Section 21 is not a specific or convenient remedy so as to disentitle the petitioner from seeking relief by invoking the jurisdiction of the High Court under Art. 227. **(1964) 15 STC 186: 67 Cal WN 179: AIR 1963 Cal 409 (415) (Pt D) (Pr 21) (DB).**

——**Art. 227** — Suit dismissed on ground of want of jurisdiction — Failure to draw decree — Appeal does not lie — Only remedy is to file revision — Art. 227 of Constitution cannot be invoked. See Civil P. C. (1908), S. 2 (2). **(1957) 61 Cal WN 789.**

——**Art. 227** — Other remedy open — Scope of power of superintendence — Order of Court of District Judge under Section 12 — Revisable under Section 115, Civil P. C. — Remedy under Art. 226 or 227, Constitution of India not available. See Houses and Rents — M. P. Accommodation Control Act (23 of 1955), S. 12. **AIR 1963 Madh Pra 218 (DB).**

——**Art. 227 — Order of tribunal open to revision by superior tribunal — Aggrieved party moving High Court for redress without seeking remedy in revision — High Court will not interfere in the absence of special circumstances.**

In the absence of very exceptional circumstances, the High Court will not interfere under Art. 227 of the Constitution with the order of a tribunal which is revisable by a superior tribunal constituted by the statute under which those tribunals function where the aggrieved party seeking redress had not first approached the superior tribunals in revision against the order. AIR 1960 SC 137, Disting.

Without determining the broad question whether or not it is permissible, as a general rule, for the High Court to interfere under Art. 227 with orders of tribunals or Courts whose orders are, under the law constituting them, appealable or revisable by a superior departmental tribunal, it is clear that it is highly undersirable for the Court to exercise this power in such circumstances, in the absence of very exceptional circumstances. **AIR 1962 Punj 441 (442) (Prs 6, 7).**

——**Art. 227** — Criminal P. C. (1898), S. 561-A — Rectification of errors in judgment — Proper course is to move Court under revisional jurisdiction or cause reference to be made to High Court by appropriate Court — Extraordinary jurisdiction of High Court under Section 561-A or Art. 227 should not be invoked — (Criminal P. C. (1898), Ss. 439 and 432. See Criminal P. C. (1898), S. 561-A. **AIR 1953 Trav-Co. 233.**

9 (c). Relief obtainable by suit.

——**Art. 227 — Other remedy open.**

In all cases where a person wants to question the validity of an appointment under Madras Act (2 of 1894) he can file a suit before the Collector, whose powers are vested in the Revenue Divisional Officer, under Section 13 of Act (3 of 1895). The order of the Revenue Divisional Officer is even subject to revision by the District Collector. The suit under S. 13 is also to be filed before the Revenue Divisional Officer, and when a remedy is available before the same authority, which is at least equally convenient and inexpensive, the powers of the High Court under Art. 227 should not be invoked. AIR 1938 Mad 903, Rel. on. **(1955) Andhra WR 290: AIR 1955 Andhra 192 (194) (Pt C) (Pr 4).**

——**Art. 227** — High Court will not permit elaborate enquiry into disputed questions of fact and to determine them especially where a party can resort to the remedy by way of a suit. See Ibid, Art. 226. **1964 Raj LW 380.**

9 (d). Availability of remedy under Art. 226.

——**Arts. 227, 226** — Remedy by way of certiorari open for quashing conviction — Petition under Art. 227 is not maintainable. See Ibid, Art. 226. **1963 (2) Cri LJ 595: AIR 1963 All 585.**

——**Art. 227** — Application under S. 115, Civil P. C. — Order sought to be revised amenable to remedy by way of certiorari — Conversion of ap-

plication to one under Art. 227. See Ibid, Art. 226. **AIR 1957 All 495.**

[**Overruled** on another point in AIR 1962 All 315 (FB)]

●——**Art. 227** — Per Desai J. :— Existence of remedy through appropriate writ under Art. 226— Bars aggrieved party from invoking powers of Superintendence under this article. Bhagirathi v. The State, **1955 Cri LJ 296 : 1955 All LJ 6 : 1955 All WR (HC) 70 : ILR (1954) 2 All 591 : AIR 1955 All 113 (122) (Pt C) (Pr 26) (FB).**

——**Art. 227** — Scope — Dismissal of writ petition if bar to maintainability of application under Art. 227. See Ibid, Art. 226. **AIR 1955 Andhra 40.**

10. Laches.

——**Art. 227 — Writ petition — Delay in filing.**

It is well settled that whosoever seeks relief by having recourse to the extraordinary remedy of a writ petition, must approach the Court with expeditiousness. Granting relief on state claims would not be a sound exercise of discretion by the High Court. **(1962) 13 STC 459 (All).**

——**Art. 227** — Order allowing amendment of plaint passed in 1953 — Defendants added as parties appearing before Court and filing written statement as well as application for discharging them from list of defendants — No final order passed on the application — Defendants petitioning under Art. 227 against order impleading them after six years after the issues raised by them in their written statement had been decided — **Held,** the delay as well as the development of the case in the meanwhile viz. decision on the issues raised by defendants would deter the High Court from interfering under Art. 227. **AIR 1961 All 559 (561) (Prs 6, 7, 8).**

——**Arts. 227, 226** — Delay — Power of High Court not fettered — Government acting under S. 64-A, Motor Vehicles Act is Tribunal — (Motor Vehicles Act (1939), Section 64-A (Mad Amendment)). See Ibid, Art. 226. **AIR 1957 Andh Pra 739.**

——**Art. 227** — Laches — See Ibid, Art. 226. **AIR 1955 NUC (Bhopal) 1784.**

——**Art. 227** — Laches —Petition filed after 90 days from date of order impugned — Competency. See Ibid, Art. 226. **1961 Nag LJ (Notes) 63.**

——**Art. 227** — Laches. See Ibid, Art. 226. **AIR 1960 Bom 9 (DB).**

——**Art. 227 — Delay and laches — (Tenancy Laws — Bombay Tenancy and Agricultural Lands (Bombay Revenue Tribunal Procedure) Rules (1954), Rule 32 (1)).**

Although Art. 227 does not fix any particular period of limitation, a party wanting to claim relief under Art. 227 must come up to High Court as expeditiously as possible. It is for the Court to consider in each case whether there is gross delay in presenting a petition.

The inability of a party to find out funds is hardly any ground in jurisdiction of the delay. In special circumstances, it may perhaps constitute a legitimate ground.

Though Rule 32 (1), Bombay Tenancy and Agricultural Lands (Bombay, Revenue Tribunal Procedure) Rules, 1954, requires that a certified copy of the tribunal's final order should be supplied free of costs as soon as practicable, it does not mean that the party should wait for such a copy for an unreasonably long time, without himself applying for a copy of the order.

Held, on facts that the petition under Art. 227 filed after four months from the date of passing the order by the tribunal and two months and a half after receipt of the copy of the order of the Revenue Tribunal could not be rejected on ground of gross delay. **60 Bom LR 670: ILR (1958) Bom 927: AIR 1959 Bom 238 (239) (Pt A) (Prs 4, 5) (DB).**

——**Art. 227 — Laches of applicant — Court would refuse to interfere if no special circumstances are shown to explain delay and position of parties has changed.**

While the Court would not hesitate to exercise its extraordinary jurisdiction under Art. 227 of the Constitution to cure defects of justice committed by tribunals in the country, the Court has to take into consideration the conduct of the party as well as the consequences which would ensue as a result of such interference.

Thus, where the petitioner under Art. 227 is guilty of inordinate delay of two months and a half in impugning the order setting aside the election and ordering a fresh election and in the meanwhile steps have been taken in furtherance of the impugned order to hold fresh election and in fact the fresh election is held before the petition comes for hearing before the High Court, it would refuse to exercise the extraordinary jurisdiction under Art. 227 when no special circumstances are shown to exist to explain the delay. **56 Cal WN 872: ILR (1953) 2 Cal 130: AIR 1953 Cal 40 (41) (Pt B) (Pr 5) (DB).**

——**Art. 227** — Delay — Delay in filing petition under Art. 227 held justified in circumstances of case. See Tenancy Laws — Bombay Tenancy Act (29 of 1939), S. 24. **ILR (1963) Guj 526.**

● ——**Art. 227** — Application under — Delay — Rules as to delay is not an invariable rule and it must be applied in furtherance of justice and not to defeat it — Having regard to peculiar circumstances of the case held it would not be proper to throw off the writ petition on the ground of delay. Madhaji Lakhiram v. Mashrubhai Mohadevbhai Rabari, **(1962) 3 Guj LR 438 : AIR 1962 Guj 235 (248) (Pt C) (Pr 44) (FB).**

——**Art. 227** — Delay in moving High Court caused on account of proceedings before Board of Revenue — Proceedings before Board of Revenue were untenable and misconceived — High Court declined to issue writ on the ground of inordinate delay. See Ibid, Art. 226. **1963 MPLJ (Notes) 145.**

——**Arts. 227, 226 — Laches — Effect of, on petitions under Arts. 226 and 227 — No distinction.**

There is no distinction between Arts. 226 and 227 as regards delay in submitting petition because delay as such cannot be considered to be an absolute bar in granting relief to a suitor either under Art. 226 or under Art. 227 of the Constitution. It is only one of the circumstances to be taken into consideration in determining whether or not to exercise the discretionary power vested in the High Court under the said Articles. Even while exercising its power of judicial superintendence, the High Court is expected to bear in mind the factor of delay. Only because the Court is competent to exercise its powers suo motu it cannot be said that delay in case of a petition under Art. 227 is less serious than in the case of a petition under Art. 226. **64 Punj LR 456 : ILR (1962) 2 Punj 439 : AIR 1962 Punj 490 (491) (Pt A) (Pr 2).**

——**Art. 227** — There can be no waiver of fundamental rights by a party and mere laches will not deprive him of that right. See Evidence Act (1872), S. 115. **AIR 1960 Punj 439.**

——**Art. 227** — Laches and delay in presenting petition is a ground for not exercising extraordin-

ary jurisdiction. See Ibid, Art. 226. **1964 Raj LW 380.**

11. Limitation.

——**Art. 227 — Petition under—Time limit.**

Petitions under Art. 227 are subject to the 90 days rules. AIR 1953 Him Pra 60, Rel. on. **AIR 1959 Him Pra 25 (28) (Pt E) (Pr 21).**

——**Art. 227 — Limitation — (Limitation Act (1908), S. 3).**

Revision under Art. 227 will also be subject to the 90 days rule of limitation as are ordinary applications in revision. AIR 1951 Him Pra 16, Foll. **AIR 1953 Him Pra 60 (61) (Pt C) (Pr 6).**

12. Statutory bar.

——**Art. 227** — Erroneous finding of Civil Court under S. 146 (1-B) Cr. P. Code — Finding may be challenged under Art. 226 and Art. 227 of the Constitution of India — Section 146 (1-D) does not affect such jurisdiction of High Court. See Ibid, Art. 226. **1965 (1) Cri LJ 271 : AIR 1965 All 127.**

——**Art. 227** — Election, meaning of — Every part of process by which candidate is declared to be representative from beginning to final selection is covered by word "election" — Petition under Arts. 226 and 227 challenging legality in counting votes — Petition is not maintainable at stage of counting votes — It may form proper ground for election petition — Proper remedy is by election petition — Representation of the People Act (1951), Ss. 81, 100 (2) (c). See Ibid, Art. 226. **AIR 1955 All 536.**

——**Arts. 227, 226** — Abducted Persons (Recovery and Restoration) Act, 1949, S. 8—Whether section affects power of High Court to act under Art. 226 or 227. See Ibid, Art. 226. **1953 Cri LJ 1384: AIR 1953 All 613 (DB).**

——**Art. 227** — Power under article whether can be curtailed, modified or affected by any enactment. See Ibid, Art. 226. **AIR 1952 All 822 (DB).**

——**Art. 227** — Provision in local or special law conflicting with Art. 227 — Validity of—S. 17 (3), Assam Opium Prohibition Act — Whether curtails power conferred on High Court by Art. 227. See Prohibition — Assam Opium Prohibition Act (23 of 1947), S. 17 (3). **1952 Cri LJ 966: AIR 1951 Assam 106 (DB).**

——**Art. 227 — Judgment or order made final by statute — Power of High Court to interfere under article.**

Even if the judgment or order of a Court or tribunal functioning within the territorial limits of the jurisdiction of the High Court is made final by statute and even if the Court itself is not subject to the appellate jurisdiction of the High Court its judgment or order may be interfered with in the exercise of the powers of superintendence of the High Court. **1952 Cri LJ 966: AIR 1951 Assam 106 (109, 110) (Pt B) (Pr 21) (DB).**

——**Art. 227** — Orders of District Judge in revision under S. 53 — Finality — Interference under Art. 227. See Panchayats—Punjab Village Panchayat Act (11 of 1939), S. 53. **AIR 1954 Bilaspur 6.**

——**Art. 227** — Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 32 — Section whether takes away jurisdiction of High Court under Arts. 226 and 227 and is invalid on that ground. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 32. **AIR 1957 Bom 252.**

[Overruled on another point in AIR 1959 SC 459.]

●——**Art. 227** — Power of High Courts under Art. 227, Constitution of India, cannot be affected by legislative provisions. See Ibid, Art. 226. **AIR 1955 Bom 220 (FB).**

——**Art. 227** — Scope — Ss. 39-B and 43 of Bengal Municipal Act bar revisional powers of High Court — But High Court can interfere under Art. 227. **AIR 1955 NUC (Cal) 1003 (DB).**

——**Art. 227** — Tenancy Laws — W. B. Bargadars Act, S. 9 (1) — Award or order of Board or appellate authority — Bar under section against challenging them in any Court — Cannot prevail against Constitution. **56 Cal WN 124: AIR 1952 Cal 526 (528, 529) (Pt A) (Prs 12, 15) (DB).**

——**Art. 227** — Jurisdiction of High Court under Arts. 226 and 227 cannot be affected by legislative provision. See Ibid, Art. 226. **1965 (1) Cri LJ 550: AIR 1965 Him Pra 25.**

——**Art. 227** — Decision of Vice-Chancellor to be final — Interference with. See East Punjab University Regulations, Reg. 23. **AIR 1955 NUC (Him Pra) 4517.**

——**Art. 227 — Power of superintendence — Decision of appellate authority under East Punjab Urban Rent Restriction Act — Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), S. 15 (4).**

The Judicial Commissioner's Court of Himachal Pradesh has jurisdiction in exercise of its power of superintendence under Art. 227 of the Constitution, to interfere with the decision of the appellate authority despite the finality given to that decision under Section 15 (4), East Punjab Urban Rent Restriction Act. The power is, however, by its very nature to be exercised very sparingly. 53 PLR 90, Rel. on. **AIR 1951 Him Pra 72 (73) (Pt A) (Pr 3).**

——**Art. 227** — Jurisdiction under article cannot be taken away by State legislation such as Special Judges Regulation. **52 Cri LJ 708 : ILR (1951) Hyd 174: AIR 1951 Hyd 82 (83) (Pt A) (Pr 1) (DB).**

●——**Art. 227** — Applicability — Decision of lower Court — Finality — Extent of — Decision as to category of suit can be challenged in revision or under Art. 227 of the Constitution. See Court-fees Act (1870), S. 12. **AIR 1961 Ker 146 (FB).**

——**Art. 227** — Order of Election Tribunal — Finality — Jurisdiction of High Court under Arts. 226, 227. See Ibid, Art. 226. **AIR 1955 NUC (Madh Bha) 2378 (DB).**

——**Arts. 227, 226 and 329 (b)** — Jurisdiction of High Court to interfere with decision of Election Tribunal — Finality given to order of tribunal — If bars interference even if decision is without jurisdiction or is in excess of its jurisdiction. (Representation of the People Act (1951), S. 105). See Ibid, Art. 226. **AIR 1953 Madh Bha 197 (DB).**

——**Art. 227 — Act of State Legislature taking away power under Article — Validity.**

The right given to High Court under Art. 227 cannot be taken away by the State Legislature. Hence Section 147, M. B. Revenue Administration and Ryotwari Land Revenue and Tenancy Act (66 of 1950), if it purports to take away the power under this Article, is ultra vires the Constitution to that extent. **Madh BLR 1952 (Civ) 94: AIR 1952 Madh Bha 51 (51, 52, 53) (Prs 3, 4, 5, 15) (DB).**

——**Art. 227** — Relief claimed in proceedings found to be temporarily barred—Court will not

grant the relief. AIR 1964 Mys 43 (45) (Pt A) (Prs 3, 16) (DB).

●——**Art. 227** — Finding by Civil Court under Section 146 (1-D) — Can be interfered with by High Court under Section 439 after finding is adopted by Magistrate and final order is passed by him under Section 146 (1-B). S. 146 (1-D) has not the effect of taking away powers of High Court under Art. 227 of the Constitution. See Criminal P. C. (1898), S. 145. **1963 (2) Cri LJ 25: AIR 1963 Pat 243 (FB).**

——**Art. 227 — (Representation of the People Act (1951), S. 105).**

The Representation of the People Act cannot take away powers of High Court which are expressly given to it by Art. 227. **ILR (1954) Patiala 1: AIR 1953 Pepsu 133 (136) (Pt B) (Pr 3) (DB).**

—— **Art. 227** — Patiala Panchayat Raj Act, Section 49—Whether power of superintendence is excluded by. See Panchayats — Patiala Panchayat Raj Act (13 of 2000), S. 49. **1952 Cri LJ 1439: AIR 1952 Pepsu 130.**

——**Art. 227** — Defence of India Act (51 of 1962), Section 18 (2) — Bar to writs — Prohibition in section does not affect High Court's jurisdiction under Arts. 226 and 227 of the Constitution. See Defence of India Act (1962), S. 18 (2). **1965 (1) Cri LJ 205 : AIR 1965 Punj 86.**

——**Art. 227 — Applicability — Statutory bar — (Panchayats —T. C. Panchayat Act (2 of 1950)— T. C. Panchayat Rules, R. 79 (4)).**

Rule 79 (4) of the T. C. Panchayat Rules under which the order of the Election Commissioner has been made final and conclusive, does not in any manner affect the power of the High Court under Art. 227 of the Constitution. AIR 1953 Mad 362 and AIR 1954 Pepsu 118, Rel. on. **1955 Ker LT 714 : ILR (1955) TC 646 : AIR 1956 Trav-Co. 63 (69) (Pt D) (Pr 21) (DB).**

——**Art. 227 — Application under, against decision of Deputy Commissioner under Rent Control Order — (Houses and Rents — C. P. and Berar House Rent Control Order (1949), Cl. 21 (3)).**

The powers conferred on the High Courts under Art. 227 of the Constitution cannot be taken away or whittled down by the legislature. An application under Art. 227 therefore, lies against the decision of the Deputy Commissioner under Cl. 21 of the Rent Control Order in spite of subclause (3) thereof. AIR 1954 SC 202, Foll. **AIR 1954 Vin Pra 34 (35) (Pt B) (Pr 6).**

13. Election disputes.

——**Art. 227** — Interlocutory order passed by election tribunal disallowing amendment on election petitions — High Court will not interfere as such matters can be agitated in appeal against the final order. **(1963) 1 Andh WR 238.**

——**Art. 227** — Election petition — Death of petitioner — Petition for substitution of a person in place of deceased — Petition dismissed for non-compliance with Section 117 — Remedy. See Representation of the People Act (1951), S. 116-A. **AIR 1964 Bom 63 (DB).**

——**Art. 227** — Representation of the People Act (1951), Section 116-A — Election Tribunal allowing certain answers to questions to go on record — Aggrieved party moving High Court — Interference with interlocutory order not justified under Art. 227. **1963 Mah LJ (Notes) 86.**

——**Art. 227** — Scope — If controlled by Art. 329 — Superintendence of High Court over Election Tribunal — If taken away. See Ibid, Art. 329 (b). **AIR 1952 Bom 277 (DB).**

——**Art. 227 — Other remedy — Municipal election — Improper rejection of nomination paper — Election Rules providing for appeal — High Court's power to interfere even at pre-election or pre-polling stage — Municipalities — Bengal Municipal Act (15 of 1932), S. 44 — Election Rules under Rules 17 and 20 — Elections — Constitution of India, Art. 329.**

In regard to elections under the Bengal Municipal Act the High Court has power to interfere in exercise of its extraordinary powers under Art. 227 of the Constitution even at a pre-election or pre-polling stage when there is improper rejection of a nomination paper of a candidate. It is no doubt true that in cases of elections under the Representation of the People Act it is the post-election attack which alone is available in view of the restrictive provisions of Art. 329 (b) of the Constitution. But there is no such restrictive provisions applicable to elections under the Bengal Municipal Act, and, moreover, the Act itself, under the Election Rules, provides distinctly for an appeal to the District Magistrate at a pre-election or pre-polling stage against inter alia improper rejection of a nomination paper and this provision for an appeal, although the Rule purports to make the decision of the District Magistrate, final, has, on established authorities, the effect of attracting the power of High Court under Art. 227 of the Constitution. AIR 1958 MP 181 and 182; AIR 1955 Nag 49 (FB); AIR 1957 Cal 164; AIR 1946 Cal 206, Rel. on; AIR 1952 SC 64, Disting. **ILR (1961) 1 Cal 356: 64 Cal WN 1043: AIR 1962 Cal 53 (57) (Pt A) (Prs 15, 16) (DB).**

——**Art. 227** — Proceedings disputing validity of election — Jurisdiction of High Court — Representation of the People Act (1951), Ss. 80, 81 and 100. See Ibid, Art. 329 (b). **AIR 1953 Cal 98.**

——**Art. 227** — Election dispute — Interference. See Ibid, Art. 226. **AIR 1961 Him Pra 2.**

——**Arts. 227, 226** — Interference with decision of election Tribunal under University Regulations — Unless wrong exercise or a refusal to exercise a jurisdiction is shown decision cannot be interfered with under Arts. 226 and 227 — (East Punjab University Regulations, Reg. 24). See Ibid, Art. 226. **AIR 1955 NUC (Him Pra) 4517.**

●——**Arts. 227, 226** — Election dispute — Election on rejection of vote bearing imprint of cross — Remedy provided by way of election petition — Writ will not be issued — (Municipalities — C. P. and Berar Local Government Act (38 of 1948), Ss. 22 and 182 (2) (ix)). See Ibid, Art. 226. **AIR 1959 Madh Pra 343 (FB).**

——**Art. 227 — Election — Dispute under Municipalities Act — Decision of election tribunal — Revision.**

A Civil Revision petition under Art. 227 of the Constitution against the order of Election Tribunal in election disputes in regard to elections to Municipalities and local Boards is maintainable. AIR 1955 SC 233, Rel. on. **1959 Mad WN 719: 72 Mad LW 778 : ILR (1960) Mad 197 : (1960) 1 MLJ 401: AIR 1960 Mad 184 (184) (Pt A) (Pr 3).**

——**Art. 227** — Order of Election Tribunal — Jurisdiction of High Court to issue writ. See Ibid, Art. 329 (b). **AIR 1953 Nag 357 (DB).**

——**Art. 227** — Election dispute — Bihar Panchayat Election Rules (1959), Rule 90 — Order allowing election petition challenged under Art. 227 — Allegation that voters' list was not revised and republished before nomination papers were called for — Fact not stated in application—High Court **cannot entertain statement of fact not mentioned**

in the application. **1964 BLJR 151: AIR 1965 Pat 183 (184) (Pt B) (Pr 4).**

——**Art. 227** — Error in filling up serial numbers of candidate and of his proposer and seconder in nomination paper — Error can be corrected under proviso to Rule 22 (a) — High Court will set aside under Art. 227 order rejecting nomination paper. See Panchayats — Bihar Panchayat Election Rules, R. 22 (a) Proviso. **1963 BLJR 560.**

——**Art. 227 — Election of Mukhiya — Two Presiding Officers for two booths — None empowered to announce result — Valid votes polled by candidates announced — Successful candidate certainly not declared elected — Application to challenge the election under Art. 227 held maintainable — Panchayats — Bihar Panchayat Election Rules (1959), Rr. 54, 70 and 72.**

The petition to question the election could not necessarily be filed before the Election Tribunal. Hence application to challenge the election under Art. 227 is maintainable. **1961 BLJR 195.**

——**Art. 227** — Election — Art. 329 (b) whether overrides power of High Court under Arts. 226 and 227. See Ibid, Art. 226. **AIR 1954 Sau 1 (DB).**

——**Art. 227 — Election disputes — Decision of Election Commissioner based on mere surmise — Interference under Art. 227 — (T. C. Panchayat Act (2 of 1950) S. 13 (2) (b)) — (T. C. Panchayat Rules, R. 78 (2) (c)).**

Where the question for decision by the Election Commissioner exercising jurisdiction under the T. C. Panchayat Act, 1950, in an election petition was whether the result of the election was materially affected by the acceptance of the nomination paper of a candidate who was disqualified to stand as a candidate under Section 13 (2) (b) of the Act, it is the duty of High Court to interfere in the exercise of its powers under Art. 227 of the Constitution especially when the aggrieved party has no other remedy.

If it were merely a case of a wrong decision by the Election Commissioner either on a question of fact or on a question of law, that by itself will not be a sufficient ground for the High Court to interfere in the exercise of its powers under the Article. **1955 Ker LT 714: ILR (1955) TC 646: AIR 1956 Trav-Co. 63 (69) (Pt C) (Pr 19) (DB).**

——**Art. 227** — Decisions of Election Tribunal — Jurisdiction of High Court under Arts. 226 and 227 whether taken away by Art. 329 (b). See Ibid, Art. 226. **AIR 1953 Vin Pra 51.**

14. Contempt of Court.

——**Art. 227** — Chief Judge of Small Causes Court acting as persona designata under City of Bombay Municipal Act is Court subordinate to High Court. See Contempt of Courts Act (1952), S. 2. **1955 Cri LJ 351: AIR 1955 Bom 103 (DB).**

●——**Art. 227** — Contempt of Industrial Tribunal — Tribunal ceasing to exist — Effect. See Industrial Disputes (Appellate Tribunal) Act (1950), S. 30. **1955 Cri LJ 1: AIR 1955 Mad 1 (FB).**

●——**Art. 227 — Scope — Inherent powers of — High Court in respect of contempt — Effect of Art. 227.**

While Art. 227 of the Constitution, which replaced Section 15 of the High Courts Act, 1861, extended the power of superintendence of the High Court to tribunals also, Art. 227 did not itself vest in the High Court any power to punish contempt of subordinate Courts and tribunals. The inherent power of the High Court to punish contempt of such Courts and tribunals was not however touched by Art. 227 of the Constitution, even as S. 15 of the High Courts Act left it untouched. 21 Mad LJ 832 (FB), Rel. on. In the matter of Hayles, Editor of "The Mail", **1955 Mad WN 1051 (2): ILR (1955) Mad 1: (1955) 1 MLJ 375: 1955 Cri LJ 1: AIR 1955 Mad 1 (18) (Pt B) (Pr 71) (FB).**

●——**Art. 227 — Contempt of Court — High Court's inherent power to punish for — Source of — Creation of other authority — Effect—(Industrial Disputes (Appellate Tribunal) Act (1950), Section 30).**

In its ultimate analysis, contempt of Court is contempt of the authority of the sovereign State exercised through its Courts duly constituted for the administration of justice. That the English jurists traced it back to the King of England dispensing justice in the aula regis does not affect the principle. The power the King's Bench exercised to punish contempt of itself and of the Courts and tribunals subordinate to it was the power of the sovereign State. It is a similar power that the High Courts in India exercise. It is obviously open to Parliament of India, which exercises the sovereign authority of the State over this portion of the legislative field, to provide specifically for the exercise of the power of the sovereign State to punish contempts of any specified classes of Courts or tribunals.

In relation to the Industrial Tribunals and the classes of contempts enumerated in sub-ss. 1 and 2 of Section 30 of Act (48 of 1950), the State, acting through Parliament, has conferred that power on the Industrial Tribunals and on the Labour Appellate Tribunal by Section 30 of that Act. The High Court is bound to respect that statutory provision, and it can no longer invoke its inherent power to punish contempts of an Industrial tribunal to the extent that the requisite power has been conferred on any independent statutory tribunal like the Labour Appellate Tribunal by that section. In the matter of Hayles, Editor of "The Mail", **1955 Mad WN 1051 (2): ILR (1955) Mad 1: (1955) 1 MLJ 375: 1955 Cri LJ 1: AIR 1955 Mad 1 (20) (Pt D) (Pr 76) (FB).**

——**Art. 227** — Power to deal with contempt of Court not punishable by the Court itself. See Contempt of Courts Act, 1926, S. 2. **1952 Cri LJ 950: AIR 1951 Punj 49 (DB).**

15. Retrospective application.

●——**Art. 227** — Constitution of India (1950), Preamble and Art. 227 — Retrospective operation — Applicability of General Clauses Act — Order under Assam Opium Prohibition Act — Finality of — (General Clauses Act (1897), S. 6) — (Assam Opium Prohibition Act (23 of 1947), Ss. 16 and 17 (3)). See Ibid, Preamble. **1953 Cri LJ 395: AIR 1953 Assam 35 (FB).**

——**Art. 227 — Retrospective application.**

Art. 227 of the Constitution may not be applied retrospectively. **ILR (1951) 3 Assam 181: 52 Cri LJ 966 : AIR 1951 Assam 106 (115) (Pt H) (Pr 59) (DB).**

——**Art. 227** — Scope — Government servants under former Madhya Pradesh State serving in districts now forming part of Bombay State — Dismissal prior to 1-11-56 by Madhya Pradesh State — Petitions under Arts. 226 and 227 challenging orders of dismissal against Bombay State filed in Bombay High Court — Maintainability. See States Reorganisation Act (1956), S. 88 (b). **AIR 1959 Bom 363 (DB).**

——**Art. 227** — Declaration under Section 6, Land Acquisition Act made before Constitution — Application under Art. 227 — Maintainability. See Land Acquisition Act (1894), S. 6. **AIR 1952 Cal 573.**

■——**Art. 227 — Land Acquisition Act, 1894, Section 18 — Order under Section 18 becoming final before Constitution — Interference with, under Art. 227 — Article held not retrospective.**

Article 227 although it does not in terms give a right to interfere with orders, is an Article which does give a right to High Courts to interfere in proper cases and therefore, does give rights to the parties to move High Court to vary or reverse orders, i.e., to exercise powers similar to those as exercised in appeal, and hence must be construed in the same manner as provision in a statute would be construed which gave a right to parties to challenge a decision, either by appeal or revision.

There are no express words in Art. 227 which give the High Court the right to interfere with a right in existence at the time of the passing of the Constitution; nor is there anything in the Article to indicate that there is such a power by necessary intendment. The Article, therefore, does not empower the High Court to interfere with an order under Section 18, Land Acquisition Act, refusing to refer a matter to Civil Court which was a final order passed at a time before the Constitution came into force and when the High Court had no power to interfere with such an order under Section 115 Civil P. C. 54 CWN 793, Foll., Case law ref. Bimala Prosad Ray v. State of West Bengal, **55 Cal WN 87: ILR (1951) 2 Cal 427 : AIR 1951 Cal 258 (261, 265) (Pt C) (Prs 22, 25) (SB).**

——**Art. 227 — Applicability — Order becoming final before Constitution.**

Art. 227 of the Constitution will not have any application where the order became final before the Constitution came into force. **AIR 1951 Cal 100 (100) (Pt A) (Pr 2) (DB).**

——**Art. 227 — Article 227 is not retrospective— Interpretation of Statutes — Retrospective operation — Vested rights.**

Assuming that the High Court has been given powers of interference, by Art. 227 of the Constitution of India, with final orders, that would not entitle it to interfere with an order which was passed at a time when such power of interference did not exist. While provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. AIR 1927 PC 242, Rel. on. **54 Cal WN 793: ILR (1951) 2 Cal 230: AIR 1950 Cal 512 (513) (Pr 2) (DB).**

——**Art. 227** — Scope — If retrospective. See Ibid, Art. 226. **1959 MPLJ (Notes) 133.**

■——**Art. 227** — Retrospective operation of article. See Ibid, Art. 226. **1952 Cri LJ 1 : AIR 1951 Nag 443 (FB).**

——**Art. 227** — Retrospective operation of article. See Interpretation of Statutes. **AIR 1951 Nag 90 (DB).**

——**Art. 227 — Retrospective operation — High Court's power of superintendence — Extent.**

It is true that all Tribunals as well as Courts throughout the territories in relation to which the High Court exercises jurisdiction have been subjected to the superintendence of the High Court under Art. 227 (1) of the Constitution and that the power of superintendence includes the power of judicial interference. But there is nothing in the language of that Article to indicate that the power of superintendence was intended to operate on rights which had been finally settled prior to the commencement of the Constitution. **ILR (1951) Nag 818: 1951 NLJ 463: AIR 1951 Nag 90 (91, 92) (Pt C) (Prs 7, 9) (DB).**

——**Art. 227 — Award of Nagpur Improvement Trust Tribunal given before Constitution — Finality — Nagpur Improvement Trust Act (36 of 1936), S. 61 (d).**

When the awards of the Nagpur Improvement Trust Tribunal became final and were not subject to any challenge by way of an appeal or a revision, the finality of the awards cannot be said to have been put in jeopardy merely because the applicants chose to file untenable revision applications and those applications were pending when the Constitution came into operation. **1951 Nag LJ 463 : ILR (1951) Nag 818 : AIR 1951 Nag 90 (91) (Pt E) (Pr 7) (DB).**

——**Art. 227** — Retrospectivity — Amendment of revision application against order passed before Constitution to add reliefs under article. See Ibid, Art. 226. **1951 Nag LJ (Notes) 115.**

——**Arts. 227 and 367 (1) — Retrospectivity — Does not affect order passed before the Constitution — (Tenancy Laws — Orissa Tenants Protection Act (III of 1948), S. 11) — (Interpretation of Statutes) — (Civil P. C. (1908), Pre.) — (General Clauses Act (1897), S. 6).**

It is a fundamental rule of interpretation that while a rule of procedure may ordinarily have retrospective effect attributed to it, provisions in a statute which affect existing rights cannot be applied retrospectively in the absence of an express enactment to that effect or necessary intendment. AIR 1927 PC 242, Ref.

There is nothing in Article 227 indicating that it is intended to have retrospective effect and that the High Court can interfere with a right in existence at the time of the passing of the Constitution. Consequently, though Art. 227 gives power to the High Court to interfere even with the orders which are declared final by different Acts of the Legislature and though any Act of a Legislature cannot affect the right vested in the High Court by the Constitution, such a right vested in the High Court does not justify interference with the past events so as to affect the vested rights of the parties. AIR 1951 Cal 258 (SB) and AIR 1951 Nag 90, Rel. on.

The orders passed by the Collector under S. 7 of the Orissa Tenancy Act, 1948, which had become final by virtue of S. 11 of that Act before the coming into force of the Constitution, cannot therefore, be interfered with under Art. 227.

Per Narasimham, J.:— Section 11 of the Orissa Tenants Protection Act, as it stood prior to 26th January, 1950, read with section 224 of the Govt. of India Act, 1935, conferred on the opposite party a right of immunity from interference by the High Court in exercise of its powers of superintendence over inferior Tribunals and that right is saved by section 6 of the General Clauses Act in the absence of any express provision in the Constitution giving retrospective effect to Art. 227. AIR 1951 SC 217 and AIR 1953 Assam 35 (FB), Ref. **ILR (1953) Cut 322 : AIR 1953 Orissa 274 (275, 276) (Pt B) (Prs 5, 7) (DB).**

——**Art. 227— Power of High Court — Interference with final order passed before Constitution coming into force.**

There are no express words in Art. 227 of the Constitution which give the High Court the right to interfere with a right in existence at the time of the passing of the Constitution: nor is there anything in the aforesaid article to indicate that there is such a power by necessary intendment. The High Court has, therefore, no power to interfere with a final order passed on appeal at a time before the Constitution came into force and when it had no power to interfere with such an order under S. 115, C. P. Code. 54 CWN 793 and 9 L 284 (PC), Ref. to. **AIR 1951 Punj 310 (310) (Pr 2).**

16. Territorial jurisdiction.

●——**Arts. 227, 241 —Rent Controller and District Judge acting under Rent Act — Jurisdiction of Judicial Commissioner — (Houses and Rents — East Punjab Urban Rent Restriction Act (3 of 1949), Ss. 13, 15)).**

The words 'in relation to which' in Art. 227 obviously qualify the word 'territories' and not the words 'Courts and Tribunals'.

The Court of the Judicial Commissioner of Himachal Pradesh exercises jurisdiction in relation to the whole of the territories of Himachal Pradesh. The Rent Controller and the District Judge exercising jurisdiction under the East Punjab Urban Rent Restriction Act, 1949, as extended to Himachal Pradesh, are certainly Tribunals, if not Courts, and they function within the territories of Himachal Pradesh. Therefore, Art. 227 (1) read with Art. 241 confers on the Court of the Judicial Commissioner power of superintendence, over such Tribunals. Waryam Singh v. Amarnath, **1954 SCJ 290 : 1954 Mad WN 424 : 1954 SCA 334 : 1954 SCR 565: AIR 1954 SC 215 (216, 217) (Pt A) (Pr 12).**

——**Art. 227** — Single tribunal sitting at one place constituted by law to deal with disputes arising anywhere in India — High Court competent to exercise jurisdiction under Arts. 226 and 227. See Representation of the People Act (1951), S. 116-A. **AIR 1958 All 137 (DB).**

——**Arts. 227, 226** — Territorial jurisdiction — Order by tribunal within jurisdiction confirmed in appeal and revision by tribunal outside jurisdiction — Principle of merger — Writ quashing lower tribunal's order cannot be granted — Lower tribunal's order invalid ab initio — Effect. See Ibid, Art. 226. **AIR 1958 Ker 357 (DB).**

——**Art. 227 — Territorial jurisdiction — Order passed by Bombay Revenue Tribunal before 1st November, 1956 — Territory transferred to Mysore State — Application before Mysore High Court— (States Reorganisation Act (1956), Ss. 8, 49, 69 and 125).**

Held that the order of the Bombay Revenue Tribunal was a judicial act and as the power of superintendence available to the High Court under Art. 227 of the Constitution includes also the power of judicial superintendence the petition was maintainable in the Mysore High Court. It could not be accepted that an offending order executable within the territories over which Mysore High Court had jurisdiction was not liable to be interfered with merely on the ground that the Bombay Revenue Tribunal had ceased to function or exist consequent on the States Reorganisation Act. The power under Art. 227 is wider than in case of a certiorari under Art. 226. AIR 1954 SC 215, AIR 1955 SC 233 and AIR 1957 Bom 142, Rel. on. W. P. No. 120 of 1957 (Mys) Disting. and Expl. The argument that the Constitutional power was saved to the High Court of Bombay by S. 69 of the States Reorganisation Act is not correct. The power of superintendence under Art. 227 could be exercised by the respective High Court throughout the territories of the new States only as from 1st November, 1956. **37 Mys LJ 82 : ILR (1959) Mys 150 : AIR 1959 Mys 108 (110, 111) (Pt A) (Prs 4, 6, 7) (DB).**

——**Art. 227** — Territorial jurisdiction — Election petition — Jurisdiction to entertain writ application — Determination of the High Court which has jurisdiction. See Ibid, Art. 226. **AIR 1954 Nag 166 (DB).**

——**Art. 227** — Assessment of assessee under Commissioner of Income-tax U. P. — Order passed by Investigation Commission at Delhi under Taxation on Income (Investigation Commission) Act, 1947 — That fact would not confer jurisdiction on Punjab High Court to entertain petition under Arts. 226 and 227 against the order. See Ibid, Art. 226. **AIR 1951 Punj 74 (DB).**

17. Application under Article.

(a) Person entitled to apply.
(b) Parties.
(c) Duty to make full disclosure of material facts.

17. Application under Article.

——**Art. 227** — Criminal P. C. (1898), Ss. 435, 439, and 561-A — Power to quash proceedings at an interlocutory stage — Objection to place of trial dismissed by lower Courts — Composite application under Ss. 561-A, 439 and Art. 227 — Maintainability. See Criminal P. C. (1898), S. 435. **AIR 1956 All 619.**

——**Art. 227** — Joint petition on common questions of law and fact is maintainable. See Ibid, Art. 226. **1963 Mah LJ (Notes) 8 (Bom).**

——**Art. 227 — Applicability and scope — Mere threat to property — No ground for petition — (Municipalities — Bombay Municipal Boroughs Act (18 of 1925), Ss. 17-A and 218).**

A mere threat with no legal consequences cannot justify the presentation of a petition under Art. 227.

Held, on facts that no power has been conferred upon the Government under S. 218 (2) which is not possessed by the Municipality itself. The only power that the Municipality has of summary eviction of the lessee is the power that is conferred under S. 174-A. Therefore, till the situation arises where action is taken under section 174-A and a notice has been served under S. 174-A the petition could not be maintained. **AIR 1956 Bom 408 (408) (Pr 2) (DB).**

17 (a). Person entitled to apply.

——**Art. 227** — Petition for writ — Who can maintain — Notices under S. 34 of Income-tax Act served on one partner of dissolved firm — Petition by such partner alone, though the firm was dissolved is maintainable — Joinder of all the ex partners in the petition not necessary— Non-joinder is not fatal to maintainability. See Ibid, Art. 226. **AIR 1963 All 444.**

——**Art. 227** — Election of President found to be void — Successful party if can be allowed to continue as President pending revision. See Panchayats — Madras Village Panchayats Act (10 of 1950), S. 112. **(1954) 2 MLJ (Andh) 44 : AIR 1954 Andhra 36.**

——**Arts. 227, 226** — Who can apply — Application by person on his own behalf and as well as in his capacity as secretary of unregistered association for reduction of fares of stage carriage— **Some of bus owners already accepting rates fix-**

ed by R. T. A. — Relief held could not be granted to Association as a whole it being not legal entity and all members not having sought relief — (Motor Vehicles Act (1939), S. 47). See Ibid, Art. 226. **AIR 1955 Cal 59.**

——**Art. 227** — Industrial Court making an award allowing Mills to work three shifts with a system of change over — Award not contemplating change over in shifts which were only partially worked — Differences arising between employer and representative union as to interpretation and effect of award — Matter referred to arbitration of persons agreed to by them — Arbitrators making award clarifying the Court's award that there shall be no change over in partial working of shifts — Arbitrator's award is valid and binding on employees — S. 116 or S. 116-A is no bar to refer such matters to arbitrators — Employees who were not given benefit of change over from second shift are not entitled to file application under Art. 227 of the Constitution of India. See Bombay Industrial Relations Act, 1946 (2 of 1947), S. 66. **(1964) 5 Guj LR 969.**

——**Art. 227** — Petition under, for quashing order under S. 18, Land Acquisition Act — Death of applicant — If can be continued by his brother. See Ibid, Art. 226. **AIR 1957 Ker 152 (DB).**

——**Arts. 227, 226** — Who can apply — (Madhya Pradesh Public Trusts Act (30 of 1951), Pre. and Ss. 4, 5, 8)—Scheme of — Order declaring certain institutions not to be public trusts passed by Registrar of Public Trusts — State Government if can challenge order under Arts. 226, 227. See Ibid, Art. 226. **AIR 1958 Madh Pra 362.**

——**Arts. 227, 226** — Industrial Disputes — Application of management and of employees respectively under Ss. 33 (2) and 33-A, Industrial Disputes Act, disposed of by single order — Employees alone challenging order passed on their application under S. 33-A — No such application against order under S. 33 (2) filed by management — Court cannot examine the order passed on the application of management — Industrial Disputes Act (1947), Ss. 33 (2) and 33-A. See Ibid, Art. 226. **AIR 1965 Pat 297.**

17 (b). Parties.

——**Art. 227** — Revision under Art. 227 of the Constitution — Applicability of O. 1, R. 10. See Civil P. C. (1908), S. 151. **AIR 1954 Andhra 36.**

——**Art. 227** — Pending proceeding under Art. 227 of Constitution — Elector's locus standi to come on record. See Panchayats — Madras Village Panchayats Act (X of 1950), S. 112. **AIR 1954 Andhra 36.**

——**Art. 227** — Revision against Election Commissioner's decision — Death of respondent —Abatement. See Panchayats — Madras Village Panchayats Act (X of 1950), S. 112. **AIR 1954 Andhra 36.**

——**Art. 227** — Parties — Necessary parties. See Ibid, Art. 226. **AIR 1953 Assam 129 (DB).**

——**Art. 227** — Parties challenging order of termination passed by Health Officer — Health Officer if necessary party. See Ibid, Art. 226. **1959 Nag LJ (Notes) 106 (Bom).**

——**Art. 227** — Parties — Writ application — Necessary parties. See Civil P. C. (1908), O. 1, R. 3. **AIR 1958 Cal 151.**

——**Arts. 227, 226** — Procedure — Application under Art. 227 challenging tribunal's decision — Tribunal is not necessary party — Proceedings under Art. 226 — Tribunal is necessary party because record of proceeding cannot be brought up without issuing notice to it. **AIR 1955 NUC (Madh B) 3370 (DB).**

——**Art. 227 — Parties — Court or Tribunal whose order is under revision — If to be impleaded.**

In proceedings under Art. 227 in which the correctness of a decision of a Court or Tribunal is challenged, it is not necessary to make the Court or Tribunal a party. **1958 Jab LJ 185.**

——**Art. 227** — Parties to proceedings — Order of appellate Authority questioned — Order one of affirmance—Primary authority if necessary. See Ibid, Art. 226. **AIR 1956 Nag 65 (DB).**

——**Art. 227** — Parties to petition — Petition for writ against Election Tribunal — Government of India if should be ordered to be joined as party. See Ibid, Art. 226. **AIR 1954 Nag 166 (DB).**

——**Art. 227 — Tribunal against whose order petition is made need not be made party. AIR 1960 Punj 432, Overruled.**

In an application under Art. 227 of the Constitution, it is not necessary to implead the Tribunal whose order is assailed and such a petition cannot be dismissed merely for the failure to implead the Tribunal concerned. AIR 1960 Punj 432, **Overruled.** AIR 1962 Punj 467, and AIR 1962 Punj 117, AIR 1959 Punj 291 and AIR 1961 Punj 24, Rel. on. **ILR (1962) 2 Punj 751 : 65 Pun LR 45 : AIR 1963 Punj 156 (158) (Pr 6) (DB).**

——**Arts. 227 and 226 — Nature of proceedings under — Distinction — Tribunal against order of which proceedings are taken under Art. 227 not a necessary party to the same.**

Article 227, which is for all practical purposes a revival of section 107 of the Government of India Act, 1915 is not an article which in terms provides for writs, etc. In this respect it is distinguishable from Article 226 which alone provides for writs, etc. Proceedings under Article 227 are not original proceedings, for orders passed in these proceedings are not even amenable to Letters Patent Appeals. Therefore, the considerations on which a Tribunal, to which a writ is to go under Art. 226 is held to be a necessary party, are not attracted in the case under Article 227. The label of Article 227 on the petition, does not by itself necessitate the impleading of the Tribunal whose order is assailed under Art. 227. **AIR 1962 Punj 467 (470) (Pt B) (Pr 13).**

——**Art. 227** — Omission to implead authority whose orders sought to be assailed — Not fatal. **AIR 1962 Punj 117 (119, 120) (Pt A) (Pr 7).**

——**Art. 227** — Parties — Petition for writ of certiorari — Tribunal concerned not made party — Defect goes to the root of relief sought — Applicability of rule to writs under Art. 227. See Ibid, Art. 226. **AIR 1960 Punj 432.**

[**Overruled** in AIR 1963 Punj 156 (DB).]

——**Art. 227** — Parties — Writ challenging award of labour Court — Necessary party — Government. See Ibid, Art. 226. **AIR 1959 Tripura 8.**

17 (c). Duty to make full disclosure of material facts.

——**Art. 227** — Person invoking writ jurisdiction must make a full and candid disclosure of all the material facts and refrain from deliberately keeping material circumstances from the Court. See Ibid, Art. 226. **(1964) 2 Andh WR 155.**

——**Arts. 227, 226** — Suppression of material facts by applicant — Petitioners under Arts. 226, 227 — Duties of. See Ibid, Art. 226. **AIR 1965 Bom 24.**

——**Art. 227** — Scope—Petitioner must file all relevant documents — If complaint is that a plea was not enquired into or opportunity was not given, all circumstances must be specifically pleaded. See Ibid, Art. 226. **1964 Mah LJ (Notes) 61.**

——**Art. 227 — Application for transfer — Vague allegations — Criminal P. C., 1898, S. 526.**

Every application for transfer of a case should furnish material particulars regarding the general allegations contained in the application against the judicial authority. Mere conclusions of the applicant unless supported by materials accompanying the application, would carry little weight in persuading the High Court to believe the allegations. **1952 Cri LJ 708 : ILR (1951) Hyd 174 : AIR 1951 Hyd 82 (83) (Pt B) (Pr 2) (DB).**

18. Suo motu exercise of power.

——**Art. 227** — Powers of High Court to quash orders suo motu. See Constitution of India, Art. 226. **AIR 1958 All 154 (DB).**

——**Art. 227** — Right to apply — Exercise of powers under Art. 227 suo motu. See Ibid, Art. 226. **AIR 1959 Andh Pra 318.**

——**Art. 227 — Scope — Court can suo motu exercise powers under.**

The power under Art. 227 can be exercised even suo motu by the Court as the custodian of all the justice within the limits of the territorial jurisdiction and for the vindication of its position as such. Where in the prayers the petitioner asked not only for the writ of habeas corpus which was enough but also for other orders that might appear to the High Court fit and proper, the Court was perfectly justified in issuing a Rule under Art. 227 of the Constitution. AIR 1957 All 414 (FB) and AIR 1958 All 154, Rel. on. **67 Cal WN 297 : (1963) 1 Cri LJ 579 : AIR 1963 Cal 261 (264) (Pt C) (Pr 7) (DB).**

——**Art. 227 — Powers of High Court — Suo motu interference by High Court in case of grave injustice.**

Per P. N. Mookerjee, J.: Under Art. 227 the High Court can even suo motu interfere in a proper case where a grave injustice has been done, or there has been a gross miscarriage of justice. The Constitution sets no express limit to the High Court's power under Art. 227. Obviously, there should be some error before this power can be legitimately invoked as otherwise there would be case for superintendence, revision or rectification. **ILR (1955) 1 Cal 478.**

——**Art. 227** — Absence of provision in statute for filing revision — No application under Art. 227 filed — High Court on a revision filed whether would give relief under Art. 227 — Interference under article when would be made. See Houses and Rents — West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 17 (3). **AIR 1952 Cal 192 (DB).**

19. Procedure.

——**Art. 227** — Application under — Hearing of by Single Judge — According to the rules framed by the Allahabad High Court the application under Art. 226 has to be heard by a bench while that under Art. 227 can be heard by a Single Judge. See Ibid, Art. 226. **1952 Cri LJ 1520 : AIR 1952 All 843.**

——**Art. 227 — Procedure — Relief.**

A company made an application for a declaration against its workers that they had gone on an illegal strike. Leave to withdraw the application and for permission to file a fresh application was applied for. The Court without giving notice to the workers allowed the application. The company thereafter filed a fresh application seeking a declaration that certain specified acts of the workers amounted to an illegal strike. That application made under Ss. 78 and 79 of the Bombay Industrial Relations Act was ultimately allowed. The workers who moved the High Court under Art. 227 against that order contended that the labour Court had no power to grant the company leave to withdraw their earlier application with leave to file a fresh application without notice to the workers.

Held, that the petitioners could not in proceedings against the order on the second application raise the contention. The proper procedure was that when they came to know of the withdrawal of the earlier application on being served with the notice of the second application, they should have filed a substantive application against the order allowing the withdrawal and raised that point then. **(1958) 13 FJR 467 (Bom).**

——**Art. 227 — Procedure — Rules of Bombay High Court — Application is to be decided by Division Bench.**

The powers of superintendence exercisable by the Bombay High Court according to the rules of that Court can be exercised only by a Division Bench. An application which invokes the powers of the Bombay High Court under Art. 227 of the Constitution can therefore only be heard and decided by a Division Bench and not by a Single Judge. **AIR 1956 Bom 323 (325) (Pt. A) (Pr 33).**

—— **Art. 227** — Nature of proceedings — Applicability of O. 27-A — Notice to Attorney-General — Necessity. See Civil P. C. (1908), O. 27-A R. 1. **AIR 1957 Cal 702.**

——**Art. 227** — Procedure under — No special procedure is prescribed — Procedure followed under S. 107, Govt. of India Act, 1935, has to be followed — Procedure for Art. 226 and Art. 227 should be distinguished. **AIR 1955 NUC (Cal) 2074 (DB).**

——**Arts. 227, 226** — Disputed question — Power to record evidence — Application for writ to set aside order of Accommodation Officer requisitioning for public purpose the additional room constructed by petitioner on the terrace of his bungalow — **Held** relying on affidavits of Accommodation Officer, that the room was capable of being let out and was premises within the ambit of Bombay Land Requisition Act 1948 and that it was not a fit case in which evidence should be recorded as to the facts alleged by petitioner — There may however be cases where it would be desirable, in the interests of justice, that evidence should be recorded to determine the disputes raised in the petition under Articles 226 and 227. See Ibid, Art. 226. **(1960) 1 Guj LR 89.**

——**Art. 227**—Procedure —Counter to the petition — Signature on — Counter filed by senior member of Revenue Board not signed by him but by secretary — Matter held not of importance, since petitioners were not prejudiced. **AIR 1955 NUC (Hyd) 2367 (DB).**

——**Art. 227** — Procedure — Affidavit — Reliability. See Ibid, Art. 226. **1963 Jab LJ 795.**

——**Art. 227 — Procedure — Conversion of civil revision application into one under Art. 227 — Permissibility.**

The District Munsif enquiring into an election petition under S. 19 (1) of the Madras Village Panchayats Act though acts as a persona designata is still a Tribunal and his orders can be questioned by means of a writ application under Art. 226 of the Constitution. In such circumstances the High Court will not grant permission to the

petitioner to convert the civil revision petition into an application under Art 227 of the Constitution **72 Mad LW 633: ILR (1959) Mad 1061: (1960) 1 Mad LJ 38: AIR 1960 Mad 353 (357) (Pt B) (Pr 19).**

——**Art. 227** — Stay of proceedings under Article under S. 4 of Mysore Tenants (Temporary Protection from Eviction) Act — Proceedings under Art 227 cannot be stayed — Revenue Tribunal rejecting claim of landlord to evict tenant — Petition by landlord under Art 227 — Tenant found liable to eviction — High Court will not order eviction because of the bar against eviction created by S. 3, even though the bar is temporary. **AIR 1964 Mys 43 (45, 49) (Pt A) (Prs 3, 16) (DB).**

——**Art. 227**—Industrial Dispute — Application of management and of employees respectively under Ss. 33 (2) and 33-A Industrial Disputes Act, disposed of by single order — Employees alone challenging order passed on their application — No such application filed by management — Court cannot examine the order passed on the application of management. See Ibid. Art. 226. **AIR 1965 Pat 297 (DB).**

——Art. 227 — Application under — Notice to tribunal — Not necessary.

In applications under Art 227 of the Constitution, there is no need for the High Court exercising power of superintendence to give any notice to any party. The High Court has power of superintending the functions of the Court below and it is open to the Court to call for record, examine it and pass such orders as it thinks fit. **1958 BLJR 704.**

——**Art. 227** — Consolidation of holdings under S. 14 E. P. Act (50 of 1948)— Dispute regarding fragmentation of holdings cannot be considered in writ proceedings under Article — In proceedings under Article High Court would ordinarily refrain from holding an enquiry into disputed, facts. See Ibid, Art. 226. **(1965) 67 Pun LR 310.**

——Art. 227 — Procedure — Attested copy of impugned order — Attachment with petition if necessary.

Where, in the absence of appropriate rule on the subject, the practice of the court is to accept unattested copies, failure to attach duly attested copy of the impugned order to a petition of revision under Art 227 does not entail dismissal of the petition. **64 Pun LR 456: ILR (1962) 2 Punj 439: AIR 1962 Punj 490 (491) (Pt C) (Pr 7).**

——**Art. 227** — Proceedings under are not original proceedings for orders passed in them are not even amenable to Letters Patent appeals. **AIR 1962 Punj 467 (470) (Pt B) (Pr 13).**

——Art. 227 — Attested copies or orders of judicial or quasi-judicial tribunals — Filing of — Omission not sufficient to non-suit petitioner.

In petitions under Art 227 of the Constitution copies of the orders of the judicial or quasi-judicial tribunals should be duly attested copies. But in the absence of definite rules in Punjab High Court if the High Court has accepted the copies not duly attested, the petitioner should not be non-suited for this omission alone. **AIR 1962 Punj 117 (120) (Pt C) (Pr 8).**

——**Art. 227 — Civil P. C. (1908) S. 115—Application under both provisions — High Court can restrain trial court from proceeding with suit in which it has wrongly assumed jurisdiction.**

Where a subordinate Court assumes jurisdiction in a suit under C. P. C. S. 92 even though the suit is not in conformity with the consent of the Advocate General and the defendant applies to the court in revision under C. P. C. S. 115 as well as under Constitution Art 227, the High Court can under Art 227 interfere even at this stage and restrain the lower court from proceeding with the suit.

Semble. Interference would be permissible even under C. P. C. S. 115. Observations in AIR 1959 SC 492 Rel on. AIR 1953 Raj 137 Dist. **1962 Raj LW 188 : ILR (1961) 11 Raj 898.**

20. New plea.

——**Arts. 227, 226**—New plea of mixed question of law and fact — Question whether document was duly registered under U. P. Tenancy Act so as to be admissible in evidence not raised in Courts below cannot be raised in proceeding under Arts. 226 and 227. See Ibid. Art. 226. **AIR 1959 All 13.**

——Art. 227 — New point.

A contention not raised by the petitioner in his revision application before the Bombay Revenue Tribunal cannot be allowed to be raised for the first time in an application under Art 227 for setting aside the order of the Tribunal. **61 Bom LR 156: ILR (1959) Bom 629.**

——**Art. 227**—Revision petition under—New plea—Determination of tenancy under Public Premises (Eviction of Unauthorised Occupants) Act, 1958—Objection to validity of determination of tenancy as it was governed by W. B. Non-Agricultural Tenancy Act, 1949, specifically abandoned before appellate authority and no record to show that it was raised before Estate Officer — Notice to quit not on record — Point neither taken nor indicated in petition — As decision on this point would involve decision on question of facts which were not averred or agitated at any time before, it cannot be allowed to urge — Petitioner can be allowed to agitate even at this stage if no further evidence is necessary for decision of point of law. AIR 1964 SC 859, Rel. on. **(1965) 69 Cal WN 1035 (DB).**

——**Art. 227**—New point — Mixed question of law and fact — Point not taken in lower Courts— Point cannot be allowed to be raised for first time in revision. **68 Cal WN 485: (1964-65) 26 FJR 221: (1965) 1 Lab LJ 380: AIR 1964 Cal 285 (286) (Pt B) (Pr 4).**

——**Art. 227**—New plea— Court will not allow any party to introduce new facts in a proceeding under Art. 227. **(1959) 63 Cal WN 976 : 1960 Cal L Jour 40: ILR (1960) 1 Cal 745: AIR 1960 Cal 378 (380) (Pt B) (Pr 11) (DB).**

——**Art. 227** — Sales Tax — Question whether turnover exceeds taxable limit — Question of fact — Cannot be allowed for first time in writ petition. See Sales Tax — C. P. and Berar Sales Tax Act (21 of 1947), S. 11. **AIR 1964 Madh Pra 161 (DB).**

——**Art. 227** — Objection not taken before the Tribunal, cannot be allowed to be taken before High Court in writ proceedings. See Ibid, Art. 226. **1964 MPLJ (Notes) 168.**

——**Art. 227** — Question not raised before panchayat — It cannot be raised for the first time in High Court — Alternative remedy no bar to petition under Art. 226. See Ibid, Art. 226. **1962 MPLJ (Notes) 126.**

——**Art. 227** — New point — Application by tenant under S. 29 (1) Bombay Tenancy and Agricultural Lands Act for restoration of possession of lands on allegation of his unlawful dispossession by landlord and his alienee — Point about sur-

render of lands by tenant applicant in favour of landlord before the latter sold them, raised by alience for first time in revision before Revenue Tribunal — Tribunal holding that surrender was not in accordance with law and it was therefore ineffective — Question held was unnecessary for the Tribunal to have gone into, and could not be urged before High Court in application under Art 227 of the Constitution.

Contention that S. 29 (1) of the Bombay Act was not applicable which also was raised for first time before Tribunal, involved question of facts and could not be entertained in application under Art. 227. (Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948) Ss. 5 (3) and 29 (1)). **ILR (1960) Mys 1.**

——**Art. 227** — New plea — Plea not raised before Election Tribunal — If can be raised. See Ibid, Art. 226. **AIR 1957 Mys 76 (DB).**

——**Art. 227** — New case—Petition under S. 66 (4) Income-tax Act read with Arts 226 and 227 of the Constitution — New case sought to be made out during arguments—Competency. See Income-tax Act (1922), S. 66 (4). **AIR 1957 Punj 284 (DB).**

Court-fees.

——**Art. 227** — Application under — Court-fees. See Court Fees Act (1870), Sch. 2 Art. 1 (D) (iii). **AIR 1955 Him Pra 41.**

Estoppel

——**Art. 227** — Industrial dispute relating to fixation of fair wages and provision for gratuity scheme — Employees objecting to admission of evidence of paying capacity on unit basis — **Held** it was too late for them to ask for a remand of the case in the writ proceedings for a fresh decision by tribunal after receiving evidence of paying capacity on unit basis. See Ibid, Art. 226. **AIR 1962 Madh Pra 172 (DB).**

——**Art. 227** — Estoppel against applying—Objection to the jurisdiction of the Tribunal not raised before it — Person taking chance of obtaining favourable decision — He cannot later urge want of jurisdiction by the Tribunal. See Ibid, Art. 226. **1961 MPLJ (Notes) 270.**

——**Arts. 227, 226** — Submission to or acquiescence in jurisdiction— (Panchayat — M B Panchayat Vidhan (58 of 1949), Ss. 75, 89). See Ibid, Art. 226. **1957 Cri LJ 759: AIR 1957 Madh Pra 58 (DB).**

——**Arts. 227, 226**—Evidence Act (1872), S. 115—Bias — Failure to raise objection — Estoppel. See Evidence Act (1872), S. 115. **AIR 1957 Pat 732.**

——**Arts. 227 and 226 — Applicabiilty — (Evidence Act (1872), S. 115).**

As a matter of principle a party denying the jurisdiction of a particular Tribunal and succeeding in that plea cannot deny the truth of that plea in subsequent proceedings before another Tribunal. AIR 1931 Oudh 123; AIR 1914 Cal 143, Rel. on.

Therefore where in a suit for eviction the defendant pleaded and succeeded on the ground that the civil Court had no jurisdiction because of the bar imposed by the provisions of the Rent Control Act he should not be permitted to plead inconsistently before the Rent Control authorities that they had no jurisdiction to order eviction. Where the Rent Control authorities commit the legal error of permitting the tenant to raise that inconsistent plea and declines to exercise the jurisdiction vested in them under the Rent Control Act the more appropriate article under which remedy is to be given is Art 227 and not Art 226 of the Constitution. **1955 BLJR 47: AIR 1955 Pat 198 (198, 199) (Prs 3, 4) (DB).**

Res judicata.

——**Art. 227** — Res judicata — Dismissal of municipal employee — Without previous approval of Government — Collector holding that the employee was a permanent employee setting aside dismissal order on the ground it was bad in the absence of Government's approval — Municipality's writ application to quash Collector's order — High Court also holding in such proceedings that the employee was a permanent one — Municipality again passing resolution dismissing the employee without Government's previous approval— **Held** that in the proceedings to set aside the second order it was not open to the municipality to contend that the employee was a temporary one and hence no previous approval of Government was necessary. See Ibid, Art. 226. **1964 MPLJ 36.**

——**Art. 227** — Successive applications — (Civil PC (1908), S. 11 — O. 23, R. 1. See Ibid, Art. 226. **AIR 1956 Punj 157.**

Objection to jurisdiction

——**Art. 227** —New plea of — Objection to jurisdiction of Tribunal not raised before it — It cannot be taken on an application under Arts. 226 and 227. See Ibid, Art. 226. **AIR 1960 Bom 219 (DB).**

——**Art. 227** — Objection to jurisdiction of Tribunal whose order is challenged. See Ibid, Art. 226. **AIR 1959 Bom 538 (DB).**

——**Art. 227** — New plea — Want of jurisdiction— Objection as to — If can be taken in petition under Arts. 226, 227 for the first time. See Ibid, Art. 226. **AIR 1961 Ker 117 (DB).**

——**Art. 227** — Case under Motor Vehicles Act — Appellate authority constituted with two members — Objection to hearing of appeal by single member not raised at the time by appellant — He cannot raise it subsequently by application under Arts. 226 and 227. See Ibid, Art. 226. **AIR 1965 Madh Pra 113 (DB).**

——**Art. 227**—New plea—Question of jurisdiction not raised before subordinate tribunal cannot be made basis of petition. See Ibid, Art. 226. **1961 MPLJ 761.**

——**Arts. 227, 226**—Proceedings under — Objection as to jurisdiction — When cannot be raised for first time. See Ibid, Art. 226. **AIR 1958 Pat 120.**

——**Arts. 227, 226** — Panchayats — Bihar Panchayat Raj Act 1947 (7 of 1948), S. 65 — Scope— Suit for declaration of title and recovery of possession — Jurisdiction — Objection not taken before Gram Cutchery — Effect — (Civil PC (1908), Ss. 9 and 21). See — Panchayats — Bihar Panchayat Raj Act (1947) (7 of 1948), Section 65. **AIR 1958 Pat 105.**

——**Art. 227** — Objection to jurisdiction not raised before lower Court itself — Power of High Court to interfere when there is patent and total want of jurisdiction in the lower Court. See Ibid, Art. 226. **AIR 1954 Pepsu 190.**

——**Art. 227** — Objection about jurisdiction of Tribunal — Objection not taken before Tribunal — Whether can be allowed in proceedings under Arts. 226 and 27 before High Court. See Industrial Disputes Act (1947), S. 10. **ILR (1963) 2 Punj 28.**

21. Appeal.

●——**Arts. 227, 226** — Interlocutory order passed by High Court in writ proceedings — Interference by Supreme Court. See Ibid, Art. 226. **AIR 1958 SC 398.**

●——**Art. 227**—Special appeal against order of High Court on application under Art. 227 —

Exercise of power under Article by Supreme Court. See Ibid, Art. 136. 1957 Cri LJ 998 : AIR 1957 SC 612.

——**Art. 227** — Appeal — Order of single Judge dismissing petition — Appealability. See Ibid, Art. 226. **AIR 1957 All 671 (DB).**

——**Art. 227** — High Court Rules and Orders— (Allahabad) Rules of Court (1950), Chap. VIII, R. 5 — Civil P. C. (1908), O. 17, R. 1 — Order of adjournment on furnishing security — Petition under Art 227 against order rejected by Single Judge — Appeal — Maintainability — (Words and Phrases — Judgment). See High Court Rules and Orders — (Allahabad) Rules of Court (1950), Ch. VIII R. 5. **AIR 1956 All 672.**

——**Art. 227** — Civil proceeding —What constitutes — Notice under S. 34 (1) (a) Income-tax Act (1922) — Writ petition under Art 226 of the Constitution for quashing notices — Appeal under Art. 133. See Ibid, Art. 133. **AIR 1964 Bom 116.**

——**Art. 227** — Question of interpretation—Certificate for appeal to Supreme Court — Competency. See Ibid, Art. 132 (1). **AIR 1958 Cal 679 (DB).**

——**Art. 227** — Letters Patent (Cal), Cl. 15 — Order made in exercise of powers of superintendence — (Civil P. C. (1908), S. 115). See Letters Patent (Cal.) Cl. 15. **AIR 1953 Cal 636.**

——**Art. 227** — Jurisdiction of High Court under Constitution, Art. 227 — Not original but revisional — Judgment of single judge in proceedings under Art. 227 — Not appealable. See Kerala High Court Act (1958), S. 5. **1961 Ker LT 823.**

—**Art. 227** — Revision held under Section 115 Civil P. C. and Art. 227 — Disposal by single Judge — Appeal. See Letters Patent (Madras), Cl. 15. **AIR 1955 Mad 287 (DB).**

——**Art. 227** — Order of Magistrate on application under Section 87, Religious Endowments Act — Revision —Order of single Judge — Appeal — Maintainability. See Letters Patent (Madras) Cl. 15. **1955 Cri LJ 323: AIR 1955 Mad 72 (DB).**

——**Art. 227** — Orders passed in proceedings are not even amenable to Letters Patent appeals. **AIR 1962 Punj 467.**

——**Arts. 227, 226** — Letters Patent (Punjab), (1919), Cl. 10 — Decision of single judge under Art. 226 quashing certain order — Further direction added under Art. 227 — Appeal against order under Art. 226 not barred. See Letters Patent (Punj) (1919), Cl. 10. **AIR 1961 Punj 24.**

——**Arts. 227, 226** — Supervisory jurisdiction of High Court over Rent Control Tribunals — Application by landlord under Arts. 226 and 227, Constitution of India to quash order of appellate authority under Delhi Rent Control Act, fixing standard rent — Application treated as one under Art. 227 and dismissed — Appeal under Cl. 10, Letters Patent (Punjab) —Whether competent — (Letters Patent (Punjab), C. 10)— (Houses and Rents— Delhi and Ajmer Merwara Rent Control Act (1947), S. 7-A). See Ibid, Art. 226. **AIR 1959 Punj 291 (DB).**

——**Arts. 227, 226 and 133 (1)** — Proceeding whether of civil nature — How to determine — Proceeding of civil nature — Jurisdiction under Art. 226 or Art. 227 invoked — Proceeding whether ceases to be civil. See Ibid, Art. 133 (1). **AIR 1959 Punj 58.**

——**Art. 227** — Decision by single Judge — Letters Patent appeal is not competent — (High Court) — Practice. **AIR 1955 NUC (Punj) 4025.**

22. Rules of High Court.

——**Art. 227 (2) (b)** — High Court Rules and Orders, (Allahabad) — General Rules (Civil), Rule 15 — Plaint written not in Hindi but in English — Plaint is valid in spite of Rule 15. See High Courts Rules and Orders — (Allahabad) General Rules (Civil), Rule 15. **AIR 1963 All 546 (DB).**

——**Art. 227 (3)** — Special agreement to charge higher fees—Validity. See High Court Rules and Orders — (Calcutta) Original Side Rules, (Chap. 36, Rule 4). **AIR 1955 Cal 319.**

——**Art. 227** — Administrative powers of the District Judge — Interference in the discretionary powers of Subordinate Courts in fixing dates of hearing by administrative orders not valid — Proper procedure for interference — Matter should be brought to notice of High Court for framing rules. See Manipur Courts Act (1955), S. 20. **AIR 1962 Manipur 24.**

23. Exemption of military Courts and Tribunals.

——**Arts. 227 (4), 226** — Tribunal constituted by law relating to army — High Court's power of superintendence. See Ibid, Art. 226. **AIR 1952 Trav-Co. 7.**

ARTICLE 228

SYNOPSIS

(Constitution of India, Art. 228.)

1. Scope and object of the Article.
2. "Case pending in a Court subordinate to it".
3. "Court subordinate to it."
4. "Involves a substantial question of law as to the interpretation of this Constitution."
5. "The determination of which is necessary for the disposal of the case."
6. Onus of proof.
7. Retrospective effect.
8. Appellate side of the High Court.
9. Who can move the High Court.
10. Procedure of High Court under this Article.

1. Scope and Object of the Article.

——**Art. 228 (a) and (b) — Transfer of case by Chief Justice to Division Bench, for decision of question of law — Direction that only that question should be decided by Bench — Direction held could be ignored — Bench could decide wheiher to act under Cl. (a) or Cl. (b) of Art. 228.**

Where the Chief Justice of the High Court directed the transfer of a case to the Division Bench for decision of the question of vires of Section 153-A, Penal Code but expressly said in his order that only that question shall be decided by the Bench.

Held, that the Chief Justice who was acting under Part I of Art. 228 could not have passed an order restricting the discretion of the Bench. The Bench was completely free to act either under Cl. (a) or Cl. (b) of Art. 228 and thus either dispose of the whole case itself or determine the question of law alone. It is only after the case had been heard on merits that the Court would be in a position to decide whether to dispose of the case itself or to decide the question of law alone. That being so the direction of the Chief Justice could be ignored. **1963 All LJ 21: 1963 All WR (HC) 87: 1963 All Cr R 80: (1963) 2 Cri LJ 4 : AIR 1963 All 335 (336) (Pt A) (Pr 2) (DB).**

——**Art. 228** — Article does not empower a Lower Court to make a reference. **AIR 1955 NUC (Madh Bha) 3401.**

——**Art. 228** — Validity of M. B. Police Act questioned in suit which lies in Civil Court — Fact that question would be referred under Art. 228 cannot warrant holding that remedy of suit is not as effective, beneficial and convenient as on an application under Art. 226. See Madhya Bharat Police Act (76 of Sm. 2007), S. 12. See Ibid, Art. 226. **AIR 1953 Madh Bha 222 (DB).**

——**Art. 228 — Decision of constitutional question (validity of Bihar Mica Act 1947), must be necessary for decision of case — High Court not in position to know whether decision of such question would be necessary — Case will not be withdrawn — Applicability of Section 432, Cr. P. Code —(Cr. P. Code (1898), S. 432, as amended).**

Three conditions must be fulfilled before Art. 228 of the Constitution can apply; the first condition is that there must be a case pending in the Court subordinate to the High Court; secondly the case must involve a substantial question of law as to the interpretation of the Constitution or the Government of India Act, 1935, thirdly, the determination of the question of law must be necessary for the disposal of the case. Once these three conditions are fulfilled the Article requires that the High Court shall withdraw the case and then may either dispose of the case itself or determine the question of law and return the case to the Court from which the case has been withdrawn, etc. So far as withdrawal of the case is concerned the Article is mandatory as soon as the conditions laid down therein are fulfilled.

The High Court must be satisfied that the determination of the question of law as to interpretation of the Constitution (the validity of Bihar Mica Act, 1947 in the instant case) is necessary for the disposal of the case. If the suit can be disposed of on the other questions raised, Art. 228 will not apply. Usually the High Court will not act till the point is clear and will wait for the other issues to be decided. AIR 1952 Mad 20, Ref.

There is another aspect of the matter. Section 432, Cr. P. Code which was recently enacted lays down inter alia that where any Court is satisfied that the case pending before it involves a question as to the validity of any Act the determination of which is necessary for the disposal of the case and is of opinion that such Act is invalid or inoperative but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court the Court shall state a case setting out its opinion and the reasons therefor and refer the same for the decision of the High Court. Though there is difference in scope of the two provisions, Art. 228 of the Constitution and Section 432, Cr. P. Code, S. 432 has some relevancy. Where the High Court does not yet know if the constitutional question as to the validity of the Bihar Mica Act, 1947, is really necessary for the disposal of the case if however the constitutional question does arise on the case and the Court is of opinion that the Bihar Mica Act, 1947, as amended from time to time or any provision thereof is invalid or inoperative Section 432, Cr. P. Code, makes it obligatory on the Court to make a reference to the High Court. In these circumstances the High Court is not obliged at this stage to withdraw the case from the subordinate Court. **1954 Cri LJ 1265: AIR 1954 Pat 387 (389, 390) (Pt A) (Prs 4, 6, 7).**

——**Art. 228 — Scope compared with scope of Section 432, Cr. P. Code — (Cr. P. Code (1898), Section 432).**

Art. 228 of the Constitution and Section 432, Cr. P. Code (as recently amended) do not cover the same ground and it cannot be said that Section 432, Cr. P. Code, controls Art. 228 of the Constitution. In one sense Section 432, Cr. P. Code, is wider in its effect, and in another sense it is narrower than Art. 228 of the Constitution. Art. 228 of the Constitution relates to a case which involves a substantial question of law as to the interpretation of the Constitution the determination of which is necessary for the disposal of the case. Section 432, Cr. P. Code, relates to the validity of any Act, Ordinance, Regulation etc., and is not confined merely to an interpretation of the Constitution or of the Government of India Act, 1935. Art. 228 applies as soon as the case involves a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case. Section 432, Cr. P. Code, applies when not merely there is a question as to the validity of any Act, Ordinance, Regulation, etc., the determination of which is necessary for the disposal of the case, but when the Court is of opinion that such Act, Ordinance, Regulation, etc., is invalid or inoperative but has not been so declared by the High Court or by the Supreme Court. Therefore, the scope and effect of Section 432, Cr. P. Code and Art. 228 of the Constitution are not the same; they do not cover the same ground, and one does not necessarily control the other. **1954 Cri LJ 1265: AIR 1954 Pat 387 (390) (Pt B) (Pr 7).**

●——**Art. 228 — Exercise of powers under — High Court, how may be moved.**

Art. 228, Constitution of India, does not say how the High Court is to be moved for the exercise of its powers but obviously it can be moved either by the parties or by the subordinate Court in which the case in question is pending. **Rulia** Ram v. Sadh Ram, **ILR (1952) Patiala 1: AIR 1952 Pepsu 1 (1, 2) (Pr 1) (FB).**

——**Art. 228** — Vires — Decision as to constitutionality — Election tribunal cannot decide question. See Interpretation of Statutes. **AIR 1955 NUC (EP) 5800.**

——**Art. 228** — Prosecution of person for violation of some section or rule — Procedure to be followed—(Criminal P. C. (1898), S. 435). See Ibid, Art. 226. **1953 Cri LJ 549: AIR 1953 Punj 77 (DB).**

——**Arts. 228, 226** — Another remedy open — Opposite party in suit under Rajasthan Premises (Control of Rent and Eviction) Act, 1950, contending that Act offended against Arts. 14, 15 and 19 (1) (f) — Proper course is to apply to High Court under Art. 228 — Opposite party can also take advantage of Section 113, C. P. Code — High Court will not interfere under Art. 226 — (Civil P. C., (1908), S. 113). See Ibid, Art. 226. **AIR 1955 NUC (Raj) 2184.**

2. "Case pending in a Court subordinate to it."

——**Art. 228 — "Case pending in a Court subordinate to it— Proceedings pending before District Magistrate under Section 49 M. B. Police Act — (Madhya Bharat Police Act (76 of 1950), Section 49 (2)) — (Criminal Procedure Code (1898), Section 6).**

Art. 228 of the Constitution relates to transfer to the High Court of a "case pending in a Court subordinate to it." The proceedings pending before the District Magistrate under Section 49 (2), M. B. Police Act cannot on any reasoning be regarded as proceedings in a case pending in a Court as the District Magistrate acts as an executive officer under the Act, and not under the Criminal Procedure Code. **1957 Cri LJ 854: 1957**

MPC 531: 1957 Jab LJ 442: AIR 1957 Madh Pra 97 (98) (Pr 2) (DB).

——Art. 228 — Applicability — Conditions necessary for — Question regarding the constitutional validity of Section 57 of the Madras Hindu Religious Endowments Act — Fit case for withdrawal.

For Art. 228 of the Constitution to apply three main conditions must exist. They are — (1) A suit or case must be actually pending in a Court subordinate to the High Court. No one can move the High Court under Art. 228 stating that such a suit or case is intended to be filed. It must be actually filed and must be pending. If it has been dismissed or disposed of already Art. 228 will not apply.

(2) The High Court must be satisfied that it involves a substantial question of law as to the interpretation of the Constitution. It should really involve such a question. A mere frivolous allegation that such a question is involved will not do.

(3) The High Court must be satisfied that the determination of that question is necessary for the disposal of the case. If the suit can be disposed on the other questions raised (like limitation, non-maintainability by a single person when a representative suit has to be filed under the law, etc.) Art. 228 will not apply. Usually the High Court will not act till this point is clear, and will wait for the other issues to be decided. Of course, where it is clear it will act at once.

Where a suit is pending in a Court subordinate to the High Court whatever the reason be for its pendency, whether mischievous and selfish petitions by the plaintiffs, or petitions filed by them bona fide in the ends of justice, the High Court can interfere.

The Appellate Side has jurisdiction especially when the matter arises from the mofussil Courts and all the more so where the High Court can act under Art. 228 (b) and does not decide to try and dispose of the suit under Art. 228 (a).

Where a scheme is framed under Section 57 of the Madras Hindu Religious Endowments Act and the issue is raised as to the constitutional validity of the section as it was alleged to offend Arts. 15 and 26 of the Constitution by discrimination against Hindus alone by subjecting their endowments alone to regulation and control by Government officers and corporations it is a fit case for withdrawal under Art. 228 (b) to High Court for decision of the question of law and returning it to the subordinate Court as soon as the question of law is decided. **64 LW 982: (1951) 2 MLJ 511: AIR 1952 Mad 20 (21, 22) (Pts A, B) (Prs 6, 10).**

——Art. 228 — Employees' State Insurance Act (1948), Section 73-B (1) — Authority appointed under — If Court — Withdrawal of proceedings.

The authority appointed under Section 73-B (1), Employees' State Insurance Act, 1948 is not a Court and as the transfer of a case to the High Court provided for by Art. 228 refers only to a case pending before a subordinate Court it is not possible to withdraw the proceedings before the Court under Art. 228. **AIR 1956 Sau 96 (97) (Pt B) (Pr 5) (DB).**

3. "Court subordinate to it."

——Arts. 228, 234, 237 and 227 — Subordinate Courts — Essentials of — (Civil P. C. (1908), Ss. 115 and 3). See Ibid, Art. 234. **AIR 1957 All 495.**

[**Overruled** in AIR 1962 All 315 (FB.)]

——Art. 228 — Court subject to supervisory jurisdiction of High Court — Whether a 'subordinate Court". See Contempt of Courts Act (1952), S. 3. **AIR 1956 All 258.**

[**Overruled** in AIR 1962 All 315 (FB.)]

——Arts. 228, 227 — Rent Controller — Transfer of proceedings.

Arts. 227 and 228 occur in juxtaposition indicating thereby that they are not intended to serve the same purpose. Art. 227 cannot comprehend a power which is specifically embodied in Art. 228. When an application for transfer is made, it must come only under Art. 228 and that Article makes no mention of Tribunals, though Tribunals are specifically referred to in Art. 227. The power of superintendence conferred by Art. 227, it is no doubt true is both judicial and administrative. But it does not comprehend a power to withdraw to the file of the High Court, a case pending before a Statutory Tribunal. The House Rent Controller is not a Court. Hence the High Court has no power under Arts. 227 and 228 of the Constitution of India to transfer an application filed under the Madras Buildings (Lease and Rent Control) Act from the file of the Rent Controller to the High Court. Case-law discussed. **ILR (1955) Andhra 262: 1955 Andh WR 126: AIR 1955 Andhra 85 (85, 87) (Prs 1, 11).**

——Art. 228 — Suit pending in subordinate Court — Substantial question of validity of Act involved — Application for transfer.

Article 228 of the Constitution is mandatory and its object is to obtain the decision of the highest Court in the State in view of the importance of constitutional questions raised at the earliest opportunity, and no narrow interpretation should be adopted which may defeat its purpose, specially when the High Court otherwise also enjoys larger powers of transfer of suits pending in subordinate Courts.

In an application under Art. 228 of the Constitution of India, in which the petitioner, who was the plaintiff in the suit, prayed for transfer of suit pending before the Subordinate Judge at Dhubri, to the High Court, it was alleged that the said suit instituted by the petitioner involved substantial questions of law as to the interpretation of the Constitution, and that the determination of the said questions was essential for the disposal of the case. The plaint showed that the question of the validity of the legislation, namely, the Assam State Acquisitions of Zamindaris Act, 1951, in its relation to the Constitution, was a substantial question of law which might arise for disposal in the case. The Government, which was a defendant, to the suit, contended that so far no written statement had been filed in the suit and no issues had been settled, and it was, therefore, premature at this stage to find out whether or not the case would be concluded by certain other points raised therein; if those other points were decisive of the case, then it would be wholly unnecessary to adjudicate upon the constitutional questions raised therein;

Held, that in special cases it might perhaps be desirable to stay one's hands before acting under Art. 228; but this did not necessarily mean that the High Court should wait until all the other issues had been decided, for in that case, the object of the transfer under Art. 228 of the Constitution would be rendered ineffective;

(2) that it would be desirable in the circumstances of the case to grant the prayer of the petitioner and to transfer the case to the High Court. AIR 1954 Pat 387; AIR 1952 Mad 20, Expl. **ILR (1955) 7 Assam 114: AIR 1955 Assam 154 (156) (Prs 4, 5) (DB).**

——Art. 228 — Applicability — Transfer cannot be ordered unless ingredients of Article are satisfied. **AIR 1955 NUC (Punj) 5727 (DB).**

——Art. 228 — 'Court subordinate to it.'

Power of withdrawal in Art. 228 has been given only in respect of case pending before Courts alone, which were subject to appellate or ordinary revisional jurisdiction of High Court and not before tribunals. The Anti-Ejectment Officer dealing with cases under Section 7 of the Rajasthan (Protection of Tenants) Ordinance, 1949, cannot be said to be a 'Court subordinate to the High Court' within the meaning of Art. 228 of the Constitution. He constitutes only a tribunal invested with quasi-judicial functions. The cases before him cannot, therefore, be withdrawn under Art. 228. **1955 Raj LW 170: ILR (1954) 4 Raj 577: AIR 1954 Raj 185 (188) (Pt A) (Pr 10) (DB).**

4. "Involves a substantial question of law as to the interpretation of this Constitution."

●——**Art. 228** — Applicability — Suit by scheduled bank on mortgage — Defendant claiming relief under U. P. Zamindars' Debt Reduction Act and contesting validity of S. 2 (f) of the Act on the ground that it was discriminatory — **Held,** Art. 228 applied as question of interpretation of Constitution was involved. See Civil Procedure Code (1908), S. 113. **AIR 1958 SC 293.**

——**Art. 228** — Separation of void portion of provision—Question depends not on interpretation of Constitution but on construction of statute — (Debt Laws — U. P. Zamindars' Debt Reduction Act, 1952 (15 of 1953), S. 2 (f). See Ibid, Art. 13 (2). **AIR 1956 All 635 (DB).**

——**Art. 228 — Applicability — "Substantial question of law as to the interpretation of the Constitution" — Meaning of — Whether Section 23, Bhopal Public Safety Act and Section 5 of the Bhopal (Administration) Order are ultra vires and void under Art. 13 of the Constitution — Nature of.**

The essentials for the application of Art. 228 of the Constitution are: (1) the existence of a question of law; (2) such question must be a substantial question; and (3) such question must be as to the interpretation of the Constitution.

Interpretation has to be distinguished from application and means applying closely with diligence and nothing more whereas interpretation is the act of making intelligible what before was not understood, not obvious, or was ambiguous. It is the method by which the meaning of the language is ascertained. No resort to interpretation can be had when the meaning is clear and free from doubt. Where the questions of law involved are (1) whether S. 23, Bhopal Public Safety Act, 1947, is ultra vires of Art. 19 (1) (a) read with Art. 13 of the Constitution and (2) whether Section 5 of the Bhopal Administration Order, 1949, is ultra vires or void under Art. 13 of the Constitution, the utmost that the Court has to do is to find out whether the questions fall within the purview of the said Articles or are repelled by them. In such a case no question is involved as to the interpretation of the Constitution and hence Art. 228 does not apply. **53 Cri LJ 78: AIR 1951 Bhopal 9 (10) (Prs 3, 4).**

——**Art. 228** — No reference lies when Judge is of opinion that impugned Act is valid. See Criminal P. C. (5 of 1898), S. 432. **AIR 1954 Madh Bha 206.**

——**Art. 228 — "Involves" — Meaning — Mere circumstance that important question of interpretation of Constitution has been raised, not sufficient to withdraw case under Art. 228 — Civil P. C. (1908), Section 110 — Government of India Act (1935), Section 205.**

The word 'involves' and expression "the determination of which is necessary for the disposal of the case", which occur in Art. 228 are important and significant. They indicate that the satisfaction of the High Court must be as to the point that the case cannot be decided without a decision on the constitutional question. If in a case, along with the question of law as to the interpretation of the Constitution, there are other questions independent of the constitutional question which are sufficient in themselves to end the case, then the constitutional question is not one the determination of which is necessary for the disposal of case. The mere circumstance, therefore, that a question of law as to the interpretation of the Constitution has been raised and that it is important and substantial, cannot give the High Court jurisdiction to withdraw the case. Article 228 couched in terms so explicit is not intended to preclude a subordinate Court from deciding a case, merely because a substantial question of law as to the interpretation of the Constitution is raised. The obvious object of the article is to make in the States the High Court the sole interpreter of the Constitution and at the same time to prevent the High Court from being made a forum for academic discussions on constitutional questions. It is only when on the facts found in the case, the decision turns on the answer to the constitutional question that the High Court can exercise its jurisdiction to withdraw the case and adopt either of the courses mentioned in the article.

The question whether the constitutional point is necessary for the disposal of the case, cannot be determined with reference to the time at which the prayer for withdrawal is made but with reference to the findings on the other questions in the case, and until those other questions are decided, the stage for considering whether the determination of the constitutional question is necessary for the disposal of the case cannot arise. **AIR 1950 Madh Bha 81 (82, 83) (Prs 3, 4) (DB).**

——**Art. 228 — Procedure.**

A subordinate Court should only make a reference to the High Court, when it is satisfied that a case pending before it involves a real or substantial question as to the validity of any Act or regulation. A mere plea that an act is ultra vires will not suffice. If it is not so satisfied it should go on with the trial, leaving it to the aggrieved accused to move the High Court under Art. 228, and to continue the trial until such an application is admitted and the trial stayed. **65 Mad LW 267: ILR (1953) Mad 191: 1952 Mad WN 261: 1952 Mad WN Cr 61: 1952-1 Mad LJ 468: 1962 Cri LJ 1235: AIR 1952 Mad 578 (579) (Pt C) (Pr 4) (DB).**

——**Art. 228** — Scope — Act impugned under Art. 19 found not to violate its provisions — No reason for withdrawing case from mofussil Court under Art. 228. See Explosives Act (IV of 1884). **1953 Cri LJ 333: AIR 1953 Mad 142.**

——**Art. 228 — Application under Madras Hindu (Bigamy Prevention and Divorce) Act (6 of 1949) — Defence that Act is void by reason of Art. 13 of Constitution, involves substantial question of law involving interpretation of Constitution — Question whether petition is maintainable even if the Act is inconsistent with Constitution, because second marriage took place before Constitution is also such a question.**

Where upon a petition under Sec. 5 of Madras Act 6 of 1949, the Madras Hindu (Bigamy Prevention and Divorce) Act, one of the defences raised is that Madras Act 6 of 1949 itself is invalid and inconsistent with the Constitution, the case involves a substantial question of law as to the

interpretation of the Constitution the determination of which is necessary for the disposal of this case and the case falls under Art. 228.

The question whether even if the Act is inconsistent with the Constitution and therefore, void under Art. 13 of the Constitution, the petition is sustainable because the second marriage which furnished the petitioner with a right to obtain a divorce took place before the coming into force of the Constitution, also involves a substantial question of law as to the interpretation of the Constitution, in particular, Art. 13. AIR 1951 SC 128, Ref. **AIR 1952 Mad 291 (291) (Prs 1, 2) (DB).**

——Art. 228 — Applicability — Conditions for.

For Art. 228 to apply, three main conditions must exist. They are:— (1) A suit or case must be actually pending in a Court subordinate to the High Court. (2) The High Court must be satisfied that it involves a substantial question of law as to the interpretation of the Constitution. It should really involve such a question. A mere frivolous allegation that such a question is involved will not do. (3) The High Court must be satisfied that the determination of that question is necessary for the disposal of the cases. If the suit can be disposed on the other questions raised (like limitation, non-maintainability by a single person when a representative suit has to be filed under the law, etc.) Art. 228 will not apply. Usually, the High Court will not act till this point is clear, and will wait for the other issues to be decided. Of course, where it is clear it will act at once. **64 Mad LW 982: 1951-2 Mad LJ 511: AIR 1952 Mad 20 (21) (Pt A) (Pr 6).**

——Art. 228 — C. P. and Berar Sales Tax Act S. 1 and Letters Patent (Nagpur), Cl. 9 — Transfer to High Court — Vires of Sales Tax Act involved — Question affecting many — Case should be tried by High Court under Cl. 9 — Art. 228 does not apply.

In a case instituted in the lower Court Civil Judge Class II, Yeotmal, plaintiff claimed for a declaration that the C. P. and Berar Sales Tax Act, 1947, in so far as it imposes a tax on the sales of tobacco and its products including sales of bidis is ultra vires. The plaintiff applied under Art. 228, Constitution of India and Letters Patent, Cl. 9 for removing the suit for trial by the High Court in exercise of its extraordinary original civil jurisdiction. The application was not opposed on behalf of the State Department.

Held, that a question of interpretation of the Government of India Act and not of the Constitution of India was involved and the application did not lie under Art. 228: that the High Court had power to try the case under Cl. 9, Letters Patent and that as the question was of importance and affected large number of persons and involved the vires of a taxing measure it was in the circumstances preferable to remove the case for trial to the High Court to save time, inconvenience and hardship. **('51) 1951 Nag LJ (Notes) 183.**

——Arts. 228, 141—Substantial question of law—Validity of S. 144, Cr. P. C. decided by Supreme Court — Decision is binding on High Court — (Criminal P. C. (1898), S. 144) — Civil Procedure Code (1908), Pre.). **AIR 1955 NUC (Punj) 5727 (DB).**

——Art. 228 — Applicability — Suit under S. 6, Rajasthan Premises (Control of Rent and Eviction) Act — Contention by defendants that Act offends Arts. 14, 15 and 19 (1) (f) of Constitution — Substantial question of law as to interpretation of Constitution arises. See Ibid, Art. 226. **AIR 1955 NUC (Raj) 2184 (DB).**

5. "The determination of which is necessary for the disposal of the case".

——Art. 228 — Scope — Extent of jurisdiction under Art. 228 — Question of validity of provision of Act raised —High Court may determine its scope and effect of such provision.

Under Art. 228 of the Constitution, the High Court has the jurisdiction to decide whether a question of law as to the interpretation of the Constitution is required to be determined for the disposal of a suit which is pending in a Court subordinate to it. Thus, where the question as to the constitutional validity of a provision of an Act is raised and it is not possible for the High Court to consider that question without appreciating its scope and effect, the High Court will determine the scope and effect of the said provision and after doing so it may decide that no question of validity of the provision is involved. **64 Bom LR 670: ILR 1963 Bom 35: AIR 1963 Bom 45 (48) (Pt C) (Pr 8) (DB).**

●**——Art. 228** — Question of constitutional law incidentally arising — Judgment capable of being given on other grounds — High Court will not express any opinion on constitutional question. Pannalal v. Hyderabad State, ILR **(1952) Hyd 684: 1952 Cr LJ 1740: AIR 1952 Hyd 187 (188) (Pt A) (Pr 3) (FB).**

——Art. 228 — Constitutional question necessary for disposal of case — Stage with reference to which the question of the necessity is to be decided.

The question whether the constitutional point is necessary for the disposal of the case cannot be determined with reference to the time at which the prayer for withdrawal is made but with reference to the findings on the other questions in the case and until these questions are decided, the stage for considering whether the determination of the constitutional question is necessary for the disposal of the case cannot arise. **AIR 1950 Madh B 81 (83) (Pr 4) (DB).**

——Art. 228 — Scope — Decision on constitutional question necessary for deciding the case — Decision on other questions in the case sufficient in themselves to dispose of case — Art. 228 not attracted.

Under Art. 228, the satisfaction of the High Court must be with regard to the point that the case cannot be decided without a decision on the constitutional question. If, therefore, in a case along with the question of law, about the interpretation of the Constitution there are other questions which are sufficient in themselves to end the case, then the constitutional question is not one the determination of which is necessary for the disposal of the case. Under that Article, a case cannot be withdrawn merely on the ground that a question of law about the interpretation of the Constitution has been raised and that the question is important or substantial. Then again, the question whether the constitutional point is necessary for the disposal of the case can be determined only when findings on the other questions arising in the case are given. Until that is done, it is impossible to say whether the determination of the constitutional question is necessary for the disposal of the case. **1961 MPLJ 910: 1961 Jab LJ 1052: 1962 MPC 100: ILR (1960) Madh Pra 536.**

——Art. 228 — Suit disposable on other questions raised.

The High Court must be satisfied that the determination of the question of law as to interpretation of Constitution is necessary for the disposal of the cases. If the suit can be disposed on other questions raised (like limitation, non-maintain-

ability by a single person when a representative suit has to be filed etc.,) Art. 228 will not apply. Usually the High Court will not act till this point is clear and will wait for the other issues to be decided . Of course where it is clear it will act at once. **1951-2 Mad LJ 511 : 64 Mad LW 982: AIR 1952 Mad 20 (21) (Pt A) (Pr 6).**

——**Art. 228 — Bihar Mica Act (10 of 1948), Ss. 11, 17 — Infringement — Reference to High Court — (Cr. P. Code (1898), S. 432).**

The contention of the petitioner was that their firm or the directors of the firm were never required by the Inspector Mica Accounts to produce the accounts and stock of mica, and the report of the Inspector Mica Accounts, showed merely that the shiftman in charge and the manager failed to produce the account books and show the stock. It was contended that assuming the report of the Inspector to be correct the petitioner had not contravened the provisions of S. 11, Bihar Mica Act, 1947 and was therefore, not liable to the penalty provided under S. 17 (2), Bihar Mica Act.

Held, that (1) the question whether the act of refusal by the servants of the firm would make the directors responsible could not be decided purely by an abstract question of law. The circumstances or the instructions under which the refusal was made had to be investigated, and they could not be investigated unless evidence was given. Whether there had been a breach of duty under S. 11 or not would depend on the facts and circumstances proved in the case. It was a mixed question of law and fact. AIR 1947 PC 135, Ref.

(2) The principal question was if Bihar Act I of 1949 validly extended the life of Bihar Mica Act, 1947. If on merits it was found that the petitioner had not contravened S. 11, Bihar Mica Act, 1947, as was urged on behalf of the petitioner, then it was unnecessary to decide the constitutional question for the disposal of the case; the determination of the constitutional question was then not necessary for the disposal of the case, and Art. 228 would not be attracted. If and when determination of that question became necessary for the disposal of the case, the proper procedure would be to make a reference under S. 432, Cr. P. Code. S. 432, Cr. P. Code, was more appropriate in the circumstances of this case than Art. 228 of the Constitution. Hence, the proceeding against the petitioner could not be quashed at the stage when evidence was not taken; nor was it necessary at this stage to withdraw the case under Art. 228 of the Constitution of India. AIR 1952 Mad 20; AIR 1954 Pat 387, Rel. on. **1955 Cr LJ 663 : AIR 1955 Pat 177 (178, 179) (Prs 4, 6, 7).**

——**Art. 228 — Suit disposable on the other questions raised.**

The High Court must be satisfied that the determination as to the question of law as to interpretation of the Constitution is necessary for the disposal of the case. If the suit can be disposed of on the other questions raised, Art. 228 will not apply. Usually the High Court will not act till the point is clear and will wait for the other issues to be decided. **1954 Cri LJ 1265 : AIR 1954 Pat 387 (389) (Pt A) (Pr 6).**

——**Art. 228 — Applicability — 'Necessary for disposal of suit' — Meaning of.**

The use of the expression that 'the decision of the issue is necessary for disposal of the suit' can only mean that the question involved must be such that it is not possible to dispose of the suit without determining the constitutional question raised. Where independent of the constitutional question there are questions which are sufficient in themselves to dispose of the case, then the High Court should not take any action under Art. 228. **AIR 1958 Punj 287 (288) (Pr 3).**

——**Art. 228** — Necessity to determine constitutional question does not arise till questions of fact are decided. **AIR 1955 NUC (Punj) 5727 (DB).**

——**Art. 228** — 'Necessary for disposal of case' — Constitutional plea raised — Its determination is not necessary merely because it is raised — Question must be such that case cannot be disposed of without determining it — (Words and Phrases) **AIR 1955 NUC (Punj) 5727 (DB).**

6. Onus of proof.

——**Art. 228 — Entire Act challenged — No obligation on Government to file affidavit in reply.**

Where an entire Act is called in question as ultra vires, there is no obligation on the State prosecutor on the criminal side to file an affidavit at all seeking to uphold its validity and the onus is on the petitioner to satisfy the Court under Art. 228 that there is a substantial question of law as to the interpretation of the Constitution, in other words, that the Act can for some prima facie substantial reasons be challenged in a Court of law. **ILR (1953) Mad 191 : 65 Mad LW 267: 1952 Mad WN 261: 1952 Mad WN Cr 61: 1952-1 Mad LJ 468 : 1952 Cri LJ 1235 : AIR 1952 Mad 578 (578) (Pt B) (Pr 3) (DB).**

7. Retrospective effect.

——**Art. 228** — Bengal Money-lenders Act (10 of 1940), S. 30 (1) (a) and (b) — Suit instituted before Constitution — Questions whether section is ultra vires — Transfer of records of High Court. See Debt Laws — Bengal Money-lenders Act (10 of 1940), S. 30 (1) (a). **AIR 1953 Cal 195.**

8. Appellate side of the High Court.

——**Art. 228** — Criminal P. C. (1898), Ss. 432, 433, 369 — Opinion of High Court expressed in reference — Lower Court passing orders on basis of the opinion — Appeal against order heard by Single Judge — His power to review the opinion expressed on reference by the High Court — (Civil P. C. (1908), S. 113). See Criminal P. C. (1898), S. 432. **AIR 1957 Andh Pra 567.**

——**Art. 228 — Substantial question of law — Whether S. 57 Madras Hindu Religious Endowments Act is void as contravening Arts. 15 and 26 of the Constitution of India.**

During the pendency of a suit in the district Court the plaintiff applied for amendment of plaint adding a contention that the scheme passed by the Hindu Religious Endowments Boards, Madras under S. 57 of the Madras Hindu Religious Endowments Act regarding the suit temple was null and void as the entire Hindu Religious Endowments Act and especially S. 57 thereof was ultra vires of the powers of Legislature as it offended Arts. 15 and 26 of the Constitution of India. The plaint was amended and additional issue was framed on the point without any objection. The plaintiff then applied under Art. 228 of the Constitution of India to the Madras High Court for transfer of suit to its file and either dispose of the suit itself or determine the question of law involved in the additional issue.

Held, that the question regarding the validity of the Madras Hindu Religious Endowments Act was a substantial question of law regarding the interpretation of the Constitution the determination of which was necessary for the disposal of the suit. Such a question had already been raised in several applications before the High Court and was bound to be raised in future suit. The question

should therefore, be determined under Art. 228 (b) by a Bench on the appellate side. 64 Mad LW 982 : 1951-2 Mad LJ 511 : AIR 1952 Mad 20 (22) (Pt B) (Pr 10).

9. Who can move the High Court.

——Art. 228 — Right to apply under — Non-citizen — Prosecution of under law alleged to be bad — Right to apply to High Court for protection. See Ibid, Art. 15 (1). **1962 Cri LJ 23: AIR 1951 Bom 470 (DB).**

10. Procedure of High Court under this Article.

——Art. 228 — Reference under S. 432, Cr. P. Code, incompetent — Reference treated as one under Art. 228. Madh BLR 1954 Cri 140 : 1954 Cr LJ 1739 : Madh BLJ 1954 HCR 790 : AIR 1954 Madh Bha 206 (207) (Pt A) (Pr 4) (DB).

ARTICLE 229

■——Arts. 229 (1), 313 and 367 (1) — Member of High Court staff — Power to dismiss vests in Chief Justice — (Civil Services (Classification, Control and Appeal) Rules (1930), R. 52) — (Government of India Act (1935), S. 276) — (General Clauses Act (1897), S. 16 (1)).

Rule 52 of the Civil Services Rules, if it originally applied to the High Court staff, must, after 1935, be read by substituting "Chief Justice" in the place of "the Local Government' whenever it occurs therein and making other consequential alterations. Even on the assumption that Civil Services Rules applied between 1930 and 1935 to the High Court staff, their continuance after 1935 makes a change in the dismissing authority and the power of dismissal is vested in the Chief Justice. The Constitution has made no change in this respect and Art. 313 would also continue Rule 52 of the Civil Services Rules as above adapted. Art. 229 (1) which in terms vests the power of appointment in the Chief Justice is equally effective to vest in him the power of dismissal. This results from S. 16 of the General Clauses Act which by virtue of Art. 367 (1) of the Constitution applies to the construction of the word "appointment" in Art. 229 (1). Section 16 (1) of the General Clauses Act clearly provides that the power of "appointment" includes the power "to suspend or dismiss". Pradyat Kumar v. Chief Justice of Calcutta High Court, **(1956) SCJ 259 : 1956 SCA 79 : 1956 SCC 402 : (1955) 2 SCR 1331 : AIR 1956 SC 285 (290, 291) (Pt A) (Prs 8, 9).**

■——Art. 229 (1) — Charges against member of High Court — Chief Justice can delegate to another Judge inquiry into charges — (Civil Services (Classification, Control and Appeal) Rules (1930), R. 52).

The exercise of the power to appoint or dismiss an officer is the exercise not of judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry stimulating judicial standards have to precede the exercise thereof. It is well recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. A functionary who has to decide an administrative matter such as the dismissal the staff can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party has a fair opportunity to correct or contradict any relevant and prejudicial material. Where therefore, charges are made against a member of the staff of the High Court, the Chief Justice is competent to delegate to another Judge the inquiry into the charges. (1953) 2 QB 18 and 1911 AC 179 and 1915 AC 120, Rel. on. Pradyat Kumar v. Chief Justice of Calcutta High Court, **(1956) SCJ 259 : 1956 SCA 79 : (1955) 2 SCR 1331 : 1956 SCC 402 : AIR 1956 SC 285 (291) (Pt B) (Pr 11).**

■——Arts. 229 (1), 310, 311 and 320 (3) (c) — Registrar of Original Side of High Court — Dismissal — Prior consultation with Public Service Commission — Necessity of.

Officers and members of the staff attached to a High Court clearly fall within the scope of the phrase "persons appointed to public services and posts in connection with the affairs of the State" and also of the phrase "a person who is a member of a civil service of a State" as used in Articles 310 and 311. The phrase "persons serving under the Government of India or the Government of a State" seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Governments. The officers and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them the administrative control is clearly vested in the Chief Justice, who under Constitution, has the power of appointment and removal and of making rules for the conditions of services. Therefore, for the dismissal of the Registrar of the Original Side of the High Court, prior consultation with the Public Service Commission is not necessary. Pradyat Kumar v. Chief Justice of Calcutta High Court, **(1956) SCJ 259 : 1956 SCA 79 : 1956 SCC 402 : (1955) 2 SCR 1331 : AIR 1956 SC 285 (293) (Pt D) (Pr 13).**

■——Arts. 229 (3), 246 (3), 146 (3), 265, Sch. VII, List I, Items 77 and 96, List II, Items 3 and 66, List III Item 47 — Court-fees Act (1870), S. 1 and Sch. II, Art. 1, Cl. (e) — (U. P. Amendment) — Court-fee imposed by Amendment is not a tax but a fee — S. 4 and Sch. II, Art. 1 (e) as amended by Court-fees (U. P. Amendment) Act (10 of 1959) are within legislative competence of U. P. Legislature — Tax and fee, distinction — Provisions of Art. 229 (3) show another class of imposition, also called a fee in Constitution. See Ibid, Art. 246 (3). **AIR 1960 All 462 (FB).**

——Art. 229 — Power of Chief Justice.

Article 229 clearly gives the Chief Justice or his nominee power not only to appoint the staff of the High Court and to fix their salaries but also to deal with them subject to the rules. The proviso however, requires that the rules so far as they relate to salaries, allowances, leave or pension must be approved by the Governor of the State. The legal position, therefore, is that the Chief Justice alone has the power to deal with the case of a person serving in the High Court. AIR 1956 SC 285, Rel. on. **AIR 1960 All 193 (197) (Pt A) (Prs 11a, 12).**

——Arts. 229 (3), 14, Sch. 7, List I, Entry 96, List II, Entries 3 and 66 and List III, Entry 47 — — Andhra State law prescribing particular court-fee for writ petitions — Validity — Does not violate either Art. 229 or Art. 14 — Andhra Court-fees and Suits Valuation Act (7 of 1956). See Ibid, Art. 14. **AIR 1959 Andh Pra 271 (DB).**

——Art. 229 — Bombay Court-fees Act (36 of 1959), Sch. I, Art. 16 — Levy imposed is neither tax nor fee in the strict sense — It is within legislative competence of the State under Sch. VII, List II, Entry 3. See Bombay Court-fees Act (36 of 1959), Sch. I, Art. 16. **AIR 1962 Bom 106 (DB).**

●——**Art. 229** — Servants of High Court — Art. 309 not applicable. See States Reorganisation Act (1956), S. 115. **AIR 1965 Punj 44 (FB).**

——**Arts. 229, 309, 310** — Scope — Provisions of Articles 309 and 310 are subject to provisions of Art. 229. See Ibid, Art. 309. **AIR 1964 Punj 285 (DB).**

——**Arts. 229 (2), 310** — Punjab Civil Services Rules, Volume I, Part I, Rule 1.8, Note 2 — Persons on the staff of High Court — Power to interpret, change or relax the rule vests in the Chief Justice and not in the Finance Department of Punjab Government — High Court Establishment (Appointment and Condition of Service) Rules (Punjab), 1952, R. 29. AIR 1956 SC 285, Rel. on. **ILR (1964) 1 Punj 377 : AIR 1964 Punj 285 (287, 288) (Pt A) (Prs 7, 8, 10) (DB).**

——**Art. 229 (1) and (2)** — Appointment of Staff — Powers of Chief Justice — Extent and nature of — Appointment made on recommendations of registrar — Art. 16 not violated. See Ibid, Art. 16. **AIR 1964 Raj 13 (DB).**

ARTICLE 230

●——**Arts. 230, 226** — Writ to authority outside jurisdiction — Order of dismissal passed by Madhya Pradesh Government — Application under Article admitted by Nagpur High Court — Transfer of application to Bombay High Court under S. 59, States Reorganisation Act — Jurisdiction of Bombay High Court to issue writ to Madhya Pradesh Government — Section 59 (5) whether a law passed by Parliament under Art. 230 — Nature of law passed under Article — Parliament's power under article — (States Reorganisation Act (1956), S. 59). See Ibid, Art. 226. **AIR 1959 Bom 122 (FB).**

——**Arts. 230, 225** — Applicability — Transfer becoming effective before coming into force of Constitution—Arts. 225 and 230 of the Constitution refer to transfer after the Constitution came into force and are inapplicable to a case where the transfer became effective before the Constitution came into force. See India and Hyderabad Exchanges of Enclaves Order (1950), Ss. 2 and 7. **52 Cri LJ 1398: AIR 1950 Hyd 71 (DB).**

ARTICLE 233

●——**Art. 233 (2) — Person on the roll of advocates of East Punjab High Court — Eligibility for appointment as District Judge — Period of practice in Lahore High Court before partition — If can be counted.**

The appointment as a District Judge of a person whose name was on the roll of advocates of the East Punjab High Court on the date of his appointment and who had a period of seven years' practice including his period of practice in or under the Lahore High Court before partition was not open to objection under Art. 233 (2), of the Constitution. Even if the word 'advocate' in Cl. (2) of the Article means an advocate of a Court in India and the appointee must be such an advocate at the time of his appointment no objection can be raised to the appointment of that person on those grounds because being factually on the roll of advocates of the Punjab High Court at the time of his appointment he was admittedly an advocate in a Court in India and contiuned as such till the date of his appointment.

The answer to the question whether he can count in the period of seven years his period of practice in or under the Lahore High Court is furnished by Cl. 6 (2) of the High Courts (Punjab) Order, 1947 read with S. 8 (3) of the Bar Councils Act of 1926.

From the fact that the Constitution-makers had specifically provided, in Explanation 1 to Cl. (3) of Art. 124 of the Constitution relating to the qualifications for appointment as a Judge of the Supreme Court and in the Explanation to clause (2) of Art. 217 relating to the qualifications for appointment as a Judge of a High Court, for counting the period of practice in a High Court before the Constitution in India it cannot be inferred that a different rule was intended under Art. 233. Articles 124 and 217 are differently worded and refer to an additional qualification of citizenship which is not a requirement of Art. 233. Clause (2) of Art. 233 cannot be interpreted in the light of explanations added to Arts. 124 and 217. Article 233 is a self-contained provision regarding the appointment of District Judge. If an advocate of the Punjab High Court is entitled to count the period of his practice in the Lahore High Court for determining his standing at the Bar, there is nothing in Art. 233 which must lead to the exclusion of that period for determining his eligibility for appointment as District Judge.

The combined effect of Cl. 6 of High Courts (Punjab) Order, 1947 and S. 8 (2) (a) in his case is that he automatically came on the roll of advocates of the Punjab High Court but had to pay a fee of Rs. 10 to the Bar Council. He did not cease to be an advocate at any time after August 15, 1947 but continued to be an advocate of the Punjab High Court till he was appointed as District Judge. Hence, he has the necessary standing of seven years to be eligible under clause (2) of Art. 233 of the Constitution. Rameshwar Dayal v. State of Punjab, **(1961) 2 SCR 874 : (1961) 2 SCJ 285 : (1961) 1 Ker LR 277 : AIR 1961 SC 816 (821, 822, 823) (Prs 11, 12, 13, 14).**

——**Art. 233** — U. P. Higher Judicial Service Rules, R. 19 — Construction of rule — Appointment of Civil and District Sessions Judges. See Ibid, Art. 309. **AIR 1963 All 415.**

——**Art. 233 — District Judge — Appointment of — Governor to appoint in consultation with High Court — Extent of Governor's power.**

The power of appointment, and posting and promotion of District Judges vests in the Governor of the State but such power has to be exercised in consultation with the High Court. The constitutional provision contained in Art. 233 of the Constitution simply is that the High Court shall be consulted before any District Judge is appointed, posted or promoted by the Governor of the State. Strictly speaking, therefore, the Governor of the State has the power not to accept the original recommendation of the High Court and to pass an order not in conformity with the recommendation of the High Court. **AIR 1963 All 415 (419) (Pt C) (Pr 19).**

——**Arts. 233 and 309** — Government of India Act (1935), Sections 246, 254 — Appointment of District Judges — Reserved Posts (Indian Civil Service) Rules (1938) — Rules do not conflict with S. 254 — (Reserved Posts (I. C. S.) Rules (1938)). See Government of India Act (1935), S. 246. **AIR 1959 Allahabad 393.**

——**Arts. 233 and 14** — Scope — Discrimination — Power of Election Commission to appoint High Court Judges as tribunals for certain election petitions and District Judges for others — Classification not unreasonable — Constitution of tribunals not discriminatory. See Representation of the People Act (1951), S. 86. **AIR 1958 All 137 (DB).**

——**Arts. 233, 227, 234, 235 and 309** — Andhra Civil Services (Disciplinary Proceedings Tribunal)

Rules (1953), R. 4 (2) — Madras Civil Services (Disciplinary Proceedings Tribunal) Rules (1948), R. 1 — Scope indicated — Substance of Arts. 227, 233, 234, 235 and 309 stated — Combined effect is that general control and superintendence of Courts conferred on High Court is restricted in specified directions — Suspension of Subordinate Judge by Registrar, Madras High Court in its disciplinary jurisdiction, is valid — Disciplinary jurisdiction of High Court continues even after Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules have come into force on 1-10-1953. See Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules (1953), Rule 4 (1) (a). **AIR 1955 Andhra 65 (DB).**

——**Arts. 233, 311** — Departmental inquiry — Natural Justice — Fair opportunity — Observations by High Court on report of Enquiry Officer or on reply to show cause notice amounts to consultation with High Court — They are privileged and need not be disclosed to Officer proceeded against — Evidence Act (1872), S. 124. See Ibid, Art. 311. **AIR 1965 Bom 156 (DB).**

——**Arts. 233, 235, 237, 310, 311** — General Clauses Act (1897), S. 16 — Disciplinary jurisdiction of High Court over District Judges and Judges subordinate to them, extent of — Jurisdiction of Governor to remove or dismiss these Officers — Exercise of Governor's powers has to be in consultation with High Court. See Ibid, Art. 235. **AIR 1965 Bom 156 (DB).**

——Arts. 233 to 237 — Part 6, Chapter 6 — Applicability — Contempt of Courts Act, S. 3 — 'Subordinate Court' — Interpretation.

Chapter 6 of the Constitution is not exhaustive of the Courts which are subordinate to the High Court much less does the provision apply to the interpretation of the expression as used in the Contempt of Courts Act. **ILR (1959) Madh Pra 351 : 20 Ele. LR 493 : 1959 MPC 709 : 1959 MPLJ 1139: 1960 Jab LJ 56 : 1960 Cr LJ 484 : AIR 1960 Madh Pra 115 (116) (Pt B) (Pr 7) (DB).**

——Arts. 233, 234, 236 and 237 — Integration of Civil Judicial Service and Criminal judiciary — Constitutionality — Appointment of Presidency Magistrate as Subordinate Judge — Validity.

The provision for the appointment of a Presidency Magistrate as a Subordinate Judge is not in contravention of Ch. 6 of Part VI of the Constitution.

The definition of District Judge in Art. 236 shows that at the level of the District Judge there is no distinction made between those discharging purely civil judicial functions and those administering the criminal law. The definition of 'judicial service' would also indicate that, the provisions in Ch. 6 of Part VI of the Constitution conceived the two services as not having between them any irremovable barrier. Art. 236 therefore, far from maintaining an inseparable division between the categories of officers who administer civil law and whose service was termed 'civil judicial' and those who administer criminal law and were called 'Magistrates', would appear to view the functions of the two categories of officers as if they could be comprised in one service. **(1958) 1 Mad LJ 38 : 70 Mad LW 553 : ILR (1958) Mad 158 : AIR 1958 Mad 53 (60) (Pt A) (Pr 22).**

——Art. 233 — Part VI, Chapter VI (Arts. 233 to 237) — Creation of Madras Criminal Judicial Service — Legality of — (Criminal Procedure Code (1898), S. 10).

The Code of Criminal Procedure does not prescribe the qualifications that should be possessed by an appointee or the service from which he could be recruited. Nor does the Constitution prescribe any conditions as regards appointment to the office of District Magistrate. Nothing can therefore, be said to question the legality of the creation of the Madras Criminal Judicial services under G. O. No. 760, dated 27th February, 1950. **(1958) 1 Mad LJ 38: 70 Mad LW 553: ILR (1958) Mad 158 : AIR 1958 Mad 53 (62) (Pt D) (Pr 33).**

——Art. 233 — Madras Government Notification G. O. Ms. 3617 (Home), Dated 19-12-1955 — If violates Art. 233 — (General Clauses Act (1897), Ss. 15 and 18) — (Criminal Procedure Code (1898), Ss. 9 and 39).

The Madras Government Notification G. O. Ms. 3617 (Home), Dt. 19-12-1955, was issued by the Government only after consultation with the High Court not only in regard to the then incumbents of the District Magistracy, but also in regard to the succeeding District Magistrates. The notification in question appointing the District Magistrates generally by virtue of their office, as Assistant Sessions Judges, did not violate the provisions of Art. 233 of the Constitution. Even with regard to the successors, the notification is valid as it was issued after consultation with the High Court. S. 18 of the General Clauses Act provides that it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

The appointment of District Magistrate as Assistant Sessions Judge not by name, but by his designation is permissible in view of the provisions of S. 15, General Clauses Act and S. 39, Criminal Procedure Code. **1957 Mad WN 159 : (1957) Mad LJ (Cri) 145 : 1957 Cri LJ 642 : ILR (1957) Mad 597 : 70 Mad LW 150 : AIR 1957 Mad 351 (352, 353) (Pt C) (Pr 4) (DB).**

——Art. 233 — Validity — Rules for appointment of District Judges framed under Art. 309, but in consultation with High Court — Rules do not contravene Art. 233. See Rajasthan Higher Judicial Service Rules. **AIR 1966 Raj 26 (DB).**

——Arts. 233, 235—Consultation of High Court in matter of appointment of District Judges mandatory or directory — Effect of holding consultation as directory. (Obiter). **1965 Raj LW 14 : ILR (1965) 15 Raj 390 : AIR 1966 Raj 26 (32) (Pt B) (Pr 13) (DB).**

——Art. 233 — Consultation under Rajasthan Higher Judicial Service Rules (1955) amounts to consultation with High Court — No contravention of Article 233. See Rajasthan Higher Judicial Service Rules (1955), R. 13. **AIR 1966 Raj 26 (DB).**

——Art. 233 — Rajasthan Higher Judicial Service Rules (1955), R. 24 — Rule does not contravene Art. 233. See Rajasthan Higher Judicial Service Rules (1955), R. 24. **AIR 1966 Raj 26 (DB).**

——Art. 233 (2) — Rajasthan Higher Judical Service Rules (1955), R. 10 — Provision fixing proportion of vacancies to be filled by direct recruitment and by promotion — There is no curtailment of power under Art. 233 (2) of the Constitution but only its regulation. **1965 Raj LW 14 :**

ILR (1965) 15 Raj 390 : AIR 1966 Raj 26 (33) (Pt D) (Pr 16) (DB).

——Arts. 233 and 234 — **Scope.**

Article 233 while authorising the Rajpramukh to make an appointment of any person as District Judge restricts the field of choice either to the existing members of the Judicial Services in accordance with Art. 234 or to an Advocate or pleader of a certain standing if recommended by the High Court. The appointment of persons in the Judicial Services (other than District Judge) has to be made in accordance with the provisions of Art. 234, and from among such members of the Judicial Service the appointment of District Judge can be made. **1956 Raj LW 497 : ILR (1956) 6 Raj 74 : AIR 1956 Raj 104 (106) (Pt B) (Pr 11) (DB).**

——**Arts. 233, 234 and 309 — Relative scope — Art. 309 is subject to Arts. 233 and 234 — Recruitment for Judicial Service has to be made in accordance with rules referred to in Art. 234.**

Art. 309 is stated to be subject to the other provisions of the Constitution. It is thus subject to Arts. 234 and 233 of the Constitution. Arts. 234 and 233 make provision for the manner of appointment (which includes the recruitment) of Judicial Service.

It is, therefore, clear that while conditions of Judicial Service can be prescribed by the Rajpramukh or the Legislature, as the case may be, under Art. 309 the recruitment for that service (other than District Judges) has to be made in accordance with rules referred to in Art. 234 and from amongst the members of the Judicial Service so recruited, the appointment of District Judges can be made under Art. 233 of the Constitution. **1956 Raj LW 497 : ILR (1956) 6 Raj 74 : AIR 1956 Raj 104 (106) (Pt C) (Pr 12) (DB).**

——**Arts. 233, 234 and 236 — Appointment of Judicial officers by Government of Rajasthan Notification No. F-1 (357) Appts. (A) 51, dated 23rd April, 1951 — Validity.**

The Rules and Instructions for selection of Government Servants and Fixation of Seniority with respect to Rajasthan Judicial Service were published under the signature of Additional Chief Secretary to the Government of Rajasthan without the Rajpramukh expressing his own approval or diapproval of the same.

Moreover, there is no averment that the Rules notified on 23rd August, 1950, were framed by the Rajpramukh in consultation with the State Public Service Commission and the High Court, which was a pre-requisite to the appointment of persons to the Judicial Service, which included the junior as well as the senior posts.

Hence, the appointments of District Judges, Senior Civil and Additional Sessions Judges, and Civil Judges and Munsifs being contrary to the provisions of Arts. 234 and 233 read with Art. 236 of the Constitution cannot be upheld. **ILR (1956) 6 Raj 74 : 1956 Raj LW 497 : AIR 1956 Raj 104 (104, 106, 107) (Pt E) (Prs 3, 14, 16) (DB).**

ARTICLE 234

SYNOPSIS

(Constitution of India, Art. 234.)

1. **Scope.**
2. **Rules made by the Governor.**

1. Scope.

——**Arts. 234, 227, 235 and 309** — Madras Civil Services (Disciplinary Proceedings Tribunal) Rules (1948), R. 1 — Scope indicated — Substance of Arts. 227, 233, 234, 235 and 309 stated — Combined effect is that general control and superintendence of Courts conferred on High Court is restricted in specified directions — Suspension of Subordinate Judge by Registrar, Madras High Court in its disciplinary Jurisdiction, is valid — Disciplinary jurisdiction of High Court continues even after Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules have come into force on 1-10-1953. See Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules, 1953, R. 4 (2). **AIR 1955 Andhra 65.**

——**Art. 234** — General Clauses Act (1897), S. 16 — Disciplinary jurisdiction of High Court over District Judges and Judges subordinate to them, extent of — Jurisdiction of Governor to remove or dismiss these officers — Exercise of Governor's powers has to be in consultation with High Court. See Ibid, Art. 235. **AIR 1965 Bom 156 (DB).**

——**Art. 234** — Position of public service commission vis-a-vis the State. See Ibid, Art. 226. **AIR 1955 Madh B 56 (DB).**

——**Arts. 234 and 237 — After 'consultation with the State Public Service Commission' — Construction of — Consultation refers not to appointment, but to 'rules' — (Government of India Act (1935), S. 255).**

The contention that before a certain appointment was made there was no consultation with the State Public Service Commission and, therefore, the appointment was invalid is not acceptable, because, the consultation, referred to in Art. 234 is not with reference to 'appointment'.

Article 234 confers an independent rule making power subject to the specific condition that it should be framed in consultation with the Public Service Commission and the High Court.

Even on the basis that Art. 234 required the actual appointment as distinct from the rules relating to appointments having to be made in consultation with the High Court and the Public Service Commission, if the formalities were all satisfied when the officers having been interviewed by the Public Service Commission were confirmed in the appointments as Subordinate Judges, then their appointments as Subordinate Judges would be valid. **(1958) 1 Mad LJ 38 : 70 Mad LW 553 : ILR (1958) Mad 158 : AIR 1958 Mad 53 (61) (Pt B) (Prs 23, 24, 25, 28).**

——**Art. 234 — Failure to consult Public Service Commission before appointment of person — Defect removed by subsequent interview — Validity of appointment.**

The question whether the failure to consult the Public Service Commission at the date of the appointment would render it invalid, would depend upon whether the requirement as to consultation was directory or mandatory. But where the appointed officers were subsequently interviewed by the Public Service Commission and their appointments were confirmed, whatever might have been the defect in the former appointment, it was removed and the appointments were valid. **(1958) 1 Mad LJ 38 : 70 Mad LW 553 : ILR (1958) Mad 158 : AIR 1958 Mad 53 (62) (Pt C) (Pr 32).**

——**Art. 234 — "Appointment"—Meaning—Mysore Munsifs (Recruitment and Promotions) Rules (1954), R. 16 — Rule 16 is not void and does not offend Art. 234 — (Mysore Munsifs (Recruitment and Promotions) Rules (1954), R. 16).**

The word 'appointments' does not necessarily mean fresh appointments directly from the Bar. 'Appointments' referred to in Art. 234 must be intended to include 'appointments by direct recruitment and also appointments by promotion.

Hence, Rule 16 of Mysore Munsiffs (Recruitment and Promotions) Rules (1954) so far as it relates to appointment by promotion, is not void and it does not offend Art. 234 of the Constitution. **ILR (1955) Mys 597 : AIR 1956 Mys 20 (25) (Pt K) (Pr 14) (DB).**

——**Art. 234** — Scope — See Ibid, Art. 233. **AIR 1956 Raj 104 (DB).**

——**Arts. 234, 233 and 309** —Art. 309 is subject to Arts. 233 and 234 — Recruitment for Judicial Service has to be made in accordance with rules referred to in Art. 234. See Ibid, Art. 233. **AIR 1956 Raj 104 (DB).**

——**Art. 234** — Appointment of judicial officers by Government of Rajasthan Notification No. F 1 (357) Appts. (A)/51 dated 23-4-1951 — Validity. See Ibid, Art. 233. **AIR 1956 Raj 104 (DB).**

2. Rules made by the Governor.

●——**Arts. 234, 226, 309, Proviso**—Mysore Munsiffs (Recruitment) Rules (1958), Rr. 6, 9, 12 — Persons selected by Public Service Commission for posts of Munsiffs — Unsuccessful candidates challenging validity of selection by writ petitions — High Court finding the list vitiated by irregularities but directing inclusion of petitioners therein and confirming it — Order held not authorised by Art. 226 — Other alleged irregularity also held not substantiated — Decision in writ Petns. Nos. 923, 1080, 1446, 1461, 1462 and 1528 of 1962 dated 19-12-1962 (Mys) **Reversed**. See Ibid, Art. 226. **AIR 1965 SC 532.**

●——**Art. 234 and Art. 309, Proviso —Subordinate Judicial Service — Recruitment of persons to — Rules framed by — Governor of Andhra Pradesh, R. 12 (h) — "The High Court" meaning of — R. 12 (h) and para 4-A (1) of notification based on it are unconstitutional and ultra vires**

Rule 12(h) framed by the Governor of the Andhra Pradesh under Art. 234 and the Proviso to Art. 309 of the Constitution, provides special qualifications and says that no person shall be eligible for appointment to the post of District Munsif by the method specified in column (1) of the table given below the rule unless he possesses the qualifications specified in the corresponding entries in column (2) thereof. For direct recruitment as District Munsif several qualifications are mentioned. One of them is that the applicant must be practising as an Advocate of the High Court, and the other is that he must be actually practising in Courts of civil or criminal jurisdiction in India for a period not less than three years

Held, that the expression "the High Court" in the context meant the Andhra High Court and not any High Court in India.

As this rule has introduced a classification between one class of Advocates and the rest and the said classification must be said to be irrational inasmuch as there is no nexus between the basis of the said classification and the object intended to be achieved by the relevant scheme of rules, R. 12(h) and the corresponding portion of para 4-A (1) of the notification based on it are unconstitutional and ultra vires. AIR 1956 Andhra 14, **Overruled.** Pandurangarao v. Andhra Pradesh Public Service Commission, **(1962) 2 Ker LR 200: (1962) 2 SCA 660: (1963) 1 SCR 707: AIR 1963 SC 268 (270, 271, 273) (Pt A) (Prs 5, 6, 16, 17).**

——**Arts. 234, 14, 309, 310**— Temporary appointments can be only under R. 7-A — Such appointments cannot be on probation — Conditions for such appointment — Satisfaction of Governor regarding existence of the conditions — Function is administrative and not justiciable — See Madras Subordinate Civil Judicial Service Rules, R. 7-A. **AIR 1961 Andh Pra 229 (DB).**

——**Art. 234.**—M. B. Judicial Services Rules (1951), Rr. 6, 9, 10, 11, 12 — Examination scheduled for a date in one year — Postponement of examination to some other dates in a different year — Necessity for inviting fresh applications before holding the examination. See Madhya Bharat Judicial Service Rules (1951), R. 6. **AIR 1955 Madh B 56 (DB).**

——**Art. 234** — Mysore Munsiffs (Recruitment) Rules (1958), R. 5 — Rule challenged under Art. 16 (4) — Writ for quashing list of successful candidates — Ground of attack not taken by petitioner in prior writ petition by him — He cannot raise it in subsequent writ petition — Applicant held had no cause of action. See Ibid, Art. 16 (4), **AIR 1963 Mys 303 (DB).**

——**Art. 234—Mysore Munsiffs (Recruitment) Rules (1958), R. 6 — Amendments to rule by adding proviso to sub-R. (3) — Consultation with High Court — Fact of consultation not disclosed to Public Service Commission—Proviso to sub-R. (3) is not improperly made — No consultation with regard to sub-R. (5) — It must be struck down.**

For the consultation required to be made under Art. 234 it is not necessary for the Governor, the Judges of the High Court and the Members of the Commission to meet face to face and hold a joint deliberation. That is not how the expression 'collective deliberation' employed in the judgment in the case reported in AIR 1963 Mys 292 has to be understood.

What is essential under Art. 234 is that both the High Court and the Commission should be informed by the Governor that he proposes to make rules and those rules which he proposes to make should be made available to them so that after a study and scrutiny of those rules, the High Court and the Commission might be in a position to offer advice. If therefore the Governor has taken those steps by placing before the High Court and the Commission the rules which he proposes to make and seeks the advice of both those bodies on the suitability of those rules, it cannot be said that the consultation enjoined by Art. 234 is not complete if the advice tendered by the High Court is not disclosed to the commission and that tendered by the Commission is not revealed to the High Court.

Held, that the Amendment to R. 6 made by the Governor without disclosing to the Commission that the High Court was consulted and without disclosing to the High Court that the Commission was consulted, could not be said to be one not properly made under Art. 234 of the Constitution (1947) 2 All ER 496 and (1948) 1 All ER 13 and (1954) 2 All ER 22 Rel. on.

In regard to sub-R (5) which was added to R. 6 by the Governor there was no consultation whatsoever with the High Court. The purpose of sub-R. (5) newly added to R. 6 was not the same as the purpose of the proviso to sub-R. (3) or the proviso to R. 12, and that sub-R. (5) could not have been therefore added to R. 6 without its inclusion being preceded by consultation with the High Court, even if in the course of the consultation with the Commission the Commission expressed its view that a sub-rule to that effect was desirable and should therefore be included. Sub R. (5) which was included by the Governor in R. 6 without the consultation with the High Court enjoined by Art. 234, must, therefore, be struck down as invalid and inefficacious. **1963 Mys LJ (Sup) 327: AIR 1963 Mys 303 (310, 311, 313) (Pt B) (Prs 25, 26, 28, 29, 36, 37, 38) (DB).**

——**Art. 234** — Mysore Munsiffs (Recruitment) Rules (1958), R. 6 (3), Proviso, R. 12, Proviso— Provisos cannot be said to be either retrospective or retroactive — Provisos are within rule making power of the Governor. **1963 Mys LJ (Sup) 327: AIR 1963 Mys 303 (313, 314) (Pt C) (Pr 41) (DB).**

——Art. 234 — Mysore Munsiffs (Recruitment) Rules (1958), R. 6 (1) and (4) — Sub-rules are to be read together.

Sub-R. (1) of R. 6 it is clear, must be read along with sub-R. (4) for the identification of the authority which has been appointed to conduct the competitive examination, and, there is nothing in sub-R. (4) which is inconsistent with sub-R. (1) since what that sub-rule really directs is that when the Commission conducts the viva voce examination as directed by sub-R. (1) it shall do so in association with the officer specified in sub-R. (4). **1963 Mys LJ (Sup) 327: AIR 1963 Mys 303 (314) (Pt D) (Pr 43) (DB).**

——**Art. 234** — Mysore Munsiffs (Recruitment) Rules (1958), R. 6, Sch. — No syllabus prescribed for viva voce examination for testing candidate's general knowledge — Examination cannot be challenged on this ground. **1963 Mys LJ (Sup) 327: AIR 1963 Mys 303 (315) (Pt E) (Pr 48) (DB).**

——**Art. 234** — Rule prescribing examination of candidate for recruitment by body of more than one person — Every member of the body should have knowledge of the subject in which the candidate is examined by them. **1963 Mys LJ (Sup) 327: AIR 1963 Mys 303 (318) (Pt F) (Pr 57) (DB).**

——**Art. 234 and Art. 309, provisos 245 and 16 (4)** — Mysore Munsiffs Recuitment Rules 1958, Rr. 6 and 12 — Competitive examination by State Public Service Commission for recruitment for the posts of Munsiffs in the State — Prescribing of qualifying marks — No delegation of power, by Governor cannot delegate the power — P. S. C. is not competent to prescribe qualifying marks — Prescribing two sets of qualifying marks, one for scheduled castes and other for others is illegal — It does not amount to reservation within Art. 16 (4). **40 Mys LJ 87: AIR 1963 Mys 292 (294, 295, 296, 297, 298, 299, 300) (Pt A) (Prs 6, 12, 21, 23, 24, 28, 32, 47, 60, 61, 65) (DB).**

——**Art. 234 and Art. 309, proviso** — Mysore Munsiffs Recruitment Rules 1958, Rr. 12, 6 (4) made by Governor — Examination of candidates by State Public Service Commission for recruitment to the posts of Munsiffs — Rules specifying viva voce examination to test candidaes' general knowledge and grasp of principles of law — Commissioner also considering personality and suitability in viva voce examination — Viva voce cannot form foundation of list of successful candidates. **40 Mys LJ 87: AIR 1963 Mys 292 (301) (Pt B) (Pr 79) (DB).**

——**Art. 234 and Art. 309, proviso**—Mysore Munsiffs Recruitment Rules, 1958, Rr. 6 (4), 12 — Rule specifying viva voce examination by members of Public Service Commission and Law Secretary — Some members of Commission not present during examination — Examination is not in accordance with Rules — Mysore Public Service Commission (Conduct of Business and Additional Functions) Act (20 of 1959), Ss. 8 and 9 do not support such examinations. **40 Mys LJ 87: AIR 1963 Mys 292 (301, 302, 303) (Pt C) (Prs 82, 83, 85, 88, 91) (DB).**

——Art. 234 and Art. 309, proviso—Mysore Munsiffs Recruitment Rules, 1958 — Competitive examination — Long delay between written examination viva voce and publication of list of successful candidates — Propriety of.

Where a competitive examination is selected as the method of recruitment and it consists of a written and a viva voce examination, the two examinations must be held in such quick succession that there may be no occasion for the reproach that one of them was deliberately deferred for collateral and oblique purpose. But the long delay after which the viva voce examination was held and the equally long delay in announcing the names of successful candidates cannot form the foundation of an argument that the conduct of the examination which was entrusted to an authority as highly placed as the Public Service Commission was anything but irreproachable. 40 Mys LJ 87: AIR 1963 Mys 292 (302, 303) (Pt D) (Pr 90) (DB).

——**Art. 234** — Mysore Munsiffs (Recruitment and Promotions) Rules (1954), R. 16 — Provision in for appointment by promotion — Does not offend Art. 234 and is not void. **ILR (1955) Mys 597: AIR 1956 Mys 20 (25) (Pt K) (Pr 14) (DB).**

——Art. 234—Rules framed under, R. 10— Scope of — Judicial service — Reputation of judicial officer.

The rules framed by the Governor under Art. 234 do not contemplate and could not possibly have contemplated that the judicial service of the State should come into contempt by the appointment to, or continuance in office of persons who do not inspire confidence among the members of the public or whose conduct is not above reproach. A judicial officer who suffers his conduct to justify the impression that he can be improperly influenced or allows his reputation to be damaged or destroyed is almost as great a danger to society as a person who actually receives a monetary gift. **58 Punj LR 299: ILR (1957) Punj 122: AIR 1956 Punj 201 (202, 203) (Pt B) (Pr 7) (DB).**

——Art. 234 — Rules framed under, Rule 10 — Retrospective effect.

The rules made by the Governor under Art. 234 and promulgated on 26-10-1951 cannot apply retrospectively to an examination which was held in the year 1950, particularly when the syllabus of the earlier examination was different from the syllabus of the later examination. **58 Punj LR 299: ILR (1957) Punj 122: AIR 1956 Punj 201 (203) (Pt D) (Pr 10) (DB).**

ARTICLE 235

●——Arts. 235 and 311—Control vested in High Court over District Judges is complete subject only to power of Governor in matter of appointment (including dismissal), posting and promotion — (AIR 1961 Cal 1 (SB), Affirmed).

The control vested in the High Court under Art. 235 of the Constitution includes disciplinary jurisdiction and is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. The High Court can in the exercise of the control vested in it hold enquiries, impose punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal if granted thereby and to the giving of an opportunity of showing cause as required by Cl. (1) of Art. 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone can hold enquiry against a District Judge. **AIR 1961 Cal 1 (SB), Affirmed.**

The fact that Governor appoints District Judges and can alone dismiss or remove them does not impinge upon the control of the High Court. It only means that the High Court cannot appoint or dismiss or remove District Judges. In the same way the High Court cannot use the special jurisdiction conferred by the two provisos. It cannot decide that it is not reasonably practicable to give a District Judge an opportunity of showing cause or that in the interest of the security of the State it is not expedient to give such an opportunity. This the Governor alone can decide. That certain powers are to be exercised by the Governor and not by the High Court does not necessarily take away other powers from the High Court. The provisos can be given their full effect without giving rise to other implications. If a case arises for the exercise of the special powers under the two provisos, the High Court must leave the matter to the Governor. In exercising these special powers in relation to inquiries against District Judges, the Governor will always have regard to the opinion of the High Court in the matter. This will be so whoever be the inquiring authority in the State. But this does not lead to the further conclusion that the High Court must not hold the enquiry any more than that the Governor should personally hold the enquiry. State of West Bengal v. Nripendra Nath Bagchi, **(1965) 2 SCA 884: (1966) 2 SCWR 169: AIR 1966 SC 447 (453, 455) (Pt A) (Prs 13, 17, 18).**

●——Art. 235 — Discrimination and equal opportunity in the matter of promotion to higher posts — Number of Munsiffs eligible for promotion to higher posts of subordinate judge — High Court in exercise of its sole authority selecting some in preference to plaintiff— Arts. 14 and 16 (1) not violated — Exercise of power by High Court not justiciable. See Ibid, Art. 14. **AIR 1962 SC 1704.**

●——**Arts. 235 and 320 (3) (c) — Civil Services (Classification, Control and Appeal) Rules. Rr. 49 and 55-A — Exclusive authority of High Court to make promotions in respect of members in State judicial service — High Court exercising power by promoting some members to higher posts in supersession of plaintiff's claim according to seniority list — Rr. 49 and 55-A not applicable — Consultation with State Public Service Commissoin not necessary — Held there was no right in plaintiff of promotion which could be enforced in a Court.**

Held, that under Art. 235 of the Constitution, the High Court is the authority which has the power of promotion in respect of persons belonging to the State Judicial Service, holding any post, inferior to that of a District Judge. Art. 235 read with the Civil Services (Classification, Control and Appeal) Rules, makes it clear that there is no right of promotion which the plaintiff could have claimed to enforce by action in a Court. Rule 49 of the Service Rules gives only a safeguard to a public servant that punishment by way of withholding of promotion shall not be imposed unless he has been given adequate opportunity of showing cause against the action proposed to be taken. Moreover, R. 49 comes into play only when proceedings are taken by way of disciplinary action against a public servant. Since there were no disciplinary proceedings against the plaintiff neither R. 49 nor R. 55-A was applicable to his case. (ii) that there was no basis for the contention of the plaintiff that the High Court had made unjustifiable delegation of its powers under Art. 235 to the English Committee or that the High Court as a whole did not pass the order which was the plaintiff's alleged cause of action. (iii) that as no disciplinary proceedings had been started against the plaintiff there could be no occasion for the State Public Service Commission being consulted in accordance with the provisions of Art. 320 (3) (c) of the Constitution. (iv) that the plaintiff had failed to make out a cause of action for the suit and as such the suit should be dismissed as not maintainable. High Court, Calcutta v. Amal Kumar Roy, **(1963) 1 SCR 437: (1962) 2 SCA 646: (1962) 2 Ker LR 114: AIR 1962 SC 1704 (1708, 1709, 1710, 1711) (Pt A) (Prs 5, 6, 7, 10)**

——**Art. 235** — Inquiry against District Judge — Power of High Court to hold. See Ibid, Art. 227. **AIR 1959 Andh Pra 497 (DB).**

——**Art. 235** — Suspension of Subordinate Judge by Registrar, Madras High Court — Validity. See Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules (1953), Ruie 4 (2). **AIR 1955 Andhra 65 (DB).**

——**Arts. 235, 233, 237, 310, 311 — General Clauses Act (1897), Section 16— Disciplinary jurisdiction of High Court over District Judges and Judges subordinate to them, extent of — Jurisdiction of Governor to remove or dismiss these Officers — Exercise of Governor's powers has to be in consultation with High Court.**

The disciplinary jurisdiction over District Judges and Judges subordinate to them vests exclusively in the High Court except making an order of dismissal or removal.

The power of dismissal and removal of District Judges and Judges subordinate to District Judges vests in the Governor. The exercise of the aforesaid power of dismissal and removal of District Judges by the Governor has to be in consultation with the High Court.

Where on preliminary investigation the High Court comes to the conclusion that the probable consequence of the charges against a judicial officer being proved would be one of dismissal or removal of the judicial officer, the course that should be adopted would be to refer the matter to the Governor recommending appointment of an enquiry officer which is the first stage of giving a reasonable opportunity to a public servant. AIR 1955 Andhra 62 Rel. on. AIR 1961 Cal 1 (SB), Commented on and distinguished. When the Governor appoints an enquiry officer on the recommendation of the High Court, the disciplinary proceedings are initiated by the High Court and not by the Governor and the order made by the Governor is not one without jurisdiction. **(1965) 2 Lab LJ 487: 67 Bom LR 170: 1965 Mah LJ 434: ILR (1965) Bom 317: AIR 1965 Bom 156 (162, 163, 164, 165) (Pt A) (Prs 19, 19-A, 20) (DB).**

●——**Arts. 235, 227, 233, 234, 309, 310, 311, 320** — Judicial service of State — Member of — District Judge — Disciplinary jurisdiction over — Who can exercise — Enquiry conducted by State Government — Validity — Civil Services (Classification, Control and Appeal) Rules, Rule 55 — Validity. See Ibid, Art. 227. **AIR 1961 Cal 1 (SB).**

——**Arts. 235, 309, 234 — Disciplinary proceedings against subordinate judicial officers — Authority competent to initiate — Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, Rules 8 and 11.**

Having regard to Rules 8 and 11 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 and Arts. 234, 235 and 309 of the Constitution, both the Governor as well as the High Court have competence to initiate disciplinary proceedings against subordinate judicial officer. It cannot be said that it is the High Court and High Court alone that is the sole authority competent to initiate such proceedings.

An examination of Arts. 233 to 235 and 309 to 311 of the Constitution reveals that in the case of Subordinate Judicial Officers the disciplinary control is divided between the Governor and the High Court. The Governor's power is confined to (i) removing them from service, (ii) dismissing them and (iii) reducing them in rank. In other respects their disciplinary control vests in the High Court. Both the Governor as well as the High Court, have, however, to exercise the power conferred on them in accordance with the provisions of the Constitution and the rules validly framed under Art. 309. Thus the field reserved for the High Court is clearly demarcated from that reserved for the Governor. Each authority can effectively exercise its power within the field reserved for it.

The word 'Control' contemplated by Art. 235 of the Constitution includes disciplinary control over the officers presiding over the subordinate Courts. But that disciplinary control is subject to two limitations, viz. (1) it does not take away from the person concerned any right of appeal, which he may have under law regulating the conditions of service and (2) it does not authorise the High Court to deal with him otherwise than in accordance with the conditions of service prescribed under such law. Since a person belonging to the Judicial service of the State is holding a post in connection with the affairs of the State, in the absence of any legislation by the State legislature, his conditions of service are those prescribed by the Governor in exercise of the power conferred on him by Art. 309 of the Constitution. On the other hand the power of the Governor to prescribe the conditions of service of the Government servants, as seen from Art. 309 is subject to the provision of the Constitution. Art. 235, is one such provision. **(1965) 2 Mysore LJ 215 (DB).**

——**Art. 235** — Judicial Service of State — Member of — Punishment — Order by Government on recommendations of High Court — Ancillary recommendation of High Court to confirm member as Subordinate Judge before retiring him compulsorily not accepted — Mere non-acceptance did not affect validity of main order of punishment. See Ibid, Art. 311. **AIR 1965 Orissa 183 (DB).**

——**Arts. 235 and 226** — Orissa High Court Rules (Vol. 1) Rule 16 (vi) — Rule requiring disciplinary proceedings under Art. 235 to be placed before Full Court of all judges — Whether authority administratively recommending imposition of punishment on judicial officer can judicially decide legality of such punishment in writ petition. See Ibid, Art. 226. **AIR 1965 Orissa 183.**

——**Art. 235** — Civil Services (Classification, Control and Appeal) Rules, 1930, Rule 55 — Disciplinary Proceedings (Administrative Tribunal) Rules, 1951, Rule 5 — Judicial Service of State — Member of — Enquiry by Tribunal — Order of enquiry issued by Government on recommendations of High Court — Order not void — No contravention of Art. 235. See Ibid, Art. 311. **AIR 1965 Orissa 183 (DB).**

——**Art. 235** — Appointments and punishments of members of judicial service — Ultimate authority to pass order of punishment, even in case of Subordinate Judge, is State Government. See Ibid, Art. 311. **AIR 1965 Orissa 183 (DB).**

——Art. 235 — Section 24 C. P. Code is not repugnant to Art. 235. See Civil P. C. (1908), Section 24. **AIR 1955 NUC (Punj) 6028.**

ARTICLE 236

——**Art. 236** — District Judge includes Additional District Judge. See Industrial Disputes Act (1947), S. 7 (3) (b). **AIR 1954 Assam 161 (DB).**

——**Art. 236** — Article provides a dictionary for the expressions "District Judge" and "judicial service" — Expression "District Judge" in view of Cl. (a) includes an Additional District Judge. See Ibid, Art. 235. **AIR 1965 Bom 156 (DB).**

●——**Art. 236 — "District Judge" — Officiating Additional District Judge — If included.**

Per P. B. Mukharji, J.:— Art. 236 of the Constitution includes all Additional District Judges within the expression "District Judge" irrespective of the fact that they are permanent or officiating. Besides, an acting District Judge comes within the definition of 'judicial service' as he is intended to fill the post of 'District Judge' within the meaning of that definition. Nripendra Nath Bagchi v. Chief Secretary, Government of W. B., **65 Cal WN 361 : (1961) 2 Lab LJ 312: AIR 1961 Cal 1 (5) (Pt A) (Pr 10) (DB).**

——**Art. 236** — Industrial Disputes Act (1947), Section 7 (3) (b) — 'District Judge' — Meaning — Does not include Additional District Judge — (General Clauses Act (1897), Section 3 (17)) — (Interpretation of Statutes) — Civil P. C. (1908), Pre.) — (Words and Phrases). AIR 1954 Assam 161, Diss. See Industrial Disputes Act (1947), Section 7 (3) (b). **AIR 1956 Madhya Bha 183.**

——**Art. 236** — Scope — Integration of Civil Judicial Service and Criminal Judiciary — Constitutionality — Appointment of Presidency Magistrate as Subordinate Judge — Validity — Division between officers whose service is termed civil judicial' and those who administer criminal justice who are called 'magistrates' whether irremovable in view of this article. See Ibid, Art. 234. **(1958) 1 MLJ 38: AIR 1958 Mad 53.**

——**Art. 236 (a)** — Civil Judge with powers of Additional Sessions Judge is 'District Judge. **1965 Raj LW 14: ILR (1965) 15 Raj 390: AIR 1966 Raj 26 (33, 34) (Pt E) (Pr 20) (DB).**

——**Art. 236** — Appointment of judicial officials by Government of Rajasthan Notification No. F 1 (357) Appts. A/51, dated 23-4-1951 — Validity. See Ibid, Art. 233. **AIR 1956 Raj 104 (DB).**

ARTICLE 237

——**Art. 237** — "Court Subordinate" — Meaning of — Magistrates whether subordinate Courts — Effect of Art. 237. See Ibid, Art. 234. **AIR 1957 All 495.**

——**Art. 237** — Legislative intent — Object of framing article is to enable the Governor to take further steps to separate judiciary from control of executive by bringing magistracy under the control of High Court. See Ibid, Art. 235. **AIR 1965 Bom 156 (DB).**

——**Art. 237** — Object of — Integration of Civil Judicial Service and Criminal judiciary — Constitutionality — Appointment of Presidency Magistrate as Subordinate Judge — Validity. See Ibid, Art. 234. **AIR 1958 Mad 53.**

——**Art. 237** — Scope — Rules referred to in article are rules made under Art. 234 — Hence they require prior consultation with authorities named in that article before they are made. See Ibid, Art. 234. **AIR 1958 Mad 53.**

——**Art. 237** — Separation of judiciary from executive — Notification issued under Art. 237 — Power of High Court to post Magistrates in Bellary District. See Criminal Procedure Code (1898), S. 12. **1959 Cri LJ 1005: AIR 1959 Mys 199.**

ARTICLE 238

■——**Art. 238**—Prerogative of Maharaja of Cochin relating to execution of death sentences — Prerogative, if consistent with Constitution — Prerogative, if stands repealed — Applicability of Art. 362 — (Criminal P. C. (1898), Ss. 401, 402 and 402-A). See Ibid, Art. 72. **AIR 1956 SC 142.**

■——**Art. 238 (7)** — Provision is subject to Art. 385 — Rajasthan Land Reforms and Resumption of Jagirs Act (5 of 1952) — Rajpramukh's power to enact the law. See Ibid, Art. 385. **AIR 1955 SC 504.**

——**Art. 238** — Adoption sanctioned before the Constitution by Nizam under his prerogative rights — It cannot be revoked after Constitution under those rights which do not exist after the Constitution. See Hyderabad Atiyat Enquiries Act (10 of 1952), S. 13 (2). **AIR 1954 Hyd 15 (DB).**

■——**Art. 238** — Rajpramukh, whether entitled to use prerogative powers which he had as Ruler of his State. See Ibid, Art. 154 (1). **AIR 1952 Hyd 163 (FB).**

■——**Art. 238** — Scope — Rule 14 (2) of Jaipur Matmi Rules (1945) — Validity after Constitution — Power of Rajpramukh after Constitution to decide question of succession to jagirs. See Ibid, Art. 154. **AIR 1961 Raj 146 (FB).**

——**Art. 238** — Scope — Travancore Cochin Covenant, Art. XXI — Power of Maharaja of Cochin to grant suspension, remission or commutation of sentence cannot be invoked or exercised after commencement of Constitution. See Constitution of India, Art. 72. **ILR (1955) Trav-Co. 788.**

ARTICLE 239

■——**Art. 239** — Contract by Government of Vindhya Pradesh — Suit against Government — Form of — Proper defendant was State of Vindhya Pradesh and not Union of India. See Civil P. C. (1908), S. 79. **AIR 1962 SC 145.**

■——**Art. 239** — Bombay Prevention of Gambling Act — Extension of, to Kutch — Chief Commissioner, whether had power after the Constitution. AIR 1954 Kutch 42, **Reversed.** See Adaptation of Laws Order (1950), Cl. 15. **AIR 1957 SC 517.**

■——**Art. 239** — Order made by Governor-General under Section 94 (3) — Saving of, by Art. 372 — Nature of order — 'Law in force'—Adaptation of order — Validity of — Appropriate Government. See Ibid, Art. 372. **AIR 1955 SC 25.**

■——**Art. 239 — Executive head of Part C State — Position and status of President — (Government of Part C States Act (1951), S. 38 (2)).**

The President who is the executive head of the Part C States does not function as the executive head of the Central Government but as the head of the State under powers specifically vested in him under Art. 239. The authority conferred under Art. 239, to administer Part C States has not the effect of converting those States into the Central Government. Under Art. 239, the President occupies in regard to Part C States, a position analogous to that of a Governor in Part A States and of a Rajpramukh in Part B States. Though the Part C States are centrally administered under the provisions of Art. 239, they do not cease to be States and become merged with the Central Government. Satya Dev Bushahri v. Padam Dev, **(1954) 2 MLJ 439: 1954 SCJ 764: 1955 SCR 549 : AIR 1954 SC 587 (591) (Pt D) (Pr 9).**

——**Art. 239** — Notification under Section 94 (3), Government of India Act (1935) — Validity after Constitution. See Government of India Act, 1935, Section 94 (3). **AIR 1953 Ajmer 65.**

——**Arts. 239 (1), 226, Sch. 1, Part 2** — Writ petition against "Himachal Pradesh Administration" as main respondent — Himachal Pradesh being Union Territory administered by the President through Administrator — Neither President nor Administrator impleaded — "Himachal Pradesh Administration" being not a juristic person cannot sue or be sued — Order on writ petition would not bind President or Administrator — Frame of petition therefore, held defective — Civil P. C. (1908), Section 79. See Ibid, Art. 226. **AIR 1964 Him Pra 19.**

——**Art. 239** — President's position in relation to Part C States — Such States, whether become Central Government — Appointment of sole arbitrator — Notice to Deputy Chief Commissioner — Union of India not given notice — Effect. See Arbitration Act (1940), Section 9. **AIR 1958 Him Pra 20.**

——**Art. 239** — Rules of Business, Part C States, Rule 24 — Filing of appeal under Section 417, Cr. P. Code — Sanction by Minister — Validity. See Government of Part C States Act (1951), Section 38. **1955 Cri LJ 944: AIR 1955 Him Pra 26.**

——**Art. 239 — Power to extend Act, vested in Provincial Government — Extension of Act by Chief Commissioner of Part C State after 26th January, 1950—Validity — (Kutch (Application of Laws) Order (1949), Para 4 — (Merged States (Laws) Act (1949)) — (Adaptation of Laws Order (1950), Paras. 4, 15 and 21) — (General Clauses Act (1897), Section 4-A) — (Bombay Prevention of Gambling Act (IV of 1887), Section 1).**

The Bombay Prevention of Gambling Act was not validly extended to the State of Kutch by the Chief Commissioner's notification, dated 28th November, 1950.

The Bombay Act, though it was applied to Kutch by the Kutch (Application of Laws) Order, 1949, did not extend by its own operation but had to be extended under Section 1 of the Act and the power to so extend was vested in the Provincial Government. As the definitions in General Clauses Act, which was also applied to Kutch by the Kutch (Application of Laws) Order, were to be applied in the interpretation of enactments in Kutch only after giving effect to the modifications, restrictions or rule of construction contained in the Order, the Chief Commissioner by the rule of construction contained in Para. 4 of that Order had the powers vested in the Provincial Government by the Bombay Act.

The Merged States (Laws) Act, intending that the Chief Commissioner should not exercise the powers vested in the Provincial Government by the Central Acts which then applied to Kutch, extended several Central Acts to Kutch and repealed those corresponding Acts applied by the Kutch (Application of Laws) Order, and also extended the General Clauses Act without any restriction. But the Bombay Act was neither extended nor repealed as a corresponding law and therefore, it might be accepted that in spite of Section 94 (3) of the Government of India Act, and the Merged States (Laws) Acts, the Chief Commissioner was entitled to exercise the power vested in the Provincial Government by the Bombay Act.

After the Constitution came into effect and the Adaptation of Laws Order, 1950, was made, the expression 'State' was substituted for the expression 'Provincial' in the Bombay Act because of Paragraph 4 even though the Bombay Act was not mentioned in any of the schedules to that order. As a result of this Order the rule of construction contained in Kutch

(Application of Laws) Order no longer survived and therefore, from 26th January, 1950, the expression 'Provincial Government' in the Bombay Act was to be read as 'the State Government' and having regard to the definitions of 'State Government' and 'Central Government' in the General Clauses Act the Chief Commissioner had to act within the scope of the authority given to him under Art. 239. Hence from 26th January, 1950, the Chief Commissioner, Kutch, had no power to issue the notification in question unless authority to do so was conferred on him under Art. 239.

Though it may be accepted that the power to extend the provisions of the Bombay Act to the State of Kutch or to any part thereof was, before 26th January, 1950, vested in or exercisable by the Chief Commissioner, Kutch, the provisions of Para. 15 of the Adaptation of Laws Order, 1950, cannot be canvassed to support a contention that as no notification was issued by the President and as the President had not authorised the Chief Commissioner, Kutch, to do so, the power continued to be vested in or exercisable by the Chief Commissioner, Kutch, on and after 26th January, 1950. Because the power was not exercised by the President it cannot be said that there was interregnum created and hence transitional provision for the exercise of power by a person or authority competent to exercise it before the appointed day was applicable.

Even if substitution of expression as mentioned in Para. 4 of the Adaptation of Laws Order, 1950, is not made, the rule of construction mentioned in the Kutch (Application of Laws) Order, 1949, for construing the expression 'Provincial Government' as the 'Chief Commissioner, Kutch' does not survive because the provisions of the Constitution are that the President administers a Part C State and from that it follows that all powers vested in or exercisable by the Central Government or a Provincial Government under any laws in force are vested in or exercisable by the President and the Chief Commissioner of a Part C State can act to such extent as he is authorised by the the President to do. The Court which is entitled under Para. 21, Adaptation of Laws Order, to construe the Bombay Act with such adaptations as are necessary for bringing into accord with the provisions of the Constitution must therefore, construe the Bombay Act with the adaptation that the rule of construction mentioned in the Kutch (Application of Laws) Order, 1949, is deleted. **1954 Cri LJ 1699: AIR 1954 Kutch 42 (43, 45, 46, 47) (Prs 2, 5, 6, 7, 8, 10, 11, 12, 13).**

[**Reversed** in AIR 1957 SC 517.]

——**Arts. 239, 226** — Power of Chief Commissioner of Kutch to make proclamation under Section 46-B, Bombay District Police Act (4 of 1890) — Notification No. 104-J dated 24-8-1950 issued by President under Art. 239. See Bombay District Police Act (4 of 1890), Section 46-B. **AIR 1954 Kutch 15.**

——**Arts. 239, 245 (1) and 372 — Manipur Administration Order (1949), paras. 5 and 7 — Validity — Manipur Constitution Act (1947) — Act is not repealed but continues to remain in force.**

The Central Government got all the powers which were exercised by the Maharajah of Manipur at the time of merger by the agreement of the merger and the Chief Commissioner was to exercise those powers later on under the Manipur Administration Order, 1949, but the rights of the people enjoyed under Manipur State Constitution Act, 1947, were never suppressed nor do they appear to have been at any time attempted to be suppressed as the Manipur State Constitution Act, 1947, was never repealed. Its provisions, therefore, so far as they are not inconsistent with the provisions of the Indian Constitution will continue to remain in force under Art. 372 of the Constitution of India.

Under the Manipur Administration Order, 1949, the Manipur State Constitution Act, 1947, had been kept intact under para. 5 but under Cl. 7 the existing Legislature was dissolved and the Ministers then functioning ceased to function. The abolition of the Legislative Assembly and the Council of Ministers is not a mere matter of procedure and as no action was taken by the President for a period of three years nor by the Parliament under Art. 239 and Art. 245 (1) of the Constitution of India the Manipur State Constitution Act, 1947, cannot be deemed to have been repealed.

Paragraph 7 cannot be interpreted to mean that the Manipur State Constitution Act, 1947, or any particular section thereof was ever sought to be repealed by this paragraph, and so it could not properly be urged on the basis of this paragraph that the requests for electing fresh Legislature and for appointment of fresh Ministers under the Manipur State Constitution Act, 1947 which has not been repealed uptill now, were in any way illegal or against the maintenance of public peace. Even if meetings are held and people peacefully request the Government for enforcing the provisions of Manipur State Constitution Act, 1947, such meetings would not be against the spirit of the Constitution or even against the provisions of Section 144, Cr. P. Code as they would not tend to disturb public tranquillity in any manner. **1955 Cri LJ 1603: AIR 1955 Manipur 41 (46) (Pt B) (Prs 15, 18).**

——**Art. 239 — Delhi Excise Rules, Rule 5.1 — Power conferred on Chief Commissioner under Rule 5.1 — Delegation of power.**

The Chief Commissioner of Delhi gets executive powers in the Delhi State under the orders of the President under Art. 239 of the Constitution. It is not open to the Chief Commissioner to delegate his executive authority to the Collector or to any other person. **ILR (1956) Punj 390: AIR 1956 Punj 97 (99) (Pt D) (Pr 6) (DB).**

[**Reversed** on facts in AIR 1959 SC 65.]

——**Art. 239 — Chief Commissioner's authority to bring Ajmer Act (IV of 1956) into force — (Ajmer Shops and Commercial Establishments Act (4 of 1956), Ss. 1 (3) and 2 (1) (w)).**

Under Art. 239 the President could carry on the business of the Ajmer State through a Chief Commissioner. This postulates that he could authorise the Chief Commissioner to bring the Ajmer Shops and Establishments Act, 4 of 1956 into force. For the same reasons the rules under the Act could also be made by the Chief Commissioner. **ILR (1958) 8 Raj 1067: 1959 Raj LW 678: AIR 1959 Raj 257 (259, 260) (Pt D) (Pr 21) (DB).**

——**Art. 239 — Suit by or against Union Territory — (Civil Procedure Code (1908), S. 79).**

A Union Territory and its administration is vested in the President under Art. 239 of the Constitution of India which empowers the President to administer through a Chief Commissioner. But in doing so, the position of President under Art. 239 is analogous to that of a Governor of a State.

A Union Territory is a separate entity and the Government of the Union Territory and the Central Government are not identical. A suit by or against Union Territory must, therefore, be brought by or against the Government of the Union Territory and not the Central Government that is by or against the Administration of the Union Territory concerned, as contemplated in Art. 239 of the Constitution. And the Administration of a Union Territory consists of the Presi-

dent and the Chief Commissioner to the extent to which he is empowered. **(1960) 30 Comp Cas 324: AIR 1959 Tripura 41 (45, 46) (Pt G) (Pr 24).**

——Arts. 239 and 311 — Servants of Part C States —Applicability of Central Civil Service (Temporary Service) Rules, 1949.

Servants of Part C States were not servants of the Central Government nor did they belong to the Central Civil Service. The Central Civil Service (Temporary Service) Rules, 1949, therefore, do not apply to them.

Service under the Part C State, or for the matter of that service under the President as administering a Part C State under Art. 239, cannot be construed as service under the Central Government. in 1949 when the Central Civil Service (Temporary Service) Rules were framed, the areas which on the passing of the Constitution were made into Part C States, and more particularly Tripura, were neither administered by the Central Government nor were they parts of the British India. The Rules could not therefore, have been made for or intended to apply to servants of the Part C States. AIR 1954 SC 587, Rel. on. **AIR 1958 Tripura 28 (32) (Pt D) (Prs 14, 15).**

——Art. 239 — State of Vindhya Pradesh is a legal entity capable of suing and being sued — (Government of Part C States Act (49 of 1951), Sections 28 (3), 38 (2), 39) See Ibid, Art. 1. **AIR 1956 Vin Pra 1.**

——Art. 239—Suit by or against Para C State— Suit if to be brought in name of Central Government — Service of notice. See Civil P. C. (1908), Section 80. **AIR 1955 Vin Pra 1.**

ARTICLE 240

● **——Art. 240** — Amendment contemplated by Article — Can be effected by bare majority such as that required for passing any ordinary law. See Ibid, Art. 368. **AIR 1951 SC 458.**

● **——Art. 240 (before it was amended in 1956), Art. 248 — Scope — Himachal Pradesh Legislative Assembly (Constitution and Proceedings) Validation Act (56 of 1958), Ss. 3 and 4 — Constitutional validity.**

By virtue of Art. 248 it was competent to the Parliament by legislation to remove the disability of members of a Legislative Assembly of a Part C State arising because of the failure to issue a notification under Section 74 of the Representation of the People Act, and to validate the acts done by the Legislature. Such legislation is not covered by any item falling in the Concurrent List or in the State List. The legislative competence of the Parliament to enact the Act is therefore, not open to challenge. No constitutional provision is violated by the enactment of Act 56 of 1958. When the Validating Act was enacted, the Himachal Pradesh State had ceased to exist and by the operation of the States Reorganisation Act, 1956, that State had merged in the State of Punjab. But on that account, the authority of the Parliament to validate the proceedings of the body of persons which purported to function as the Legislative Assembly under Act 32 of 1954 was not extinguished. Jadab Singh v. Himachal Pradesh Administration, **(1962) 1 SCA 210: (1961) 1 SCJ 185: (1961) 3 SCR 755: AIR 1960 SC 1008 (1011) (Pt A) (Prs 8, 9).**

——Arts. 240, 246 (4), 254 — Scope — Government of Part C States Act (1951), Ss. 21 and 22 and Part C State Law — Repugnancy — Effect — 'Pith and substance' rule — Applicability — State Act void.

The legislative power of the legislature of Part C States was not derived directly from the Constitution. Art. 240 gives power to the Parliament to provide for the administration of Part C States and to create a body to function as a legislature for the State. Acting on this power, the Parliament enacted the Government of Part C States Act, 1951. The Vindhya Pradesh State as a Part C State under Section 21 of the Government of Part C States Act, 1951, did not have any exclusive power to legislate on the items contained in the State List. Their power to legislate both on the items in the State List and the Concurrent List was concurrent with power of the Parliament. In other words, Lists II and III were both in the nature of Concurrent Lists in the context of Part C States. That being the position, repugnancy with the Central Law would render the State Act void under Section 22 of the Government of Part C States Act, 1951: AIR 1947 PC 72, Disting. **1961 MPLJ 1429: ILR (1960) Madh Pra 1029: 1961 MPC 160: 1961 Jab LJ 836: AIR 1961 Madh Pra 216 (217 and 218) (Pt A) (Prs 6 and 9) (DB).**

ARTICLE 241

● **——Art. 241** — Rent Controller and District Judge acting under Rent Act — Jurisdiction of Judicial Commissioner under Art. 227 read with Art. 241. See Ibid, Art. 227. **AIR 1954 SC 215.**

——Art. 241 — Judicial Commissioner's Court of Himachal Pradesh — Power of superintendence — Election tribunals — (Elections). See, Ibid, Art. 227. **AIR 1959 Him Pra 25.**

——Art. 241 — Section 6 (a), Judicial Commissioner's Courts (Declaration as High Courts) Act, 1950 — Provision of making Article 216 inapplicable to Judicial Commissioner's Courts declared as High Courts under Act — Is neither an amendment nor modification of the Constitution but is only an exception made under and by virtue of a provision of the Constitution, viz., Art. 241 (2) — Non-observance of procedure prescribed under Art. 368 does not render it ultra vires. See also Judicial Commissioner's Courts (Declaration as High Courts) Act, 1950, Section 6 (a). **1952 Cri LJ 114 : AIR 1952 Him Pra 5.**

ARTICLE 242

——Art. 242 — Coorg Legislative Council — Competence to legislate on subjects classified as provincial subjects in the Coorg Devolution Rules. See Government of India Act (1919), S. 77. **AIR 1958 Mys 102 (DB).**

ARTICLE 243

——Art. 243 — Right of principal to step in litigation carried in name of agent — Suit by Municipal Assembly of Chandernagore — Right of Union of India to appeal. See Chandernagore (Administration) Regulation (1952), Section 7. **AIR 1954 Cal 615 (DB).**

——Art. 243 — Regulation under — Regulation for Chandernagore — Validity.

As the territory of Chandernagore has become comprised within the territory of India within the meaning of Art. 243 of the Constitution, the Regulation that is made by the President is validly made and it has the same force and effect as an Act of Parliament applying to such territory. **ILR (1956) 1 Cal 493: 59 CWN 107: AIR 1954 Cal 615 (617) (Pt D) (Pr 11) (DB).**

ARTICLE 244

● **——Art. 244 and Fifth Schedule Paragraph 5 (2)** — Madras Scheduled Areas Estates (Abolition and Conversion into Ryotwari) Regulation (4 of 1951) — Validity — Even though the Governor did not repeat in the Regulation the terms of Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948) but merely referred to the title of the Act he could give retrospective effect to its provisions over the area to which it

was being applied. Hota Venkata Surya Sivarama Sastry v. State of Andhra Pradesh. **(1962) 1 SCJ 252: (1962) 1 Mad LJ (SC) 120: (1962) 1 Andh WR (SC) 120 : 1962 (2) SCR 535 : AIR 1967 SC 71 (74) (Pt B) (Pr 11).**

●—— **Art. 244** — Sch. 6 Paras 4 & 20 and Art. 244 (2) — Territory forming part of United Khasi and Jaintia Hills District but comprising within Municipality of Shillong — Jurisdiction of Siem of Myliem and his Durbar to decide civil litigation. See Ibid, Sch. 6, Para 4. **AIR 1956 Assam 129 (SB).**

——**Arts. 244, 19 (1) (d), (e) and (5), 14, 226, 342** — Laccadiv Islands and Minicoy Regulation (1 of 1912), S. 33 — S. 33 is not unreasonable and is valid. See Laccadiv Islands and Minicoy Regulation (1 of 1912), S. 33. **AIR 1957 Mad 433.**

ARTICLE 245

SYNOPSIS

(Constitution of India, Art. 245.)

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1. Scope.

——**Arts. 245 to 255 — Distribution of legislative powers — Scheme of.**

Arts. 245 to 255 deal with the respective powers of the Union Parliament and the State Legislatures and the subjects assigned to each of those legislatures with reference to legislation. The scheme of the Articles is to provide against repugnancy and overlapping between State's Legislation and Union legislation. There are two departures from the general resemblance between the provisions of the present Constitution and the provisions of the Government of India Act of 1935 with reference to the distribution of legislative subjects, and these are (1) that the residuary power to legislate in respect of matters not coming under any of the Lists is given to the Union Parliament, while in the 1935 Act the power vested with the Governor-General to initiate legislation in respect of such residual subjects not specifically provided for; and (2) that the Union Parliament can legislate with reference to a Provincial Subject whenever the Council of States by a special majority resolves that such legislation with reference to any constituent State must be undertaken by the Union Parliament. As regards the Concurrent Subjects with reference to which both the Union Parliament and the State Legislature have powers of legislation. the possible repugnancy is sought to be avoided by a provision that if a State Legislature legislates after the consent of the President then the legislation will prevail even over an existing Union legislation. **71 Mad LW 291: (1958) 28 Com Cas 270: AIR 1958 Mad 403 (406) (Pt A) (Pr 5).**

[**Overruled** on another point in 1961 (2) MLJ 494.]

2. Retrospective effect.

●——**Art. 245** — Hyderabad (Abolition of Jagirs) Regulation (1358 Fasli), S. 6 (4) — Hyderabad Jagirs (Commutation) Regulation (25 of 1359 Fasli), Ss. 4 (1) (c) and 4 (2) — Validity — Regulations cannot be challenged on ground of want of legislative authority — Jagirs taken over prior to Constitution — Retrospective operation of Constitution — Rights extinguished by Abolition Regulation not revived. See Ibid, Art. 31-B. **AIR 1960 SC 862.**

——**Arts. 245, 372 and 246** — "Subject to the other provisions of this Constitution" — Sales Tax Act validly passed before Constitution — Distribution of power in Seventh Schedule not the test of its validity — (Sales-tax — Travancore-Cochin General Sales Tax Act (1125), S. 1. See Ibid, Art. 372. **AIR 1957 Ker 146 (DB).**

[**Overruled** on another point in AIR 1958 SC 560.]

●——**Arts. 245, 246 — Scope — Whether retrospective.**

Arts. 245 and 246 restrict the State Legislature's competence to legislate, but they are clearly pros-

pective in their application and do not affect what was done before they came into force. They need not therefore, be referred to while considering the validity of a State legislation made before the passing of the Constitution. Sheoshankar v. State Govt. of Madhya Pradesh. **52 Cri LJ 1140 : ILR (1951) Nag 646 : AIR 1951 Nag 58 (80) (Pt I) (Pr 152) (FB).**

——Arts. 245, 246 and 372 — Retrospective effect — (Police Act (1861), Pre.).

All laws which were in force in the territory of India upon the commencement of the Constitution continued to remain in force under Art. 372 (1) and Art. 246 does not apply to any Act which was already in existence. The Police Act which was passed in 1861, at a time when there was no representative Government in India, remained in force at the commencement of the Constitution and its constitutionality cannot therefore be challenged on the ground that it being a Central Act is not a valid Act in the State of Punjab after the Constitution. AIR 1951 All 816, Rel. on. **ILR (1956) Punj 1377 : 1957 Cr LJ 540 : AIR 1957 Punj 91 (92) (Pt B) (Pr 5).**

3. Sovereignty of the Legislature.

●**——Art. 245 — State Legislature — Its legislative powers — Extent of and limitations on.**

The Legislatures have undoubtedly plenary powers, but these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within the legislative fields allotted to their jurisdiction by the three Lists under the Seventh Schedule; but beyond the lists the legislatures cannot travel. If the legislatures steps beyond the legislative fields assigned to them, or acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the relevant articles dealing with the said fundamental rights, their legislative actions are liable to be struck down by Courts in India. Therefore, though our Legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution. In the Matter of Under Article 143, of the Constitution of India, **(1965) 1 SCJ 847 : (1965) 1 SCA 447 : AIR 1965 SC 745 (762) (Pt J) (Pr 40).**

——Art. 245 — Legislatures in India possess plenary powers of Legislation confined to the topics mentioned as entries in the Lists. State of Rajasthan v. S. Chawla, **1959 Cri LJ 660: 1959 SCJ 485 : 1959 Mad LJ (Cri) 309 : 1959 Supp 1 SCR 904 : AIR 1959 SC 544 (546) (Pt A) (Pr 8).**

——Art. 245 — Power of legislature to adopt and extend measures enacted by another legislature. See Madras State of Motor Spirit Taxation (Andhra Pradesh) Extension and Amendment Act (5 of 1958). **AIR 1959 Andh Pra 237 (DB).**

——Art. 245 — Character of Provincial Legislature — Consent of Governor-General — Its effect on sovereignty of Legislature. See Government of India Act (1861), S. 42. **AIR 1954 Bom 261 (DB).**

●**——Art. 245 — Federal legislatures — Sovereignty of.**

Per Ansari, J.:— In a country with unwritten unitary constitution as opposed to those with federal Constitutions, with division of powers between the legislatures of the States and the Centre, the question of any particular enactment being ultra vires of the legislature does not arise. But even legislatures under written federal Constitutions are sovereign enacting authorities as regards the subjects assigned to them by their Constitutions. Pannalal Lahoti v. State of Hyderabad. **ILR (1954) Hyd 441 : 1954 Cr LJ 1093 : AIR 1954 Hyd 129 (149) (Pt M) (Pr 143) (FB).**

——Art. 245 — Scope — Grant of village, revenue free — Right of Legislature to take away exemption. See C. P. and Berar Revocation of Land Revenue Exemption Act (37 of 1948), S. 3. **AIR 1958 Madh Pra 97 (DB).**

——Arts. 245 and 246 — Powers of Legislatures are not unrestricted. See Government of India Act (1935), S. 99. **AIR 1956 Mad 642.**

——Arts. 245, 246 — Powers of State legislature to enact laws — Extent of.

The Constitution proceeds on the assumption that sovereignty vested in the people of India and they through the accredited representatives in the Constituent Assembly, gave themselves the Constitution. The State legislature therefore, has no other independent sovereign right to legislate apart from what is contained within the four corners of the Constitution. **1952 Mad WN 299 : 1952-1 Mad LJ 557 : AIR 1952 Mad 613 (631, 632) (Pt H) (Pr 27) (DB).**

——Art. 245 — Indian Legislature — Power to legislate — It has unrestricted power of legislation within the restricted area — Legislature cannot delegate its legislative power to another authority but can delegate non-legislative power.

The Indian Legislature and the Colonial Legislatures are created by Statutes, Orders in Council, or Letters Patent. The power to legislate and its limits are defined by the Constitution. They are in no sense agents of the British Parliament which created them, and the principle of delegata potestas non potest delegare is inapplicable to them. Within the limits prescribed by the statute they have sovereign and plenary powers of legislation of the same nature as the British Parliament. The authority creating them also fixes the limits of the field of legislation within which they possess plenary powers. The area is no doubt restricted but within the area their powers are unrestricted. As the legislative power of a Government is vested in the Legislature under the Constitution Act it is not open to the Legislature to surrender or abdicate that power or delegate it to another authority whether it is the executive Government or some other body. But a Legislature is authorised to delegate a power which is non-legislative in character. Sometimes the delegated power may be in the nature of conditional legislation authorising an authority such as the executive to determine the time of the commencement of an Act and the area of its application after determining, if necessary, certain facts : 4 Cal 172 (PC) and (1884) 9 AC 117, Rel. on. **(1949) 2 Mad 663: 1949 Mad WN 733: 51 Cri LJ 615 : AIR 1950 Mad 243 (246, 247) (Pt E) (Prs 6; 9) (DB).**

●**——Art. 245** — No legislative authority that is subject to a written Constitution which it is bound to obey possesses sovereign powers to fullest extent. Prahalad Jena v. State, **ILR (1950) Cut 222 : 51 Cri LJ 1189 : AIR 1950 Orissa 157 (166) (Pt H) (Pr 22) (FB).**

●**——Arts. 245 and 246 — Limitations on legislative powers — Competency to enact confiscatory or ex-propriatory legislation — (Punjab Consolidation of Land Proceedings (Validation) Act (6 of 1954), Ss. 3 and 4).**

The Punjab Consolidation of Land Proceedings (Validation) Act (6 of 1954) was not beyond the competence of the State legislature on the ground of it being a confiscatory or ex propriatory enactment.

The legislative competence of the State legislature can only be circumscribed by the express prohibition contained in the Constitution itself,

Unless there is any provision expressly prohibiting legislation on the subject either absolutely or conditionally, there is no fetter or limitation on the plenary powers which the State legislature enjoys to legislate on the topics enumerated in the Lists 2 and 3 of the Seventh Schedule.

Inasmuch as the real object of the Act is covered by Entry 18 of List 2 or by Entries 27 and 41 of List 3 and it cannot be said that the object fell within the exclusive field of another legislature, the Act cannot be held to be colourable legislation. State of Punjab v. Kehar Singh, **60 Punj LR 461 : ILR 1958 Punj 2136 : AIR 1959 Punj 8 (13, 14) (Pt B) (Prs 5, 6) (FB).**

4. The legislature and the executive.

●——**Art. 245 — Functions of Government—Executive, legislative and judicial functions — Distinction — Functions which are not legislative or judicial must be regarded as executive.**

Per Gajendragadkar, Shah and Raghubar Dayal, JJ. :— Functions which do not fall strictly within the field legislative or judicial, fall in the residuary class and must be regarded as executive. It cannot however, be assumed that the legislative functions are exclusively performed by the Legislature, executive functions by the executive and judicial functions by the judiciary alone. The Constitution has not made an absolute or rigid division of functions between the three agencies of the State. To the executive, exercise of functions legislative or judicial are often entrusted. For instance power to frame rules, regulations and notification which are essentially legislative in character is frequently entrusted to the executive. Similarly judicial authority is also entrusted by legislation to the executive authority. In the performance of the executive function, public authorities issue orders which are not far removed from legislation and make decisions affecting the personal and proprietary rights of individuals which are quasi-judicial in character. In addition to these quasi-judicial, and quasi-legislative functions, the executive has also been empowered by statute to exercise functions which are legislative and judicial in character, and in certain instances, powers are exercised which appear to partake at the same moment of legislative, executive and judicial characteristics. In the complexity of problems which modern Government have to face and the plethora of parliamentary business to which it inevitably leads, it becomes necessary that the executive should often exercise powers of subordinate legislation. It is indeed possible to characterise with precision that an agency of the State is executive, legislative or judicial, but it cannot be predicated that a particular function exercised by any individual agency is necessarily of the character which the agency bears. AIR 1955 SC 549 and AIR 1961 SC 1669, Rel. on. AIR 1963 Gujarat 80, Not approved. Jayantilal Amratlal Shodhan v. F. N. Rana, **(1964) 5 Guj LR 481 : (1964) 2 SCA 284 : (1964) 5 SCR 294 : AIR 1964 SC 648 (655, 656) (Pt B) (Prs 10, 11).**

●——**Art. 245 — Law — Firman of Maharana of Udaipur, an absolute monarch, is law — Constitution of India, Art. 13.**

In the case of an absolute Ruler like the Maharana of Udaipur, no distinction can be made between an executive order isued by him or a legislative command issued by him. Any order issued by such a Ruler has the force of law and governs the rights of the parties affected thereby. This universal principle in regard to the scope of the powers inherently vesting in sovereignty applies as much to Hindu monarch as to any other absolute monarch. Therefore, it must be held that the Firman issued by the Maharana of Udaipur in 1934 is a law by which the affairs of the Nathdwara Temple and succession to the office of the Tilkayat were governed after its issue. **AIR 1961 SC 298 and AIR 1955 SC 352 and AIR 1956 SC 60, Rel. on.; AIR 1962 Raj 196, Affirmed.** Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan, **(1963) 2 SCA 518: (1964) 1 SCR 561: (1964) 2 SCJ 715 : AIR 1963 SC 1638 (1650) (Pt A) (Prs 32, 33).**

——**Art. 245 — Crown, how far bound by Statute — Legal proceedings against.**

The Crown is not bound by a statute unless expressly named or bound by necessary implication. It is also a part of the common law that no proceeding, civil or criminal, is maintainable against the Crown in the ordinary Courts of law. **1951 Mad WN 391 : 1951-2 Mad LJ 23 : 64 Mad LW 659 : AIR 1951 Mad 880 (881) (Pt B) (Pr 3) (DB).**

5. The legislature and the judiciary.

●——**Art. 245 — Exercise of judicial powers by Legislature — What amounts to — Giving retrospective operation to Act or setting aside decisions of Courts — Effect of.**

The mere fact that the Legislature has given retrospective operation to an Act does not make the Act a thing done in the exercise of judicial power. It is laying down the law to be followed by Courts. The Legislature can interfere with the vested rights of persons in the exercise of its legislative power. That is not adjudicating between parties affected by the Act. AIR 1959 SC 459 and AIR 1944 FC 1, Rel. on. Kochuni v. States of Madras and Kerala, **1960 Ker LJ 1077: (1960) 2 SCA 412 : (1961) 2 SCJ 443 : (1960) 3 SCR 887 : 1960 Ker LT (SC) 31 : AIR 1960 SC 1080 (1109, 1110) (Pt O) (Prs 76, 78).**

●——**Art. 245** — Authority of State Rulers — Pre-Constitution Nizam — Firmans of — Nature and authority of — Special Commission for enquiry in matter of succession of a Nawab — Findings when amount to decree — Execution — Effect of various firmans.

Prior to the integration of Hyderabd State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities. The firmans were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law; nay, they would override all other laws which were in conflict with them. So long as a particular firman held the field, that alone would govern or regulate the rights of the parties concerned, though it could be annulled or modified by a later firman at any time that the Nizam willed.

By a firman dated 19th February, 1939, the Nizam constituted a special commission to investigate and submit a report to him in a case of succession to a deceased Nawab which was transferred to the commission from the file of Darul Quaza Court. A firman dated 26th June, 1947 declared the report of the Commisison worthy of implementation and directed it to be implemented. The report was transmitted to the Chief Justice of the Hyderabad High Court for execution with a direction that report for distribution of matrooka property should be submitted for the Nizam's sanction before carrying it into effect. After the Police Action, the previous order was withdrawn by a firman dated 24th February, 1949, and the decision of the special commission was set aside in respect of certain claimants. This firman was again revoked by a fresh firman dated

7th September, 1949 and the case was referred to another person for opinion and report.

Held, that though the report of the Special Commission could not per se operate as a decree, it had that force after the sanction of the Nizam which was given to it by the firman dated 26th June, 1947. The result was that a decree capable of execution was brought into existence by the firman of 26th June, 1947.

(2) That the decree did not cease to be executable by reason of the firman dated 28th June, 1948.

(3) That the effect of the firman dated 24th February, 1949 was to set aside the decision of the Special Commission in respect of certain claimants and though the subsequent firman dated 7th September, 1949, revoked the earlier firman, it did not restore the decision of the Special Commission. On the other hand, it referred the whole case for further inquiry and investigation which ultimately proved abortive and inconclusive.

(4) That in these circumstances, there was no final and conclusive determination of the rights of the parties in existence after the order of 7th September, 1949, which was capable of execution as a decree.

(5) That all the proceedings subsequent to the withdrawal of the suit instituted by the claimants in the Darul Quaza Court must be held to have been wiped out and the suit must consequently be held to be undisposed of and still pending. (The case was therefore, remanded for fresh trial from the stage of its transfer to the Special Commission.) ILR (1954) Hyd 658, **Reversed.** Ameer-un-Nissa Begum v. Mahboob Begum, **AIR 1955 SC 352 (359, 360, 361, 362) (Pt A) (Prs 15, 18; 19; 21; 25).**

——**Arts. 245, 213** — Jurisdictions of High Court and Legislature — Each supreme within its own sphere — Nature and extent of — Validating enactment — Scope and its effect—Legislature cannot validate unconstitutional act — U. P. Act of 1953 declared unconstitutional — Actions taken or orders passed thereunder cannot be validated by S. 17 of U. P. Ordinance of 1953 — U. P. Public Land (Eviction and Recovery of Rent and Damages) Ordinance (4 of 1959), S. 16. **AIR 1962 All 350 (352, 353) (Pt B) (Prs 9, 10, 13).**

——**Art. 245 — Legislature — Ultra vires—Powers of Court to declare upon validity of legislation when to be exercised.**

Until a bill has become law, the legislative process not being complete, Courts do not come into the picture at all. It is not the function of any Court or Judge to declare void or directly annul a law the moment it has been promulgated. Courts are not a supervisory body over the Legislature. Their approval or disapproval is not needed for an Act passed by the Legislature to have the force of law. Their function is interpretative. In other words, upon any particular case coming before them in which the right of any party is involved they decide whether the Act or any part of it is to be disregarded on the ground of its incompatibility with the Constitution. **1951 All LJ 246 : ILR (1951) 2 All 505 : AIR 1951 All 228 (231, 232, 233) (Pt C) (Prs 13, 23) (DB).**

——**Art. 245 — Powers of Indian Legislature under the Government of India Act.**

Desai, J. :— When an Act of the Indian Legislature is attacked before a Court the Court has simply to see whether that Act was within the scope or mandate of the Indian Legislature and has to uphold it if it was. It follows that, the powers of the Indian Legislature within its mandate are as plenary and full as those of the British Parliament. Provided it has power to make laws with respect to the particular matter, it can make any laws which the British Parliament can. Once it acts within its scope, the difference between the Indian Legislature and the British Parliament disappears. **52 Cr LJ 1191 : ILR (1952) 2 All 360 : AIR 1951 All 44 (50, 51) (Pt C) (Pr 11).**

●— **Art. 245** — Exercise of legislative function — Power to put an end to finality of a decision by Court by enactment — Such an enactment whether amounts to exercise of judicial functions by legislature — Validity of M. P. Act (1 of 1955). See Madhya Pradesh Janpada Election Matters Validating Act (1 of 1955), S. 3. **AIR 1957 Bom 266 (FB).**

●——**Art. 245 — Legislative and judicial functions — Distinction between.**

The judicial function consists in the Court deciding the rights of parties according to law and submitting to the mandate issued by the Legislature; but it is for the Court to interpret what that mandate is and it is for the Court pursuant to that mandate to decide what the rights of the parties are. On the other hand, the legislative process is for the Legislature to lay down the law which will govern parties and transactions. Gulabrao Keshavrao v. Pandurang Bhanji, **ILR (1957) Bom 714 : 60 Bom LR 12 : 1957 Nag LJ 419 : AIR 1957 Bom 266 (268) (Pt A) (Pr 3) (FB).**

——**Art. 245** — Validity of — Houses and Rents — W. B. Premises Tenancy Act (12 of 1956), S. 40 (2-A) — Not invalid on ground of encroaching on judicial field. See Houses and Rents — W. B. Premises Tenancy Act (12 of 1956), S. 40 (2-A). **AIR 1963 Cal 470.**

——**Art. 245 — Usurpation of judicial functions by Legislatures.**

If any enactment disposes of a case by the vigour of the enactment itself without leaving to the judiciary the power to pass the appropriate orders with reference to the law in force at the date of the order, it may be open to the objection of judicial functions being usurped by the Legislature. Where, however, the Legislature enacts a rule of law applicable to certain facts which are to be ascertained by Courts, it would be essentially an exercise of an enacting power though the new law may vary or reiterate the earlier law. The exercise of such a power would obviously be different from the exercise of judicial power inasmuch as, the essential characteristics of a judicial function, namely, adjudication on facts and interpretation of law would be wanting in such a case. AIR 1952 Pat 166, Dist. **ILR (1954) Hyd 766 : AIR 1955 Hyd 257 (259) (Pt B) (Pr 6) (DB).**

●——**Art. 245 — Written constitutions — Interpretation — Principles.**

Per Ansari, J. :— It is true that judiciary in written federal constitutions generally interpret and construe the constitutions, but this is the inevitable consequence of all written ruling instruments, be they federal or unitary, or something of lesser importance. The principles applied in the interpretation and construction of the written Constitutions are not different to those used in construing laws enacted by legislatures where the Constitutions have not been reduced into writing. A written Constitution is generally interpreted like any other statute by reference to its terms, and without any consideration of policy or the

possibility of abuse of power. Therefore, authorities of Courts in countries with written federal Constitutions relating to emergency legislations should not be ruled out on the only ground that a particular legislation is by an authority whose power was not reduced to writing. Pannalal Lahoti v. State of Hyderabad, **ILR (1954) Hyd 441 : 1954 Cr LJ 1093 : AIR 1954 Hyd 129 (148, 149) (Pt L) (Prs 139; 140; 142) (FB).**

——**Art. 245** — Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962), S. 3 — Madhya Pradesh Agricultural Produce Markets (Validation) Ordinance (2 of 1962) — Enactments validating action which is struck down by judgment — Not open to challenge though it renders judgment to have no legal effect as a judicial act performed by legislative authority — Legislature competent to enact laws within limits framed by Constitution. See Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962), S. 3. **AIR 1965 Madh Pra 6 (DB).**

——**Art. 245** — Legislature is competent to put an end to finality of a decision of Court by an enactment — This does not amount to exercise of judicial power — AIR 1961 SC 1486 and AIR 1944 FC 1 and AIR 1953 Nag 40 and AIR 1956 Nag 167 and AIR 1957 Bom 266 (FB), Rel. on. **(1962) Jab LJ 897 : 1962 MPLJ 849 : ILR (1963) Madh Pra 985 : 1962 MPC 321 : AIR 1962 Madh Pra 342 (348) (Pt C) (Pr 13) (DB).**

——**Art. 245 — The Legislature and the Judiciary — Legislation to override effect of Judicial decision — Whether bad as exercise of judicial power — Sales Tax Laws Validation Act (1956), S. 2 — Validity and effect — Injunction issued by Supreme Court prior to passing of Act, restraining-local Sales-Tax Authorities from taxing transactions made in course of inter-State trade or commere — Liability to sales-tax of such transactions after passing of Act—Constitution of India, Art. 286 (2) — M. P. Sales-tax Act (21 of 1947), Ss. 4, 27-A.**

When the Legislature, without amending the law, directs, that pending cases shall be disposed of in a particular manner or that cases decided in one way shall be deemed to have been decided in another way, that would be an exercise of judicial power. But the enactment of a retrospective law or the passing of a Validation Act, which incidentally puts an end to the finality of a decision of a Court or reopens a past controversy cannot be regarded as an exercise of judicial power.

Section 2 of the Sales Tax Laws Validation Act, 1956, is constitutionally valid and hits every judgment, decree or order which pronounces as invalid any imposition of sales-tax or purchase tax on transactions made between 1-4-1951 and 6-9-1955 in the course of inter-State trade or commerce.

The petitioners, prior to the passing of the Sales Tax Laws Validation Act, 1956, had obtained an injunction from the Supreme Court restraining the Sales Tax Authorities in M. P. from enforcing the provisions of the C. P. and Berar Sales Tax Act, 1947. On the date injuction was issued by the Supreme Court in respect of the transactions of sale or purchase effected, on the ground that the transactions had taken place in the course of inter-state trade or commerce when the ban had not been lifted, the Supreme Court pronounced that so far as those transactions are concerned, the M. P. Sales Tax Act as it then stood by itself could not be enforced. The ban was subsequently lifted and what was subsequently sought to be enforced was not only the Act as it stood then but the Act read with the Sales Tax Laws Validation Act, 1956. This was not interdicted by the Supreme Court. The judgment of the Supreme Court, which was given before the lifting of the ban, noticed that lacuna and gave effect to it. **(1962) MPLJ 935 : (1962) Jab LJ 725 : 1962 MPC 216 : AIR 1962 Madh Pra 245 (250, 251, 252) (Pt A) (Prs 11, 13, 14, 15) (DB).**

——**Art. 245 — Powers of Legislatures in India— Exercise of judicial powers — Legality — Validity of M. B. Act (7 of 1956)—(Municipalities — M. B. Municipalities (Second Amendment) Act (7 of 1956), Ss. 2 and 3) — (Municipalities — M. B. Municipalities Act (M. B. Act 1 of 1954), S. 10, Expl. —Validity).**

Where the Legislature, on finding that there has been a lacuna in creating jurisdiction, supplies it, acts within the legislative field. Where, however, the Legislature goes further than this and compels the determination of a case at the hands of a Court taking it completely out of the reach of the Court to make a contrary decision, the mater is one under judicial and not legislative power. AIR 1944 FC 1; AIR 1944 FC 86 and AIR 1950 SC 188, Rel. on.

When the High Court of Madhya Bharat stated that there was no jurisdiction in any particular District Judge till the District Judge was designated by Legislature or some authority acting under its commands, the M. B. Act VII of 1956 merely supplied the lack of jurisdiction by designating the Judge and did so retrospectively. The result of the introduction of the Explanation in S. 10 of the M. B. Municipalities Act, 1954, was to clear the jurisdiction, not only in praesenti when the Act was passed, but for all time. By enacting S. 3, the Legislature provided a right of application to the aggrieved party, giving him the chance of moving the Court once again for the re-opening of the prematurely terminated case and compelled the Court to go back on its own decision where the dismissal was the result only of want of jurisdiction. This cannot be said to be an exercise of a judicial power by the Legislature. Sections 2 and 3 of the Amending Act 7 of 1956 are therefore, a valid piece of legislation. **ILR (1957) Madh Pra 226 : 1957 MPLJ 505 : 1957 Jab LJ 687 : 1957 MPC 498 : AIR 1957 Madh Pra 165 (167, 168, 169) (Prs 9; 11; 16; 17) (DB).**

——**Art. 245 — Statute to rectify mistaken view of law.**

The Legislature constituted under the provisions of the Constitution has the power to set right by means of rectifying the statutes, any mistaken view of the law. RC Nos. 86 to 88 of 1952 (Mad), Foll. **1956 Mad WN 528 : (1956) 2 Mad LJ 87 : AIR 1956 Mad 604 (605) (Pt A) (Pr 1) (DB).**

——**Arts. 245 (1) and 225** — Legislation imposing limitation on powers of High Court under the Constiution cannot be passed — Existing laws which contain such limitation become void after Constitution came into force. **1953 Nag LJ 279 : ILR (1953) Nag 226 : AIR 1953 Nag 148 (150) (Pt B) (Pr 8) (DB).**

——**Art. 245** — Legislation or Ordinance cannot be struck down as being usurpation of judicial power — Bill to replace Ordinance — Leave to introduce refused — Refusal does not amount to disapproving Ordinance — Ordinance does not cease to be operative — Rules of Procedure. See Ibid, Art. 213 (1). **AIR 1960 Orissa 46 (DB).**

●——**Art. 245 — Bihar Land Encroachment Act (XXXI of 1950) — Validity.**

The Articles of our Constitution do not divide and establish areas of black and white. As un-

der the English system, it will be open to the Legislature under our Constitution to override the effect of a judicial decision by legislation provided the legislation does not violate any of the Articles of the Constitution and is not in contravention of fundamental rights as guaranteed by the Constitution.

Though there is no scope for judicial determination by the Collector under the Bihar Act (31 of 1950), the Act cannot be declared invalid simply because it is in effect adjudicating with regard to the rights of the parties. On the mere ground that the Act is so drafted, that instead of giving any judicial discretion to the Collector it finally lays down and indicates the action which has to be taken against the person in possession of a public property within the meaning of the expression as used in the Act it cannot be declared ultra vires. Brij Bhukan v. S. D. O., Siwan, **1954 BLJR 513: 33 Pat 690: AIR 1955 Pat 1 (31, 32) (Pt W) (Pr 21) (SB).**

——**Art. 245** — Consolidation ordered under Section 14, East Punjab Act 50 of 1948 — Prior enforcement of Ch. 2 not necessary — Enforcement of provisions of Act — Not a matter for judicial decision. See Tenancy Laws — East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 1 (3). **AIR 1964 Punj 90 (DB).**

6. Delegation of power by the judiciary.

(a) 'Legislation', meaning of.
(b) Essential legislative power cannot be delegated.
(c) Abdication or self-effacement by legislature.
(d) Control over subordinate agency.
(e) Delegatus non-potest delegare — Sub-delegation.
(f) Power to repeal existing laws.
(g) Power of taxation.
(h) Power to constitute Courts and tribunals.
(i) Conferment of administrative authority.
(j) Sub-delegation of power.
See Note 6 (e).
(k) Legislation relating to foreigners.
(l) Defence of India Act.
(m) Marketing laws.
(n) Tenancy Acts.
(o) Excise laws.
(p) Industrial Disputes Act.
(q) Acts relating to municipalities.
(r) Police Acts.
(s) Rent Control legislation.
(t) Panchayat Acts.
(u) Sales-tax Acts.
(v) Essential Supplies (Temporary Powers) Act.
(w) Factories Act.
(x) Motor Vehicles Act.
(y) Arms Act.
(z) Other instances.

6. Delegation of power by the judiciary.

●——**Arts. 245, 248, 277 and Sch. VII, List II, Entry 5 — State legislature cannot confer higher power on municipal bodies than it has under the Constitution — List II, Entry 5 — Interpretation of — Reference to legislative practice prevailing before Constitution how far relevant — Rule against excessive delegation of legislative powers equally applies in case of municipal bodies.**

Per Subba Rao and Ayyangar, JJ.: The State legislature cannot authorise a municipal body which it creates even though it be for the purpose of local self-Government a power higher than what it itself possesses. Nothing therefore, depends upon the use of the powers in Entry 5 of List II as that expression can refer only to (a) such powers as are actually conferred by the enactment in question and (b) powers which the legislature can by law confer on the executive Government of the State or on any other instrumentality of its creation. AIR 1959 SC 586, Foll.

As power could be conferred on a Municipal Corporation only by law, the nature or quantum of power that could be vested by a law of the State Legislature, cannot transcend the limitations prescribed by the Constitution on the State Legislature. In the context therefore, of the law being one in relation to municipal corporations, the State Legislature can confer on the corporation created, only those powers which are within its legislative power and relevant to the topic. The contention that List II, Entry 5 is to be understood in the light of the legislative practice which prevailed prior to the Constitution cannot be accepted. What the legislature cannot do directly by legislating and conferring power upon the State Government or the instruments which it creates, it cannot obviously confer upon a municipal corporation, merely because it has authority to confer, power upon a municipality in express terms. The power to impose taxes which it cannot impose for the augmentation of the revenues of the State it cannot manifestly confer upon a municipality or other organ of a local self-government. Secondly, the territory of India now embraces what were formerly the territory of ruling princes in which there were no limitations on the powers which might be vested in Municipal bodies. It is not, therefore, possible to refer to a uniform legislative practice prevailing before the Constitution to serve as a guide for interpreting the legislative entries in the Constitution.

If the very nature of a legislative power is such that the legislature cannot delegate essential legislative functions the fact that, the authority to confer power is express, not implicit, makes no difference to the application of the principle. In either event, as the law conferring power even when expressly authorised is a law, the rule against excessive delegation, applies to it as much to cases where the authority to confer power is implicit. The analogy of the American decisions affords no guidance for the application of a different rule as to what constitutes excessive delegation in the case of legislation creating municipal bodies. The same tests have to be applied to determine the limits of permissible delegation of quasi legislative power whether the same be in favour of Municipal bodies or in favour of other administrative agencies. Corporation of Calcutta v. Liberty Cinema, **1965 SC (Notes) 6: (1965) 1 SCA 657 : AIR 1965 SC 1107 (1134, 1135, 1136, 1137, 1138) (Pt F) (Prs 72; 73; 74; 75; 76; 77; 78; 79; 80).**

●——**Art. 245** — Excessive delegation. See Bhopal Reclamation and Development of Lands (Eradication of Kans) Act (13 of 1954), S. 4 (1). **AIR 1965 SC 124.**

●——**Art. 245** — Delegation of Legislative functions — Extent of. See Employees' Provident Funds Act (1952), S. 1 (3) (b). **AIR 1964 SC 980.**

●——**Art. 245 — Delegation of legislative powers — Permissibility — Extent of.**

The power of delegation is a constituent element of the legislative power as a whole, and when the legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their Acts. The Legislature must lay

down the legislative policy and principle, and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf.

Subba Rao, J. :— There is a danger inherent in a process of delegation. An over-burdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. The self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. It is the duty of the Supreme Court to strike down without any hesitation any blanket power conferred on the executive by the legislature. Vasanlal Maganbhai Sanjanwala v. State of Bombay, **63 Bom LR 138 : (1961) 1 SCJ 394 : 1961 Nag LJ 222 : (1961) 1 SCR 341 : AIR 1961 SC 4 (7, 11 12) (Pt A) (Prs 4; 16).**

●——**Arts. 245 and 312** — All India Services Act (1951), Ss. 3 and 4 — Delegation of Rule-making powers — Delegation is not excessive. See All India Services Act (1951), S. 3. **AIR 1959 SC 512.**

●——**Art. 245 — Delegation of Legislative power — Extent of valid delegation — Validity of S. 3 (1) (f) of B. and O. Act (1 of 1915) and Notification of 23rd April, 1951 (Municipalities —Patna Administration Act (1 of 1915), S. 13 (f).)**

An executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms. But this much is clear that it cannot include a change of policy. AIR 1951 SC 332, Expl. and Rel. on.

As a part of an Act can be extended by an executive authority it follows that a section or sections also can be picked out and applied. Also for the same reason that the whole or a part of an Act can be modified, it follows that a section also can be modified. But when a section of an Act is selected for application, whether it is modified or not, it must be done so as not to effect any change of policy or any essential change in the Act regarded as a whole. 4 Cal 172 (PC), Rel. on.

Subject to the above limitation S. 3 (1) (f) of the Bihar and Orissa Act (1 of 1915) as amended in 1928, is intra vires, that is to say, any section or sections of the Bihar and Orissa Municipal Act of 1922 can be picked and applied to 'Patna' provided that does not effect any essential change in the Act or alter its policy.

The Notification of 23-4-1951 extending S. 104 of the Bihar and Orissa Municipal Act, 1922, to the 'Patna' village area, however, effects a radical change in the policy of the Act. The action of the Governor in subjecting the residents of the Patna village area to municipal taxation without observing the formalities imposed by sections 4, 5 and 6 of the Bihar and Orissa Municipal Act of 1922, cuts across one of its essential features touching a matter of policy. Therefore, the Notification travels beyond the authority which S. 3 (1) (f) confers and consequently it is ultra vires. Rajnarain Singh v. Chairman, Patna Administration Committee, **(1954) SCJ 661: (1954) 2 MLJ 344 : 1954 SCA 774 : 1955 SCR 290 : AIR 1954 SC 569 (574, 575) (Prs 31, 32, 36, 37, 39).**

●——**Art. 245 — Delegated legislation — Limitations.**

Per Fazal Ali, J. :— (1) The legislature must normally discharge its primary legislative function itself and not through others (2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law and it may utilize any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do everything which is ancillary to and necessary for the full and effective exercise of its power of legislation. (3) It cannot abdicate its legislative functions, and therefore while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel legislature. (4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed, enables the American Courts to check undue and excessive delegation but the Courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in this country on the power of the legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to "abdication and self-effacement."

Delegated legislation, using the expression in the popular sense, has become a present-day necessity and it has come to stay — It is both inevilable and indispensable. The legislature has now to make so many laws that it has no time to devote to all the legislative details, and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by those who are more familiar with the subject. Again, when complex schemes of reform are to be the subject of legislation, it is difficult to bring out a self-contained and complete Act straightway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is to be made. Thus, some degree of flexibility becomes necessary, so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again. The advantage of such a course is that it enables the delegate authority to consult interests likely to be affected by a particular law, make actual experiments when necessary, and utilize the results of its investigations and experiments in the best way possible. There may also arise emergencies and urgent situations requiring prompt action and the entrustment of large powers to authorities who have to deal with the various situations as they arise.

The complexity of modern administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions. But while emphasizing that delegation is in these days inevitable, one should not omit to refer to the dangers attendant upon the injudicious exercise of the power of delegation by the legislature. The dangers involved in defining the delegated power so loosely that the area it is intended to cover cannot be clearly ascertained and in giving wide delegated powers to executive authorities and at the same time depriving a citizen of protection by the Courts against harsh and unreasonable exercise of powers, are too obvious to require elaborate discussion.

Per Mukherjea J. — The Legislature cannot part with its essential legislative function which consists in declaring its policy and making it a binding rule of conduct. A surrender of this essential function would amount to abdication of legislative powers in the eye of law. The policy may be particularised in as few or as many words as the legislature thinks proper and it is enough if an intelligent guidance is given to the subordinate authority. The Court can interfere if no policy is discernible at all or the delegation is of such an indefinite character as to amount to abdication, but as the discretion vests with the legislature in determining whether there is necessity for delegation or not, the exercise of such discretion is not to be disturbed by the Court except in clear cases of abuse. These are the fundamental principles and in respect to the powers of the legislature the constitutional position in India approximates more to the American than to the English pattern. There is a basic difference between the Indian and the British Parliament in this respect. There is no constitutional limitation to restrain the British Parliament from assigning its powers where it will, but the Indian Parliament qua legislative body is fettered by a written constitution and it does not possess the sovereign powers of the British Parliament. The limits of the powers of delegation in India would therefore have to be ascertained as a matter of construction from the provisions of the Constitution itself and the right of delegation may be implied in the exercise of legislative power only to the extent that it is necessary to make the exercise of the power effective and complete.

Per Bose J. — The concept of legislative power which had hitherto been accepted in India continued to hold good but this limitation was placed upon it by the Constitution, namely that wherever the Constitution empowers Parliament to do a particular thing as opposed to legislating generally on a particular topic, there can be no delegation. Parliament must itself act. It has been held from the earliest times even when viewed through purely British eyes, that a legislature created by the British Parliament (1) cannot act beyond the ambit of its powers, the extent of which must be gathered from the document which brings it into being, (2) it cannot create a new legislature for the purpose of legislating generally and (3) it cannot abdicate. The same limitations exist in the case of the Indian Parliament because that, unlike the British Parliament, is not free to do as it likes; it is bound by the Constitution.

Kania C. J. — While a legislature as a part of its legislative functions can confer powers to make rules and regulations for carrying the enactment into operation and effect, and while a legislature has power to lay down the policy and principles providing the rule of conduct and while it may further provide that on certain data or facts being found and ascertained by an executive authority, the operation of the Act can be extended to certain areas or may be brought into force on such determination which is described as conditional legislation, the power to delegate legislative functions generally is not warranted under the Constitution of India at any stage. Therefore, the contention that legislative power carries with it a general power to delegate legislative functions, so that the legislature may not define its policy at all and may lay down no rule of conduct but that whole thing may be left either to the executive authority or administrative or other body, is unsound.

The true test in respect of 'abdication' or 'effacement' appears to be whether in conferring the power to the delegate, the legislature, in the words used to confer the power, retained its control. Does the decision of the delegate derive sanction from the act of the delegate or has it got the sanction from what the legislature has enacted and decided?

To say that the true test of effacement is that the authority which confers power on the subordinate body should not be able to withdraw the power appears to be meaningless.

Abdication by a legislative body need not necessarily amount to a complete effacement of it. Abdication may be partial or complete. When in respect of a subject in the Legislative List the Legislature says that it shall not legislate on that subject but would leave it to somebody else to legislate on it, why does it not amount to abdication or effacement? I full powers to do anything and everything which the legislature can do are conferred on the subordinate authority, although the legislature has power to control the action of the subordinate authority, by recalling such power of repealing the Acts passed by the subordinate authority, the power conferred by the instrument amounts to an abdication or effacement of the legislature conferring such power.

The power of delegation, in the sense of the legislature conferring power, on either the executive government or another authority, "to lay down the policy underlying a rule of conduct" is not permitted. In re, Constitution of India and Delhi Laws Act (1912) etc. **1951 SCJ 527: 1951 SCR 747: AIR 1951 SC 332 (345, 346, 355, 361, 400, 401, 438) (Pt B) (Prs 35, 36, 38, 74, 90, 246, 378, 379).**

■ ——**Art. 245** — Delegated legislation—Difference between Indian and American Constitution indicated. See Ibid, Preamble. **AIR 1954 All 538 (FB).** [**Reversed** on another point in AIR 1961 SC 420]

■ ——**Art. 245** — Delegation of powers — What constitutes — S. 62 of Assam Act (25 of 1953), not invalid. See Assam Local Self-Government Act (25 of 1953), S. 62. **AIR 1959 Assam 221 (SB).**

——**Art. 245** — Rule-making power—Extent of—Delegation of legislative powers — Principles. See Sales Tax — Assam Sales Tax Act (17 of 1947), S. 52 (1). **AIR 1959 Assam 216 (DB).**

——**Art. 245** — Legislature entrusted by Constitution to enact particular kind of legislation — In such a case specifically there can be no delegation of legislative power. **AIR 1956 Assam 142 (DB).**

[**Reversed** on another point in AIR 1957 SC 414]

——**Art. 245 — Delegation of power by legislature—General — Foreigners Act (1946), Pre, S. 3 — Object of Act — S. 3 is not bad for excessive delegation.**

Essential legislative functions must not be delegated but subordinate legislative functions may. Legislature, therefore, necessarily leaves the duty of making rules and of taking necessary actions under the statute to the appropriate Government. But this delegation must not be uncontrolled and unguided and only such delegation of authority may be made to the Government for the exercise of which sufficient guidance has already been provided in the statute itself. AIR 1958 SC 538 and AIR 1961 SC 4, Rel. on.

The object of the Foreigners Act is limited to powers over the entry, presence and departure of foreigners into, in and from India. The problem of immigration and presence of foreigners, is difficult for the legislature to resolve once for all, because the problem is linked up with many variables both national and international. S. 3 of the

Foreigners Act, authorising prohibition, regulation or restriction on the entry of foreigners into India or their departure therefrom or their presence or continued presence therein is not bad for **excessive** delegation of authority, because the power in respect of entry of foreigners into India, their presence therein and their departure therefrom must be left as of necessity, to the discretion of the executive. **67 Cal WN 206: (1963) 2 Cri LJ 9: AIR 1963 Cal 369 (371, 372) (Pt A) (Pr 10).**

——Art. 245—Iron and Steel Control Order (1956) — Plea as to excessive power of delegation — When available — Legislature selecting instrumentality by whom power is to be exercised — Delegation cannot be condemned on ground of excessive delegation — Power conferred by R. 11 not arbitrary — Does not suffer from vice of excessive delegation — Essential Commodities Act (1955) Ss. 3 and 5

Where the delegation of powers under a provision of law is unguided and unbriddled the delegation may be condemned as unreasonable; but where the legislature selects the instrumentalities or indicates the method of selecting the instrumentalities, the legislative wisdom must not be questioned on the plea that the Government has been vested with excessive power of delegation. Such a criticism is subversive of the rights which legislatures enjoy while dealing with matters falling within the class or subject in relation to which the Constitution has granted them legislative powers. Under S. 5 of the Essential Commodities Act, the power to make orders (under S. 3 of the Act, under which the Iron and Steel Control Order has been framed) may be exercised, inter alia, by an officer or authority subordinate to the Central or the State Governments as may be specified by the notified order by the Central Government. The section therefore selects the instrumentality by whom the power under the Act may be exercised. 'Any person' authorised by the Central Government becomes an authority subordinate to it and as such an instrumentality selected by the legislature. Exercise of power under the Act by such an authority must not be condemned on the ground of excessive delegation power. AIR 1954 SC 465, Rel. on.

S. 3 of the Essential Commodities Act leaves it to the Central Government by order to provide for regulation and prohibition of production, supply and distribution of essential commodities and trade and commerce therein, if in its opinion it is necessary to do so for increasing supplies or securing equitable distribution thereof. The Statute supplies the guidance for the exercise of power under the Control Order (and also under clause 11 thereof), and it cannot, therefore, be said that the provisions of clause 11 invest the Controller with arbitrary powers. AIR 1960 SC 475 Rel. on. **67 Cal WN 120: AIR 1963 Cal 355 (357, 359) (Pt B) (Prs 9, 13, 15).**

——Art. 245—Delegation of power by legislature—Nature and extent of — Indian Dock Labourers Act (1934), S. 5 — Regulations framed under — Indian Dock Labourers Regulations (1948) — Power given to frame regulations not exceeded—No delegation of unrestricted power to make laws. **1962 (1) Cr LJ 22 (24, 25) (Pt B) (Pr 13) (Cal).**

——Art. 245 — Extent to which legislative power may be delegated — There exists great danger in excessive delegations to executive. **AIR 1955 NUC (Cal) 5922.**

● **——Art. 245**—Delegation of legislative functions — Right of Maharaja of Travancore. See Travancore Tobacco Act (1 of 1087), S. 31. **AIR 1958 Ker 129 (FB).**

[**Reversed** on another point in AIR 1962 SC 922]

——Art. 245—Legislature making law containing determination of legislative policy — It has discretion to delegate authority to subordinate agency to deal with details for working out the law and to carry the enactment into operation—MP Minimum Wages Fixation Act (XVI of 1962), S. 3 — Validity — Act not violative of freedom of contract. See M. P. Minimum Wages Fixation Act (16 of 1962), S. 3. **AIR 1964 Madh Pra 45 (DB).**

● **——Art. 245** — M. P. Accommodation (Requisition) Act (63 of 1948) — Delegation of powers of requisition under S. 14 to Collector — Extent of power so conferred. See M. P. Accommodation (Requisition) Act (63 of 1948), S. 3. **AIR 1962 Madh Pra 146 (FB).**

● **——Art. 245** — Delegation of powers to outside agency — Conferment of uncontrolled, arbitrary and naked powers is unreasonable if those powers infringe fundamental rights. State v. Haidarali, **1957 Jab LJ 658: 1957 MPC 473: 1957 MPLJ 549: 1957 Cri LJ 1266: AIR 1957 Madh Pra 179 (182) (Pt B) (Pr 9) (FB).**

[**Held reversed** on another point by Cri App. 162 of 1957 dated 16-12-1959 in 1961 (1) Cri LJ 674 (MP).]

● **——Art. 245 — Delegation of power by Legislature — Validity of.**

The delegation of its power by the Legislature may, up to a point, be good, but it will not be good if it confers naked and arbitrary powers on the delegate. The restriction placed upon the fundamental rights by Control Orders should be not only reasonable but should be manifestly reasonable. There should be some standard which the Courts can see and examine and from which they can determine whether the restriction is reasonable or not. AIR 1954 SC 224 Foll. State v. Haidarali, **1957 Jab LJ 658: 1957 MPC 473: 1957 MPLJ 549: 1957 Cri LJ 1266: AIR 1957 Madh Pra 179 (190) (Pt G) (Pr 42) (FB).**

[**Held reversed** by Cri App. 162 of 1957 dated 16-12-1959 on another point in 1961 (1) Cri LJ 674 (MP)]

——Art. 245 — Power of delegation — Limitations on — Legislature must indicate policy and lay down principles for carrying it out — Delegation of power to Executive to fill up details, to create machinery for effectuating purpose of legislation and to make rules towards that end. See Ibid, Art. 265. **AIR 1966 Mad 220.**

——Art. 245 — Delegated legislation—Rule making power delegated to executive— Validity—Legislative practice —Madras Village Panchayats Act—Rules under, constituting tribunals to hear election disputes are valid—(Madras Village Panchayats Act (10 of 1950), S. 112 (2) (i)).

Once it is established that the legislature has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do everything which is ancillary to and necessary for the full and effective exercise of its power of legislation.

The utilisation of the Government for setting up the machinery for the adjudication of disputes to enable the constitution of the Panchayat Board under the Act is merely a ministerial provision, in respect of which it is competent for the Legislature to employ the Executive for making the rules.

The Legislative practice in India also supports the validity of this type of legislation. The juridical basis upon Legislative practice relied upon to sustain the validity of a law is that the content of Legislative power granted by the Constitution should be measured by the manner in which the same has been utilised before the Constitution. In other words, the entry in the Legislative list conferring upon the Legislature a power in relation to a subject would include in the light of this Legislative practice, a right to legislate in the manner in which it was hithertofore done.

Therefore, the rules framed by Government under S. 112 (2) (i) constituting the tribunals to hear election disputes under the Village Panchayats Act are intra vires and valid. **AIR 1955 NUC (Mad) 2421.**

——Art. 245 — Delegated legislation.

The proposition that subsidiary or delegated legislation has become inevitable and necessary owing to the increased pressure on legislation and the complexity of the subject-matter of the present day legislation is well recognised. Due to the complexity of the modern social and economic conditions the Legislature has been compelled to entrust the Department responsible for administering the law with the power of deciding administrative or quasi-judicial issues.

The usual test for finding out whether a delegation of power is permissible or not is to see if the delegation amounts to an abdication of legislative powers. **ILR (1955) Mys 597: AIR 1956 Mys 20 (24) (Pt G) (Pr 10) (DB).**

●**—Art. 245** — Delegation of legislative power — Extent of delegation allowed. Ganpatrao Yadorao v. State of Madh. Pra., **AIR 1955 NUC (Nag) 1341 (FB).**

——Art. 245 — Delegated legislation.

The weight of judicial authority now favours the view that what can be delegated is only the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it. The Legislature has always to declare the policy of the law and fix the legal principles, and after it has done that it can, under certain circumstances, delegate to executive officers the authority to make rules and regulations. State v. Kunja Behari Chandra, **1954 Cr. LJ 1187: 1954 BLJR 459: 33 Pat 507: AIR 1954 Pat 371 (384) (Pt K) (Pr 46) (FB).**

——Art. 245 — Power to make rules and regulations for carrying enactment into operation and effect — Legislature can as part of its legislative functions confer power on Executive. **AIR 1956 Pepsu 40 (45) (Pt C) (Pr 16) (DB).**

●**——Art. 245 — Power of legislature to delegate its powers — Limits of.**

It is well established that the power of delegation is a constituent element of the legislative powers as a whole, and in modern times when the legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their enactments. It is further well settled that though subsidiary legislative authority may thus be delegated, the legislature cannot delegate its essential legislative function in any case, and it must lay down the legislative policy and principle and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf. AIR 1951 SC 332 and AIR 1961 SC 4 and ILR (1958) 8 Raj 248, Rel. on. Virendra Kapur v. University of Jodhpur, **1964 Raj LW 328: ILR (1964) 14 Raj 463: AIR 1964 Raj 161 (165) (Pt A) (Pr 13) (FB).**

6 (a). 'Legislation', meaning of.

●**——Art. 245 — Delegated legislation — Awards pronounced by Industrial Tribunals — Whether there is legislation or delegated legislation in awards — (Industrial Disputes Act (1947), Section 15 (1)).**

The powers vested in the Industrial Tribunals in the matter of the settlement of industrial disputes referred to them for adjudication, can hardly be characterised as legislative powers.

The Industrial Courts are undoubtedly free to apply the principles of justice, equity and good conscience, keeping in view the further principle that their jurisdiction is invoked not for the enforcement of mere contractual rights but for preventing labour practices regarded as unfair and for restoring industrial peace. The process does not cease to be judicial by reason of that elasticity or by reason of the application of the principles of justice, equity and good conscience.

There is neither legislation nor delegated legislation in the awards which are pronounced by the Industrial Tribunals while adjudicating upon the industrial disputes referred to them for adjudication. Niemla Textile Finishing Mills, Ltd. v. State of Punjab, **(1956-57) 11 FJR 481: ILR (1957) Punj 989: (1957) SCJ 275: (1957) 1 Lab LJ 460: (1957) SCA 640: (1957) MLJ (Cri) 181: 1957 SCR 335: AIR 1957 SC 329 (338, 339) (Pt D) (Prs 22, 23, 24).**

——Art. 245 — 'Legislation' — Meaning of — Power of Legislature to adopt and extend measures enacted by another Legislature. See Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act (5 of 1958). **(1959) 1 Andh WR 216: AIR 1959 Andh Pra 237 (DB).**

——Art. 245 — Power to create public office.

The creation of a public office is generally said or assumed to be a legislative function, though it has been held in a unmber of cases that the Legislature in providing for the creation of local offices, may make the operation of the Act in a given locality dependent upon some contigency or event. In either case the Legislature cannot delegate to another body the power to create an officer or appoint an officer which is enjoined upon it by a constitutional provision. 79 Law Ed. (Anno.) 573-575 and 79 Law Ed (Anno) 479, Rel. on. **AIR 1956 Assam 142 (148) (Pt D) (Pr 13) (DB).**

[**Overruled** on another point in AIR 1957 SC 414.]

——Art. 245 — "Legislation" — Central Excise Rules (1944), Rule 8 — Collector withdrawing exemption from particular area does not legislate. See Central Excise Rules (1944), Rule 8. **AIR 1959 Bom 256.**

——Art. 245 — Delegation of legislative power and non-legislative power such as power to make rules, bye-laws and other things for carrying out purpose of law — Latter is not delegation of legislative power. **AIR 1955 NUC (Hyd) 1548 (DB).**

6 (b). Essential legislative power cannot be delegated.

●**——Art. 245 — Delegation of essential legislative functions — Prohibition against — Whether applies even where there is express authority to confer power.**

If the nature of legislative power is such that the legislature cannot delegate essential legislative functions the fact that the authority to confer powers is express and not implicit makes no difference to the application of the principle. In either event, as law conferring power expressly is a law, the rule against excessive delegation

applies to it as much to cases where the authority to confer power is implicit. The Corporation of Calcutta v. Liberty Cinema, **(1965) 1 SCA 657: AIR 1965 SC 1107 (1134 to 1138) (Pt F) (Prs 72 to 79 and 80).**

●——**Art. 245 — Plenary power of Legislature — Delegation of subsidiary or ancillary measure.**

When a Legislature is given plenary power to legislate on a particular subject there must also be an implied power to make laws incidental to the exercise of such power. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power. A Legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law-making has to be discharged by the Legislature itself but delegation may be resorted to as a subsidiary or an ancillary measure. (1909) 8 CLR 626; (1878) 3 AC 889, Rel. on. Edward Mills Co. v. State of Aimer, **1955 SCA 24: (1954) An WR (SC) 1: (1955) 1 MLJ (SC) 1: 1955 SCR 735: 1955 SCJ 42: AIR 1955 SC 25 (32) (Pt B) (Pr 17).**

●——**Art. 245** — Validity of Section 3 of Act (24 of 1946) — Delegation of legislative powers — Essential power of legislation — Bar against delegation of. See Essential Supplies (Temporary Powers) Act (1946), S. 3. **1954 Cri LJ 1322: AIR 1954 SC 465.**

●——**Art. 245** — Legislature must normally discharge its primary legislative function itself and not through others. In re Art. 143 Constitution of India and Delhi Laws Act (1912), **1951 SCJ 527: 1951 SCR 747: AIR 1951 SC 332 (345, 355, 361, 400, 401, 433) (Pt B) (Prs 35, 36, 38, 74, 90, 246, 378, 379).**

——**Art. 245** — Delegated powers — Execution of — Extent of — Delegation of essential legislative powers. See Municipalities — U. P. Nagar Mahapalika Adhiniyam (2 of 1959), S. 560. **AIR 1965 All 356.**

——**Art. 245** — Validity — Delegation of legislative powers — Principles — Rule 17 of U. P. Agri. Income-tax Rules 1949 not covered by S. 44 (2) or S. 8 of U. P. Agri. Income-tax Act — Rule acted upon bona fide by assessee—State cannot challenge validity retrospectively—Rule held effective in respect of past transactions. See U. P. Agricultural Income Tax Rules (1949), Rule 17. **ILR (1959) 2 All 353.**

——**Art. 245** — Delegation of legislative power — What amounts to. See U. P. Industrial Disputes Act (28 of 1947), S. 3. **AIR 1954 All 550 (DB).**

●——**Art. 245 — Delegation of legislative power — Validity — The rule and the exceptions.**

The power conferred upon a Legislature to make laws cannot be delegated or transferred by it to any other body or authority. Such Legislature, though it may have plenary powers within the limits set by the Constitution of the State, cannot give up those powers and thus pass on the duty of making laws to another authority. In the very nature of things, the duty cast upon a Legislature to make laws must be discharged by the Legislature itself and it cannot be transferred to other authorities. This is the general well-established principle. The extension of the life of an Act, i.e., the duration of a temporary Act is an exercise of legislative function and such a power cannot be delegated to any non-legislative authority.

Certain exceptions have been engrafted on the cardinal principle that the Legislature cannot transfer or delegate this power to any other department or body which may be summed up under these general heads:—

(1) A statute may be conditional and its taking effect may be made to depend upon some subsequent event. This is not really an instance of a delegation of legislative function. Such a form of legislation is inherent in the very nature of the plenary character of legislative power vested in a particular Legislature.

(2) A Legislature may enact a law complete in itself, but may expressly authorise specific officials within definite limitations to provide rules and regulations for carrying out and enforcement of the law enacted.

(3) A Legislature may delegate any power which is not strictly legislative although it may itself be in a position to exercise that power. State v. Ram Kishan, **1951 AWR (HC) 128: 52 Cri LJ 333: 5 AI Cr D 306: 1951 ALJ 64: ILR (1952) 1 All 376: 1951 All Cri R 23: AIR 1951 All 181 (191, 192, 194, 195) (Prs 46, 49, 57, 60) (FB).**

——**Art. 245 — Extension of life of Act.**

Extending the life of an Act is a Legislative function exclusively exercisable by the legislature. **('51) 1951 All LJ 9 (DB).**

——**Art. 245 — Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act (15 of 1960), Section 35 — Delegated Legislation — Principle underlying such legislation — Its application to notification issued under Section 35 — Notification is not objectionable.**

In respect of delegated legislation, what is prohibited is the delegation by the Legislature of its essential functions of laying down legislative policy in respect of a measure and formally enacting it as a rule of conduct. When the Legislature declares the policy of the law and the legal principles which are to control a given case, and provides also a standard to guide the officials or the body in power to execute the law if the power is delegated which does not contravene in any manner the declared policy of the law, it cannot be said that such a delegation is objectionable. Applying this principle to the issue of G. O. Ms. 575, dated 11th October, 1961 issued under Section 35 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act (15 of 1960), it cannot be said that it encroached upon the essential legislative functions entrusted solely to the Legislature. What it does is to merely put in practice the policy in regard to appeals laid down by S. 20. AIR 1951 SC 332; AIR 1954 SC 465, 569; AIR 1961 SC 4, Rel. on. **(1964) 1 Andh LT 236: (1964) 2 Andh WR 88.**

——**Art. 245 — Limits of power of delegation — Citizenship Act (1955), Section 9 — Delegation of power under — Validity — (Citizenship Act (1955), Section 9).**

The true distinction is between the delegation of power to make the law, and conferring authority or discretion as to its execution to be exercised under and in pursuance of law. The first cannot be done; to the latter no valid objection can be made. 1 Ohio St. 88, Foll.; AIR 1956 Andh 129 and 72 Pa. St. 491, Rel. on.

In conferring under Section 9 of the Citizenship Act read with the rules made thereunder, on the Central Government the power of prescribing the authority to determine the questions whether a citizen of India has voluntarily acquired the citizenship of any other country the Legislature did

not delegate its power to make a law but only conferred a power on the Central Government to implement the law in the manner prescribed. It cannot be said that the Legislature in the circumstances has abdicated its function. The delegation therefore, is within the limits permissible by law. **1957 Andhra LT 689: (1957) 2 Andhra WR 527: ILR (1957) Andh Pra 755: AIR 1957 Andhra Pra 1047 (1053) (Pt D) (Prs 18, 20) (DB).**

[**Overruled** on another point in AIR 1962 SC 1052].

——**Art. 245 — Delegation of power by Legislature — Limits to.**

The Legislature cannot part with its essential legislative function which consists in declaring its policy and making it a binding rule of conduct. A surrender of this essential function would amount to abdication of legislative powers in the eye of law. It cannot therefore, create a sort of a parallel Legislature to do what the Legislature should have done itself. AIR 1951 SC 332 Rel. on.

In this respect the real test is whether there is delegation in matters of essential legislative principle and policy to the Executive Government. If it is, then it must be held that the legislation is void for excess of delegation. This is specifically so where the Legislature has been entrusted by the Constitution with the right to enact a particular kind of legislation; for, in such a case there can be no delegation of legislative power. AIR 1954 SC 569, Rel. on. **AIR 1956 Assam 142 (146, 147) (Pt A) (Prs 8, 9) (DB).**

[**Reversed** on another point in AIR 1957 SC 414.]

——**Art. 245 — Delegation of legislative power— Tests to determine — Duty of Court.**

It is still incumbent upon the Court, when a legislation is challenged on the ground that it constitutes delegated legislation, to consider whether in delegating certain power to the Government or to an outside agency, the Legislature has divested itself of any essential judicial function. It is also incumbent upon the Court to consider whether the power has been delegated to the Government after the Legislature has laid down the vital policy. Once the policy is laid down and is made clear in the Act itself, it would not be for the Court to consider the extent and the nature of the delegation; that must be left to the discretion of the Legislature. The Court will not and cannot say that the Legislature should have delegated up to this point and not beyond it. If the delegation does not constitute a delegation of essential judicial functions and if the delegation does not result in the outside agency laying down the policy and not the Legislature, then the delegation must be upheld as within the competence of the Legislature. AIR 1952 SC 252 and AIR 1951 SC 69, Rel. on; Case-law referred. **56 Bom LR 321 : ILR (1954) Bom 1278 : AIR 1954 Bom 397 (402) (Pt A) (Pr 11) (DB).**

——**Art. 245 — Delegation of legislative functions — Principles.**

The power to delegate legislative functions generally is not warranted under the Constitution of India, at any stage. If, owing to unusual circumstances and exigency the Legislature does not choose to lay down detailed rules or regulations, that work may be left to another body which is then deemed to have subordinate legislative power. This is described as 'subordinate legislation'. The Legislature while entrusting power to an outside agency, must see that such agency acts as a subordinate authority and does not become a parallel Legislature. So long as a standard is established by Statute no constitutional delegation of legislative power is involved. It is equally true that where no policy is laid down but arbitrary power is given without limit, then there is a surrender of legislative function. AIR 1951 SC 332 and 93 Cal LJ 304, Foll. **AIR 1959 Cal 45 (50; 51) (Pt C) (Pr 18).**

[Impliedly **Overruled** on another point in AIR 1963 SC 1811.]

——**Art. 245** — Validity — Delegation of legislative powers — What amounts to — Policy and purpose of the Rules — S. 3 not invalid due to excessive delegation. See Defence of India Act (1962), S. 3. **1963 (2) Cr LJ 624 : AIR 1963 Ker 341 (DB).**

——**Art. 245 — Delegated legislation — (T. C.) Motor Vehicles Act (14 of 1950), S. 12 — Policy and guiding principles for levy of tolls not indicated in Act — S. 12 amounts to excessive delegation of legislative powers — (T. C.) Notification, dated 28-4-1953 held invalid.**

The essential powers of legislation cannot be delegated. The legislature must declare the policy of the law and the legal principles which are to control any given case and must also provide a standard to guide the officials or the body in power to execute the law. The legislature cannot strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law making has to be discharged by the legislature itself; but there can be a delegation resorted to as a subsidiary or ancillary measure. The legislature cannot abdicate its functions in favour of another.

There is no indication anywhere in the T. C. Motor Vehicles Act as to what circumstances can be considered to be 'special circumstances' under S. 12 justifying the levy of a toll. The decision as to what will constitute a 'special circumstance' under S. 12 for levy of a toll, has been completely left to the sole and exclusive discretion of the Government. Again, the legislature has not specified on what basis the toll is to be levied on the various vehicles using the bridge or road. The maximum levy, that could be made under the section has not in any way been indicated by the legislature. As it is, it is open to the Government to treat any circumstance as a 'special circumstance' and the only requirement is that the Government should be so satisfied. In the absence of any legislative indication in the Act regarding any policy to govern the Government before taking action under S. 12 or placing any limits of assessment for the guidance of the assessing authority in the matter of fixing of rates of tolls, the provisions of Section 12 of the Act amount to excessive delegation of legislative power. Hence, the notification, dated 28-4-1953 issued by the T. C. State Government under Section 12 of the Act, directing the levy of tolls on vehicles using the bridge at Palai across the Meenachil river must be held to be invalid. **1961 Ker LJ 1235: ILR (1962) 1 Ker 494: AIR 1962 Ker 298 (308, 309) (Prs 59, 61, 62, 68).**

——**Art. 245** — Central Excises and Salt Act (1944), S. 12 — Delegation of legislative power — Principles — Bar against surrender of Legislative power to subordinate — Does not cover authority to frame Rules where object and limits of Rules are not vague to frame rules amounting to mere ministerial acts — Delegation of power under S. 12 — Not invalid — Rules framed under the power are valid. See Central Excises and Salt Act (1944), S. 12. **AIR 1961 Ker 93.**

——**Arts. 245, 265** — T. C. Vehicles Taxation Act (1950), S. 18 (1) — Notification under, enhanc-

ing maxima specified in Schs. 1 and 2 — Validity — Delegation of legislative functions — Principles — Notification held ultra vires. See T. C. Vehicles Taxation Act (14 of 1950), S. 18 (1). **AIR 1960 Ker 58.**

——Art. 245 — Delegation of legislative powers— Limits of.

The Legislature cannot repose any power essentially legislative in another body or organ; it cannot efface itself and set up a parallel legislative authority; it must exercise its judgment on vital matters of policy and enact the general principles which should be embodied in the legislation; but it can confer upon any person or body fitted to exercise it, the power to work out details and particulars for carrying out its policy and in order to give effect to the legislation in a particular direction. It is not possible to lay down any hard and fast rule for determining whether a matter is of principle and policy or whether it is one of detail, ancillary to the statute for carrying it into effect. The question, though often be set with difficulty, has to be answered with reference to the nature of the impugned legislation. AIR 1951 SC 69; AIR 1951 SC 332; AIR 1951 SC 484; AIR 1954 SC 569 and AIR 1949 FC 175, Rel. on. **ILR (1955) Madh Bha 406: Madh BLR 195[illegible] (Civ) 528: Madh BLJ 1955 HCR 1949: AIR 1955 MB 177 (178) (Pt A) (Pr 3) (DB).**

——Art. 245 — Madhya Pradesh Accommodation Control Act (41 of 1961), S. 3 (2) — Legislature cannot delegate its essential legislative function — It is open to legislature to formulate policy and to delegate rest of legislative work — Held, S. 3 (2) of the Act not hit by Art. 245 of Constitution. AIR 1954 SC 465 and AIR 1961 SC 4, Rel. on. **1964 Jab LJ 628: 1965 MPLJ 188: AIR 1965 Madh Pra 160 (163) (Pt A) (Pr 8) (DB).**

●——Art. 245 — Delegation of power by Legislature — Limits to power.

The Supreme Court has laid down that all the essential law making must be done by the Legislature itself. What is meant by 'Essential Law making' is defined by the Supreme Court as the policy and the intent and purpose of the law. Thereafter, according to the Supreme Court, delegation is perfectly valid so that the details of the law may be filled in by the designated authority. But even there, unless the intent and purpose and the policy of the law is clearly adequate, or there is some ancillary provision controlling the vagaries of the delegate, the law is found to be defective and has been struck down. State v. Haidarali. **1957 Jab LJ 658: 1957 MPC 473: 1957 MPLJ 549: 1957 Cri LJ 1266: AIR 1957 Madh Pra 179 (188) (Pt C) (Pr 32) (FB).**

[Held reversed by Cri. App. 162 of 1957 dated 16-12-1959 on another point in 1961 (1) Cri LJ 674 (MP).]

——Art. 245 — Unconstitutionality on ground of excessive delegation — Karnatak University Act (Bom. Act 20 of 1949), Ss. 19, 29 — Provision empowering Syndicate to make Ordinances for supervising and controlling conduct and discipline of students — Not unconstitutional on ground of excessive delegation by Legislature — Ordinances 109, 119 and 120 — Validity — Not beyond scope of Ss. 19 and 20 — Power to arrange for conduct of examinations — Includes power to arrange for conduct and discipline of students. Karnatak University Act (Bom. Act 20 of 1949), Ss. 19 and 20 — Whether unconstitutional on ground of excessive delegation — Karnatak University Ordinances, Ordinances 109, 119 and 120 — Validity — Whether beyond scope of Ss. 19 and 20 of Karnatak University Act.

What may be described as essential legislative function of the legislature consists in declaring its policy and making it a binding rule of conduct and the true test of whether there has been a delegation of any part of that essential legislative function is to see whether decisions or exercise of power by the delegate derive sanction from the act or volition of the delegate himself or they have got the sanction from what the legislature has enacted and decided.

The Legislature by establishing the Karnatak University, naming its authorities and allocating to several authorities the duties and powers necessary for the purpose for which the University has been established has clearly indicated its policy and laid down the rule of conduct for all the authorities functioning under the Act. There is no question therefore, of either a delegation of essential legislative functions or excessive delegation of such functions or of a conferment of arbitrary power on statutory authorities without any guidance whatever having been given to them as to the manner in which those powers are to be exercised by them.

There is, therefore, no reason to hold either that any part of sections 19 and 29 of the Karnatak University Act is unconstitutional or that Ordinances 109, 119 and 120 promulgated by the Syndicate of the University are for any reason invalid or incompetent. 1951 SCR 747, Rel. on.; 63 CWN 147, Disting.

The expression 'students of the Univeristy' in S. 19 is comprehensive enough to include not merely students residing in institutions like hostels, colleges, research department, etc., actually, set up and maintained by the University itself, but also students of affiliated colleges or other recognised institutions who get themselves admitted into courses of study prescribed by the University and pursue those courses with a view to acquire degrees, diplomas or other academic distinctions appropriate to the same. Under these clauses the University has power to control and supervise the residence also of students reading in affiliated colleges or other recognised institutions by prescribing that such students shall reside only with their parents or other near relations or in recognised hostels or other institutions conducted in a prescribed manner.

The power to arrange for the conduct or examinations, having regard to the purpose of holding an examination is wide enough to make provisions for all matters germane to the proper conduct of examinations including the conduct and discipline of students in relation thereto. **1963 Mys LJ 408.**

——Art. 245 — Scope — Manner of dividing land among quasi-permanent tenants and inamdar is not matter of policy relating to essential legislative function. See Mysore (Personal and Miscellaneous) Inams Abolition Act (1 of 1955), S. 6. **AIR 1959 Mys 222 (DB).**

——Art. 245 — Pepsu Sirhind Canal and Western Jamna Canal (Enforcement and Validation) Act, S. 3 — Validity — (Pepsu Sirhind Canal and Western Jamna Canal (Enforcement and Validation) Act (4 of 1954), S. 3).

A Legislature cannot delegate its legislative functions to the Executive. The Legislature can, as as a part of its legislative functions, confer on the Executive, power to make rules and regulations for carrying the enactment into operation and effect.

The rule making power is given by the Canal Act (8 of 1873) itself and that was simply recognised or reiterated by the Validation Act (4 of 1954). The Punjab Rules were formally adopted for the interim period till the State Government framed its own rules under the Canal Act. This can, in no sense, be regarded as abdication of its power by the Legislature in favour of the Executive.

Assuming that second portion of S. 3 of the Validation Act (4 of 1954) is ultra vires the powers of the Legislature, there is no reason to accept the contention that it is so inseparably inter-mingled with the rest of the section that the section should be declared invalid in its entirety. The first part of the section enforces the Punjab Rules in the State and the second authorises the State Government to modify those rules or make fresh rules of its own. Even if the latter be bad the former stands as valid and unimpeachable. **AIR 1956 Pepsu 40 (44, 45) (Pt C) (Prs 15, 16, 18) (DB).**

●——**Art. 245 —Legislature itself may lay down legislative policy and principle.**

It is well settled that though subsidiary legislative authority may be delegated the legislature cannot delegate its essential legislative functions in any case and it must lay down the legislative policy and principle and must afford guidance for carrying out the said policy before its delegates its subsidiary powers in that behalf. Virendra Kapur v. University of Jodhpur, **1964 Raj LW 328: ILR (1964) 14 Raj 463: AIR 1964 Raj 161 (165) (Pt A) (Pr 13) (FB).**

——**Art. 245 — Delegation of powers by State Legislature — Extent of — (Municipalities — Rajasthan Town Municipalities Act (XXIII of 1951), S. 59 —Whether invalid on ground of excessive delegation).**

In delegating its powers to subordinate authorities the legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials of the body in power to execute the law. **AIR 1954 SC 465, Rel. on.**

Section 59 of the Rajasthan Town Municipalities Act, which authorises imposition of octroi tax cannot be struck down as conferring excessive delegation on the Board or the Government. The legislature has discharged its essential legislative functions in the determination of the legislative policy and formally enacting that policy into a binding rule of conduct. **1959 Raj LW 6: ILR (1958) 8 Raj 409: AIR 1958 Raj 192 (196, 197) (Pt B) (Prs 22, 24) (DB).**

6 (c). Abdication or self-effacement by legislature.

●——**Art. 245** — Parliament cannot delegate power so as to abdicate its legislative function—Power can be entrusted to outside agency only in such a way that it would act as a subordinate authority and not as a parellel legislature. In re Art. 143 Constitution of India and Delhi laws Act (1912), etc. **1951 BLR (SC) 311: 1951 SCJ 527: 1951 SCR 747: AIR 1951 SC 332 (359, 360, 361, 371, 392, 393, 407, 408, 434, 440) (Pt A) (Prs 80; 81; 97; 130; 205; 206; 207; 269, 276, 348, 390, 391).**

●——**Art. 245 — Delegation of legislative power — Extent.**

No doubt a law can be challenged on the ground of the incompetency of the particular Legislature, whether federal or State to enact it or on the ground of its inconsistency with the fundamental rights guaranteed by the Constitution. but—provided the Legislature concerned does not abdicate its power of legislation by wiping itself out and retains its control so as to be able to withdraw legislature power conferred on the subordinate authority whenever it considers it proper to do so, it is not for Courts to decide how much authority should be delegated or for how long such delegation should continue: AIR 1951 SC 332, Rel. on. Basti Sugar Mills, Ltd. v. State of Uttar Pradesh, **ILR (1954) 1 All 457: 1954 All LJ 452: 1954 All WR (HC) 428: AIR 1954 All 538 (541; 542) (Pt C) (Prs 6, 7) (FB).**

[**Reversed** on another point in AIR 1961 SC 420.]

●——**Art. 245 — Delegation of powers of subordinate legislation.**

A legislature must legislate. It cannot abdicate its powers. But provided it preserves its own capacity intact there is no reason why it should not delegate powers of subordinate legislation to such other authorities as it deems proper. Raja Suryapalsingh v. U. P. Govt., **1951 All LJ 365: 1951 All WR (HC) 317: ILR (1952) 2 All 46: AIR 1951 All 674 (696, 697) (Pt V) (Prs. 119; 120; 121; 123) (FB).**

——**Art. 245** — Madras Village Panchayats (Andhra Second Amendment) Act (1955), S. 22—Validity — S. 22 does not amount to abdication of power by Legislature. See Panchayats — Madras Village Panchayats (Andhra Second Amendment) Act (1955), S. 22. **AIR 1957 Andh Pra 355.**

——**Art. 245** — Government of India Act (1935), S. 296 — Assam Revenue Tribunal (Transfer of Powers) Act (4 of 1948), S. 3 (3) — S. 3 (3) in effect makes government a parellel authority for Constituting Tribunal leaving the principle and policy of such constitution to be determined by Government — Hence it goes beyond bounds of permissive legislation — It is repugnant to S. 296, Government of India Act. See Government of India Act (1935), S. 296. **AIR 1956 Assam 142.**

——**Art. 245** — S. 169, Bom. Municipal Corporation Act is valid — Delegation of power to Commissioner to charge for water supplied by measurement — Whether amounts to delegation of legislative functions — Discrimination — Whether a valid ground for challenging the provision. See Municipalities — Bombay Municipal Corporation Act (3 of 1888), S. 169. **AIR 1955 Bom 185 (DB).**

——**Art. 245** — Granting of certain powers, under S. 133, Bombay Industrial Relations Act, 1946 (11 of 1947) do not amount to surrender or abdication of legislative power. See Bombay Industrial Relations Act, 1946 (11 of 1947), S. 133. **(1965) 6 Guj LR 369.**

——**Art. 245 — Banking Companies Act (1949), S. 45 (10) (as amended by Act 7 of 1961) — validity—Provision not ultra vires on ground of excessive delegation.**

The essential legislative function of declaraing the policy and making it a binding rule of conduct is done by S. 45, of the Banking Companies Act itself and is not surrendered under sub-section (10), of S. 45, to the Central Government. It is not as if the Central Government can make any order it pleases under the sub-section and thereby alter contractual or other rights. The section clearly lays down the policy and the guiding principles. Only the details are left to the Central Government. The order to be made under the sub-section can only be for the purpose of removing a difficulty that arises in giving effect

to the provisions of the scheme and it must be necessary or expedient for that purpose. Sub-section (5), lays down with great particularity what the scheme can do. Among the many things the scheme can do is a reduction or other alteration of the interest and rights of depositors and other creditors of the banking company concerned. Thus the contract between the banking company and its creditors can be altered by the scheme. Under sub-S. (8), the contract so altered is binding on both parties. The Central Government is empowered to remove only a difficulty that arises in the working of the scheme in its many details. There is no abdication of the essential legislative function. Even if S. 45 (10) is construed so as to authorise a modification of any other law the provision would come within the bounds of permissible delegation. AIR 1951 SC 332 and AIR 1954 SC 569, Rel. on. **ILR (1965) 1 Ker 131 : 1965 Ker LT 229 : (1965) Com LJ 154 : 1965 Ker LJ 359 : (1965) 1 Ker LR 410 : AIR 1965 Ker 297 (301) (Pt A) (Prs 13, 14).**

——**Art. 245** — Delegated legislation — Motor Vehicles Act (1939), Ss. 68 (2) (o) and 133 — Scope —S. 68 (2) (o) does not confer unrestricted power to frame rules — There is no abdication of function by legislature. See Motor Vehicles Act (1939), S. 68 (2) (o). **ILR (1962) 2 Ker 540.**

——**Art. 245** — Rule against abdication and self effacement — Implication of — Possible abuse of power delegated as a test of validity of delegation. See T. C. Vehicles Taxation Act (14 of 1950), S. 18 (1). **AIR 1960 Ker 58 (DB).**

●—— **Art. 245 — Delegation of power by Legislature — Competency.**

It is open to the Indian Legislature, both at the Centre and in the States, to delegate to an outside instrumentality the carrying into operation of the purpose of an enactment. The only condition to be observed in this respect is that in making such delegation the Legislature itself must enact the policy and the purpose of the enactment and should not, in other words, abdicate or efface itself. AIR 1951 SC 332, Foll.

Further, uncontrolled and arbitrary and naked powers conferred upon an outside agency are unreasonable if they infringe the fundamental rights. State v. Haidarali, **1957 Jab LJ 658 : 1957 MPC 473 : 1957 MPLJ 549 : 1957 Cri LJ 1266 : AIR 1957 Madh Pra 179 (181, 182) (Pt B) (Prs 6, 9) (FB).**

[**Held reversed** by Cri. App. 162 of 1957 dt. 16-12-1959 on another point in 1961 (1) Cri LJ 674 (MP).]

——**Art. 245** — Delegation of powers by legislature to executive — Conditions and limitations — Legislature cannot abdicate its legislative functions — Delegation of power to levy tax. See Ibid, Art. 265. **AIR 1966 Mad 220.**

——**Art. 245 — Legislatures under the Government of India Act, 1935.**

Under the Constitution Act the legislative powers of a Government was vested in the legislature and it was not open to the legislature to surrender or abdicate that power or delegate it to another authority whether it is the executive Government or some other body. **(1949) 2 Mad LJ 663 : 1949 Mad WN 733 : 51 Cr LJ 615 : AIR 1950 Mad 243 (246, 247, 248) (Pt E) (Prs. 6, 9) (DB).**

——**Art. 245** — Act declaring policy of law fixing the legal principles that should govern in a case — Delegation of power to ascertain facts and conditions to which the policy and principles apply — Validity — Delegation when does not amount to abdication or self-effacement. See Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (1 of 1947), S. 2 (a). **AIR 1952 Orissa 260.**

——**Arts. 245 and 246 — S. 78 of the Bengal Irrigation Act — Validity — (Bengal Irrigation Act (3 of 1876), S. 78).**

It was open to the Legislature to leave it to the State Government to determine the water rate from time to time. S. 78, Bengal Irrigation Act 1876, cannot be said to amount to an abdication of the Legislative function. **1956 BLJR 383 : AIR 1956 Pat 482 (488) (Pt F) (Pr 12) (DB).**

——**Art. 245** — Punjab Urban Immovable Property Tax Act (17 of 1940), Ss. 1 (2), 2 (e), 3 (3) and 4 (2) — Not violative of Art. 14 of the Constitution as being discriminatory — Sections 1 (2), 3 (3) and 4 (2) are in the nature of conditional legislation which is not an abdication of Legislative powers. See Punjab Urban Immovable Property Tax Act (17 of 1940), S.1 (2). **AIR 1963 Punj 354 (DB).**

6 (d). Control over subordinate agency.

●——**Art. 245** — Power can be entrusted to outside agency only in such way as that agency acts as subordinate authority and not as a parallel legislature. In re Art. 143 Constitution of India and Delhi Laws Act (1912). **1951 BLR (SC) 311 : 1951 SCJ 527 : 1951 SCR 747 : AIR 1951 SC 332 (359, 360, 361, 371, 392, 393, 407, 408, 434, 440) (Pt A) (Prs 80; 81; 91; 130; 205 to 207; 269; 276, 348, 390, 391).**

●——**Art. 245— No improper delegation of power — Law, whether can be challenged on the allegation that excessive authority has been given.**

Provided the legislature concerned does not abdicate its power of legislation by wiping itself out and retains its control, so as to be able to withdraw its authority whenever it considers it proper to do so, it is not for Courts to decide how much authority should be delegated or for how long delegation should continue. Basti Sugar Mills Co., Ltd. v. State of Uttar Pradesh. **1954 All LJ 452 : 1954 All WR (HC) 428 : ILR (1954) 1 All 457 : AIR 1954 All 538 (541, 542) (Pt C) (Prs 6, 7) (FB).**

[**Reversed** on another point in AIR 1961 SC 420.]

——**Art. 245** — Delegation of statutory powers — Effect — Delegating authority does not denude itself of delegated powers during subsistence of delegation. See Municipalities — Madras District Municipalities Act (5 of 1920), S. 23. **AIR 1964 Andh Pra 357.**

——**Art. 245 — Delegated Legislation — Subordination of delegate — Nature of.**

All that is implied in the idea of delegated legislation is that the delegate should operate under the control of the Legislature from which authority is derived and on the continuing operation of which its capacity to function rests. It is only in that sense that there is dependency by the delegatee. The power delegated could be withdrawn, altered, and expanded or further curtailed at any time. So, the subordination contemplated is only legislative subordination : 1957 SCJ 527 : AIR 1951 SC 332, Rel. on. **(1959) 1 An WR 331 : (1959) 10 STC 378 : AIR 1959 Andh Pra 225 (229) (Pt B) (Pr 15) (DB).**

——**Art. 245** — Entrustment of power to outside agency — Legislature must see that the agency acts as a subordinate authority and does not be-

come a parallel legislature. AIR 1959 Cal 45 (50, 51) (Pt C) (Pr 18).
[Impliedly **overruled** on another point in AIR 1963 SC 1811.]

■ ——**Art. 245 — "Delegation"— Meaning of.**
The word "delegation", as generally used, does not imply a parting with powers by a person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself. Achchala v. Janpad Sabha, Sihora., **ILR (1963) Madh Pra 777 : 1963 Jab LJ 5 : 1963 MPLJ 92 : AIR 1963 Madh Pra 74 (84) (Pt C) (Pr 18) (FB).**

● ——**Art. 245** — Delegation of power to designated authority to fill in details of law — Though such delegation is not invalid law will be found to be defective and struck down unless the intent and purpose and policy of the law is clearly adequate or there is some ancillary provision controlling the vagaries of the delegate. State v. Haiderali, **1957 Jab LJ 658 : 1957 MPC 473 : 1957 MPLJ 549 : 1957 Cri LJ 1266 : AIR 1957 Madh Pra 179 (188) (Pt C) (Pr 32) (FB).**
(Held, reversed on another point by Cri App. 162 of 1957 dated 16-12-1959 in 1961 (1) Cri LJ 674 (MP).)

● ——**Art. 245 — Delegation of power — Procedure and conditions.**

In delegating the power to fix prices or to control commodities or trade, it is necessary that not only the purpose and intent of the law should be made clear but that the mode and manner in which the control is to be exercised should also be indicated. AIR 1952 Mad 565 : (1952) 1 Mad LJ 514, Foll. State v. Haidarali, **1957 Jab LJ 658 : 1957 MPC 473 : 1957 MPLJ 549 : 1957 Cri LJ 1266 : AIR 1957 Madh Pra 179 (190) (Pt F) (Pr 41) (FB).**
[Held **reversed** on another point by Cri App. 162 of 1957 dt. 16-12-1959 in 1961 (1)Cri LJ 674 (MP).].

6 (e). Delegatus non potest delegare — Sub-delegation.

● ——**Art. 245 — Delegation of discretion to State Government or its executive — Validity — Ss. 2 and 3 of Punjab Act (38 of 1956) — Validity — (Punjab Special Powers (Press) Act (38 of 1956), Sections 2 and 3).**

Sections 2 and 3 of the Punjab Special Powers (Press) Act, 1956, lay down the principle that the State Government or the delegated authority can exercise the power only if it is satisfied that its exercise is necessary for the purposes mentioned in the sections. The State Government may delegate the power to any officer or person but the fact that the power of delegation is to be exercised by the State Government itself is some safeguard against the abuse of this power of delegation. No assumption ought to be made that the State Government or the authority will abuse its power. To make the exercise of the power justiciable will defeat the very purpose for which the power is given. Further, even if the officer may conceivably abuse the power, what will be struck down is not the statute but the abuse of power. AIR 1950 SC 124: Distinguished. Virendra v. State of Punjab. **1958 SCC 1: 1958 SCA 891: 1958 SCR 308: (1958) SCJ 88: AIR 1957 SC 896 (900, 901) (Pt D) (Prs 11, 12, 13).**

● ——**Art. 245** — Validity of Section 4 of Act (24 of 1946 — Delegation of delegated powers. See Essential Supplies (Temporary Powers) Act (1946), **Section 4. 1954 Cri LJ 1322: AIR 1954 SC 465.**

——**Art. 245** — Electricity Act (1910), S. 37 — Rules under, Rule 45 — Notification under U. P. Government Notification No. 877/El-86-1938, dated 2-6-1942 — Power delegated by Central Electricity Board to State Government to provide for qualifications of electric contractors and manner for issue and cancellation of licence — Delegation of powers not illegal. See Electricity Act (1910), S. 37. **AIR 1960 All 87.**

——**Art. 245** — Delegation of power to sanction prosecution — Validity — Principles of. See Panchayats — Madras Village Panchayats Act (10 of 1950), Section 106. **1961 (1) Cri LJ 37: AIR 1961 Andh Pra 18.**

● ——**Art. 245** — Motor Vehicles Act (1939), Section 133-A and Section 44-A (Madras) — Power of delegation vested in Government — Its exercise — Presumption as to. See Motor Vehicles Act (1939), Section 133-A. **AIR 1959 Andh Pra 413 (FB).**

——**Art. 245** — Re-delegation of delegated powers. See Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order (1947), Cl. 4. **AIR 1959 Bom 511 (DB).**

——**Art. 245** — Essential Commodities Act (1955), Sections 5, 3 — Validity — Power to form opinion and make orders under section 3—Delegation of— Not unconstitutional — See Essential Commodities Act (1955), Section 5. **1963 (1) Cri LJ 49: AIR 1963 Cal 61.**

——**Art. 245 — Essential Commodities Act (1955), Ss. 3 and 5 — Power to promulgate orders — If delegated to District Magistrate — Principle of delegatus non potest delegare — Applicability — West Bengal Soft Coke Distribution Order (1955), Paras. 3 and 5 — Scope.**

The West Bengal Soft Coke Distribution Order (1951) has been promulgated by the State Government in exercise of powers under S. 3 (2) (d) of the Essential Commodities Act, 1955, delegated to it by the Central Government under S. 5 of that Act. By that order, the State Government has not re-delegated its power to the District Magistrate, etc., of making such an order. The principle of delegatus non potest delegare has therefore, no application. **('60) 64 Cal WN 521.**

——**Art. 245 — Prevention of Food Adulteration Rules (1955) Rule 50 (1) — Constitutional validity — Legislative sub-delegation — State Government empowered by Central Government to apply Rule 50 (1) to any other article of food — No legislative sub-delegation — Rule is valid.**

The Central Government does not sub-delegate its legislative function to the State Government by providing in Rule 50 (1) that the Rule will apply also to any other article of food which the State Government may by notification specify. There is undoubtedly an element of delegation implied in the provision of Rule 50, for the Central Government in a sense authorises another body specified by it to do something which it might do itself. But such delegation, if it can be so called at all is not unconstitutional. The Central Government have made all the necessary rules on the subject and thereby discharged fully their legislative function and what is left to the State Government under Rule 50 (1) is only to determine to what further articles of food the operation of the said Rules should be extended. There is no element of legislative sub-delegation involved in this and therefore Rule 50 (1) is not ultra vires. **1962 Ker LJ 240 : 1962-1 Ker LJ 294 : ILR (1962) 1 Kerala 436.**

——**Art. 245** — Notification dt. 13-8-1953 issued under M. P. Official Languages Act, 1950 — Not hit by doctrine of delegate potestas non potest delegare. See M. P. Official Languages Act (1950), S. 3 (2). **AIR 1959 Madh Pra 208 (DB).**

——**Art. 245** — Madras Prevention of Adulteration Act (3 of 1918), Section 3 — Delegation referred to in Section 3 amounts to delegation of a delegated authority which is not valid under Section 20 of the Central Act, viz., Prevention of Food Adulteration Act (1954). Hence, a Sanitary Inspector of a town or Panchayat authorised to launch prosecution under Madras Act (3 of 1918) is incompetent to launch prosecution under Section 20 of the Central Act. **(1956) 2 MLJ 465.**

——**Art. 245 — Indian Legislatures before Constitution.**

The Indian legislatures were in no sense the agents of the British Parliament which created them and the principle of delegata potestas non potest delegare is inapplicable to them. **(1949) 2 Mad LJ 663 : 1949 Mad WN 733 : 51 Cr LJ 615 : AIR 1950 Mad 243 (246, 247, 248) (Pt E) (Prs 6, 9) (DB).**

——**Art. 245** — Delegated legislation — Delegatus non-potest delegare — Applicability. See Industrial Disputes Act (1947), S. 38. **AIR 1965 Mys 39 (DB).**

——**Art. 245** — Competitive examination by State Public Service Commission for recruitment for the posts of Munsiffs in the State — Prescribing of qualifying marks — Absence of power in Governor to delegate his authority — Governor cannot delegate the power — P. S. C. is not competent to prescribe qualifying marks — Prescribing two sets of qualifying marks, one for scheduled caste and other for others is illegal — It does not amount to reservation within Art. 16 (4). See Ibid, Art. 234. **AIR 1963 Mys 292 (DB).**

——**Art. 245 — Delegated Legislation — Public Safety — Saurashtra State Public Safety Measures (Third Amendment) Ordinance (66 of 1949), Ss. 9, 10, 11 — Validity — Civil P. C. (1908), S. 9.**

The Legislation contained in S. 9, S. 10 and S. 11 of the Ordinance is valid and is not obnoxious to the principle of delegatus non potest delegare. 47 Bom LR 260, Foll. **52 Cri LJ 1300 : AIR 1951 Sau 69 (73) (Pt B) (Pr 7) (DB).**

6 (f). Power to repeal existing laws.

●——**Art. 245 — Authority of State Rulers—Pre-Constitutional Nizam — Firmans of — Effect of subsequent firman repealing earlier one — Repeal of repealing Act — Effect — (Interpretation of Statutes) — (General Clauses Act (1897), Ss. 6, 7) — (Supreme Court — Practice — Can follow Common law rule).**

Under the English Common Law when a repealing enactment was repealed by another statute the repeal of the second Act revived the former Act ab initio. But this rule does not apply to repealing Acts passed since 1850 and now if an Act repealing a former Act is itself repealed, the last repeal does not revive the Act before repealed unless words are added reviving it.

The present rule, however, is based on the statutory provisions introduced by the Interpretation Act, 1889 and as the Supreme Court is not bound by the provisions of any English statute, it can still apply the English Common Law rule if it appears to be reasonable and proper. But even according to the Common Law doctrine, the repeal of the repealing enactment would not revive the original Act if the second repealing enactment manifests an intention to the contrary.

Held, that the firman of the 7th September, 1949, did not repeal the earlier firman of the 24th February, 1949, simpliciter but made a further provision providing for fresh enquiry and report which presupposed the continuance of the repeal of the original firman of the 26th June, 1947. Ameer-un-Nissa Begum v. Mahboob Begum, **AIR 1955 SC 352 (363) (Pt B) (Pr 24).**

●——**Art. 245** — Validity of S. 6 of Act 24 of 1946 — Does not repeal any Act. See Essential Supplies (Temporary Powers) Act (1946), S. 6. **1954 Cri LJ 1322 : AIR 1954 SC 465.**

——**Art. 245** — Power of Government to render ineffective provisions of S. 5-A in cases of urgency, does not amount to delegation of legislative functions — Power flows not from executive but from S. 17, Land Acquisition Act framed by Legislature. See Land Acquisition Act (1894), S. 17 (4). **AIR 1965 All 433.**

——**Art. 245 — Delegated legislation — Permissible limits of Delegation — Land Acquisition Act (1894), Ss. 17, 5-A — Direction that S. 5-A shall not apply to particular case does not imply conferment of power on Government to repeal section 5-A.**

The fact that sub-S. (4) of S. 17 authorises the appropriate Government to direct that S. 5-A shall not apply to a particular case does not imply that the appropriate Government has been given the power of repealing S. 5-A and consequently has been invested with essential legislative functions.

The effect of direction under S. 17 (4) is not to repeal S. 5-A. Matters of detail and the manner in which to execute the law are often left to the executive, the policy of law and legal principle having been enacted into a binding rule of conduct by the Legislature itself. In such cases, there is no delegation of essential legislative function. The mere fact that the State Government has been given power to decide that in cases of urgency the provisions of S. 5A would not apply, does not amount to the repealing of that provision. **AIR 1963 All 24 (27) (Pt E) (Pr 10).**

——**Art. 245** — Land Acquisition Act (1894), S. 17 (4) — Sub-section is not invalid on the ground of excessive delegation of power by Legislature. See Land Acquisition Act (1894), S. 17 (4). **AIR 1962 All 221 (DB).**

[**Reversed** on another point in AIR 1965 SC 1763.]

——**Art. 245** — Responsible authority authorised by Act to extend it to specified locality — Authority given power to alter and modify Act according to situation and to repeal existing law which would stand repealed by the Act — Notification repealing certain laws in force in the area when applying the Act does nothing more than express what is implicit in the situation — Repeal is not one by act of delegate but is by Act of legislature itself. **1955 All LJ 508: 1955 All WR (HC) 450 : AIR 1955 All 554 (556, 557) (Prs 13, 17) (DB).**

——**Art. 245** — Applicability and scope — Law passed by Parliament or existing Central law in matter enumerated in concurrent list — Power of State Legislature to repeal. See Minimum Wages Act (1948), S. 31-A. **AIR 1962 Madh Pra 342 (DB).**

——**Art. 245 — Law — Amendment of — By executive act not valid — Order of erstwhile Ruler in Vindhya Pradesh making cash grant — Nature of — Power of Raj Pramukh after forma-**

tion of Union of Vindhya Pradesh to modify — Modification by executive act not valid.

The act of the Raj Pramukh in modifying the grant made by the erstwhile Ruler by merely an executive act is not valid. A pre-existing law could be repealed only by a repealing enactment and as the executive act of the Raj Pramukh did not have that effect the order of the ruler, making grant continued valid. **1961 MPLJ 549 : 1961 Jab LJ 820 : 1961 MPC 605 : AIR 1962 Madh Pra 257 (259, 261) (Pt A) (Prs 12, 16, 17) (DB).**

——**Art. 245** — S. 6 C. P. and Berar Regulation of Letting of Accommodation Act 11 of 1946 — Validity — Not invalid as conferring power of repeal on executive. See Houses and Rents — C. P. and Berar Regulation of Letting of Accommodation Act (11 of 1946), S. 6. **AIR 1955 Nag (246).**

——**Arts. 245 and 254** — Provisions of S. 35, Stamp Act (1899) as modified by S. 5 Indian Stamp (East Punjab Amendment) Act (27 of 1949) cannot be extended to Delhi. See Part C States (Laws) Act (1950), S. 2. **AIR 1965 Punj 279 (DB).**

——**Art. 245**—Power conferred on State Government to exempt from provisions of Act — Exercise of power does not amount to exercise of powers of repeal — Exemption merely implies suspension of statute — Repeal implies obliteration of statute. **64 Pun LR 1: ILR (1962) 1 Punj 407: AIR 1962 Punj 204 (210, 211, 212, 213) (Pt A) (Prs 11, 13, 14, 15, 17, 18) (DB).**

6 (g). Power of taxation.

●——**Art. 245**—Delegation of legislative powers—Power of taxation — Delegation of, to corporation — Fixing of rates of tax not essence of legislative power — Duty of legislature to provide for sufficient guidance — Sufficient guidance — What is. See Municipalities — Calcutta Municipal Act (XXXIII of 1951), S. 548 (2). **AIR 1965 SC 1107.**

●——**Art. 245 — Delegated legislation — C. P. and Berar Sales Tax Act (21 of 1947), S. 6 (1) and (2) and Sch. II. Item 33 — Scope — Notification, dated 18th September, 1950, Amending Sch. II, Item 33 — Validity.**

Per Venkatarama Aiyar, J. : It is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like.

The power conferred on the State Government by S. 6 (2) to amend the schedule relating to exemption is in consonance with the accepted legislative practice relating to the topic, and is not unconstitutional. The two sub-Sections (1) and (2) of S. 6 together form integral parts of a single enactment, the object of which is to grant exemption from taxation in respect of such goods and to such extent as may from time to time be determined by the State Government. S. 6 (1) therefore, cannot have an operation independent of S. 6 (2) and an exemption granted thereunder is conditional and subject to any modification that might be issued under S. 6 (2). In this view, the notification, dated 18th September, 1950, issued by the State under S. 6 (2) of the Act amending item 33 in Sch. II of the Act, is intra vires and not open to challenge. Banarasi Das Bhanat v. The State of Madhya Pradesh. **1959 SCR 427: (1958) 9 STC 388: 1958 MPLJ 467: AIR 1958 SC 909 (912, 913) (Pt B) (Prs 7, 10, 11).**

——**Art. 245, Sch. VII, List II Entries Nos. 54, and 66 — Delegation of power to fix fees in sales tax cases — Validity — S. 52 (1) of Assam Act 17 of 1947 not invalid.**

The mere fact that the imposition of fee forms a distinct head of the legislative list, is no bar to the legislature delegating the power to fix fees to the administrative authorities as ancillary to the main purposes of the Assam Sales Tax Act, 1947 and with a view to carry out the purposes of the Act. **(1960) 11 STC 125: AIR 1959 Assam 216 (218, 219) (Pt B) (Pr 2) (DB).**

——**Art. 245** —Municipal borough empowered to levy profession tax — Rate at discretion of Municipal boroughs — No excessive delegation. See Municipalities — Bombay Municipal Boroughs Act (18 of 1925), S. 75. **AIR 1966 Bom 15 (DB).**

——**Art. 245, Sch. VII, List II, Items 13 and 66 — Calcutta Tramways Act (1 of 1880), Ss. 9 and 10 — Validity.**

The fares charged by the Calcutta Tramways Company Ltd., cannot be called as "fees" chargeable by the State Government in terms of item 66. The power to fix the rate of fares is based on legislative sanction. Even assuming that this is a delegated legislation, as long as the Legislature lays down the policy, the details can be left to a non-legislative body to work out. Nothing illegal has been done on this ground, and the provisions of Ss. 9 and 10 of the Act of 1880 are valid and constitutional. **AIR 1960 Cal 396 (399) (Pt C) (Pr 8).**

——**Art. 245** — Delegated legislation — Taxation Laws — Delegation to municipal corporation of power to fix rate of tax. See Ibid, Art. 110 (2). **AIR 1959 Cal 704 (DB).**

——**Art. 245** — Delegation of power to tax — Excessive delegation. See Municipalities — Calcutta Municipal Act (33 of 1951), S. 548 (2) **AIR 1959 Cal 45.**

——**Art. 245** — S. 299, Calcutta Municipal Act — Validity — Licence fee, if tax — Powers of delegation, if exceeded. See Municipalities — Calcutta Municipal Act (33 of 1951), S. 229. **AIR 1959 Cal 36.**

——**Art. 245 — Delegation of legislation — Power to impose trade-tax — Ss. 123 and 182 and Sch. IV, Bengal Municipal Act, if ultra vires—(Municipalities — Bengal Municipal Act (15 of 1932), Ss. 123 and 182 and Sch. IV).**

The Bengal Municipal Act contemplates an imposition of tax on trades. The rate is fixed, and the procedure by which a licence has to be taken out in respect of a trade is laid down in the Act. Only the power is given to the Commissioners to decide as to whether in a particular Municipality, the tax is to be levied. That of course will depend upon the necessity for raising revenue and so far as this is concerned, the Commissioners would be the best persons to judge as to whether an occasion has arisen for the imposition of the tax. Such a delegation is permissible and Ss. 123 and 182 and Sch. IV of the Act are not ultra vires. **60 Cal WN 170: ILR (1957) 1 Cal 391: AIR 1956 Cal 397 (399) (Pt C) (Pr 5).**

——**Art. 245** — Power of taxation — Fixing per capita tax burden at suitable level — Duty of legislature — Delegation of power to extraneous body to ascertain and determine appropriate tax level by applying principles and standard which may be settled by the legislature. See T. C. Vehicles Taxation Act (14 of 1950), S. 18 (1). **AIR 1960 Ker 58 (DB)**

——**Art. 245**—Delegation of power to levy tax. See Ibid, Art. 265. **AIR 1966 Mad 220.**

——**Art. 245 — Delegated legislation—Madras Commercial Crops Markets Act (XX of 1933) (as amended by Madras Act (33 of 1955), S. 11 (1)—Validity.**

A taxing provision has essentially three features: (1) a declaration of liability, (2) assessment or quantification and (3) machinery for collection. Section 11 (1) of the Madras Commercial Crops Markets Act, 1933, declares a liability and provides the machinery. But the rate of tax which is an essential part of the declaration and assessment has been completely delegated to the Executive Government with no principles or basis laid down. Uncontrolled power is vested in the Executive to fix such rate as it pleases. The provisions of the section amount to excessive delegation of legislative power and therefore, are invalid. **1960 Mad WN 734: (1960) 1 MadLJ 298: 72 Mad LW 752: ILR (1960) Mad 171: AIR 1960 Mad 160 (166, 167, 168) (Pt E) (Pr 17)**

——**Art. 245** — Delegated legislation — General Scheme of Mad. Gen. Sales Tax Act — Main provisions in Rule — Draft criticised. See Sales Tax—Madras General Sales Tax Act (9 of 1939), **(1957) Mad LJ (Cr.) 721: (1957) 2 Mad LJ 533.**

——**Art. 245** — Scope — Sale in course of inter-State trade — Power of Parliament to directly enact legislation — Validity of S. 2, Sales Tax Law Validation Act, 1956. See Ibid, Art. 286 (2). **(1957) 2 Mad LJ 167: AIR 1957 Mad 368 (DB).**

——**Art. 245** — Agency for collection of sales-tax. See Sales Tax — Madras General Sales Tax Act (1939), S. 15. **1954 Cr LJ 1267: AIR 1954 Mad 833 (DB).**

——**Arts. 245, 246 (3), and 277** — Power of fixing percentage of tax — Does not amount to delegation of legislative power — Sections not ultra vires the Constitution. See Municipalities — Assam Municipal Act (15 of 1957), S. 68 (1) (a) **AIR 1962 Manipur 28.**

——**Art. 245** — Sales Tax — Mysore Sales Tax Act (46 of 1948), S. 3 (4), Proviso — Proviso conferring power on Government to amend Sch II of the Act providing for determination of turnover is not invalid on the ground of excessive delegation — Determination of turnover is a mere matter of detail in regard to which the legislature itself need not make a law: AIR 1955 SC 25 Rel. on. — Constitution of India Art. 245. See Sales Tax — Mysore Sales Tax Act (46 of 1948), S. 3 (4). **(1962) 13 STC 314 (DB).**

——**Arts. 245 and 265 — Power of Legislature to impose tax — Delegation of, to municipal Corporation — Corporation cannot exceed delegated power.**

The power to tax belongs to the Legislature. The State Legislature has delegated the power in respect of municipal administration to the Corporation, but the taxing power of the Corporation depends upon the grant to it in the Act. The Corporation cannot either change or exceed the delegated powers. The power of the municipal Corporation to impose taxes, licence fees, or other imposts is not an absolute power. **1956 Nag LJ 237: ILR (1956) Nag 102: AIR 1956 Nag 152 (153) (Pt A) (Pr 5) (DB).**

—**Art. 245**—Power to fix rate of tax—Nature of—Whether delegation of, to executive authority invalid. See Municipalities — Bihar and Orissa Municipal Act (7 of 1922), S. 82 (1) (ff) Proviso. **1965 BLJR 886.**

— **Art. 245** — Taxing power derived from Constitution — Interpretation. See Interpretation of Statutes. **AIR 1960 Punjab 669.**

——**Art. 245** — Rajasthan Entertainment Tax Act (24 of 1957), S. 6-A (as amended by Act 8 of 1960) — Power for levy of entertainment tax—Section not invalid for excessive delegation. See Rajasthan Entertainment Tax Act (24 of 1957, as amended by Act 8 of 1960, S. 6-A. **AIR 1964 Raj 106.**

——**Art. 245** — Determination of fee by executive authority — If permissible delegation. See Ajmer Shops and Establishments Act (4 of 1956), S. 4. **AIR 1959 Raj 257 (DB).**

6 (h). Power to constitute Courts and tribunals.

● ——**Art. 245** — Delegation of judicial function—Exercise of — Such function, subject to delegating authority's control and revision — Propriety. See Municipalities — Bombay Municipal Corporation Act (1888) (as amended by Maharashtra Act 14 of 1961), S. 68 (1). **AIR 1965 SC 1486.**

●——**Art. 245** — Bengal Finance (Sales Tax) Act (6 of 1941) as amended by Bengal Finance (Sales Tax) (Delhi Amendment) Act 17 of 1956), S. 8-A, as in force in Delhi — Powers conferred on Commissioner are not unlimited and unrestricted — Provision for demanding security is not arbitrary or unreasonable restriction — Amount of security — Power to demand is not constitutionally invalid — Constitution of India, Arts. 19 (1) (g) and (6), 245, 226. See Sales Tax—Bengal Finance (Sales Tax)Act (6 of 1941) as amended by Bengal Finance (Sales Tax) (Delhi Amendment) Act (17 of 1956), S. 8-A. **(1962) 1 SCR 283.**

——**Art. 245 — Delegation of power of — Validity—Power given to Reserve Bank under Banking Companies Act — If excessive delegation — Abuse of power — Aggrieved party's right to apply under Art. 226 — (Banking Companies Act (1949), S. 20).**

The power that is given to the Reserve Bank under the Act is a wide range of administrative discretion. The Legislature having prescribed the nature of a real banking institution in this country, it could not be said that there has been any excessive delegation of power. A discretionary power is not necessarily a discriminatory power and abuse of power should not be easily assumed where discretion is vested in a public authority, and not in a minor official. In such cases the delegation as such could not be held to be invalid, though in individual cases, if such a body exceeds its jurisdiction or abuses its power, it would be open to an aggrieved party to apply to the superior Court for the issue of a writ under Art. 226 of Constitution. AIR 1956 SC 44 Foll. **72 Mad LW 790: (1960) 30 Comp Cas 146: 1960 Mad WN 207: (1959) 2 Mad LJ 455: AIR 1961 Mad 8 (13) (Pt D) (Pr 16).**

——**Art. 245 — Delegated legislation — S. 3, Madras Hindu Religious and Charitable Endowments Act (19 of 1951) — Validity.**

Madras Act (19 of 1951), no doubt, primarily and of its own force, applied to Hindu religious institutions and endowments. The Legislature considered that it was sufficient if the provisions of the Act were applied to those charitable endowments whose affairs were mismanaged. Naturally some authority had to be created and vested with power to find out those cases of charitable endowments whose affairs were mismanaged. The executive Government was vested with this power

under S. 3. It was for the Legislature to determine the authority to be invested with such power, and so no objection, could be taken on the score that the Government were chosen for that purpose. AIR 1955 SC 25 Foll. **1956 Mad WN 177 (2): 71 Mad LW 222: (1958) 1 Mad LJ 248: AIR 1958 Mad 532 (533) (Pt A) (Pr 5).**

——**Art. 245** — Delegated legislation—Rule making power — Delegation to executive — Validity — Legislative practice — Rules under Madras Village Panchayats Act constituting tribunals to hear election disputes are valid — (Madras Village Panchayats Act (10 of 1950), S. 112 (2) (1). **AIR 1955 NUC (Mad) 2421.**

——Art. 245 — Delegated legislation — Legislature leaving creation of appellate authority under Motor Vehicles Act to the discretion of State — Qualification for Chairman not laid down — Sections 64 and 68 are not invalid because of it.

There is no specific provision either in the Motor Vehicles Act or the Rules framed thereunder prescribing qualification for the Chairman of the Appellate Authority. The Legislature left it to the Government of the State to constitute the Appellate Authority for purposes of S. 64. Power has been given to the State Government under S. 68 to make rules for purposes of carrying into effect the provisions of Chapter IV. The Legislature may not have thought it fit to prescribe qualifications for the Chairmanship leaving the matter to the discretion of the State Governments. Ss.64 and 68 of the Motor Vehicles Act cannot in this view of the matter be regarded to be invalid and Ss. 64 and 68 are not hit by the principle of delegated legislation as laid down in the judgment of the Supreme Court in Delhi Laws Act case. **ILR (1960) 10 Raj 1060: 1960 Raj LW 708 : AIR 1962 Raj 19 (22, 23) (Pt C) (Prs 7, 9) (DB).**

——Art. 245 — Delegation of powers by legislature — Rajasthan Municipalities Act (38 of 1959), S. 301 — Validity.

The authority delegated to the Government under S. 301 of the Rajasthan Municipalities Act is of a transitory nature. The intention of the Legislature was that the Act was ultimately to prevail but in order to bring it in operation, it was considered necessary that the Government should be authorised to issue orders so as to bring the old boards or the boards that had not come into being under the laws thereby repealed in a position to function under the Act. Hence S. 301 could not be held to be ultra vires. Section 3, sub-S. (4) of the Rajasthan Municipalities (Transitory Provisions) Second Order, 1959 could not be regarded outside the scope of S. 301, for the Government thereby provided a quick and suitable method of constituting the Board at its earliest in consonance with the spirit of the new Act. AIR 1951 SC 332 and AIR 1954 SC 465 and AIR 1954 SC 569 Foll. **ILR (1960) 10 Raj 477: AIR 1961 Raj 3 (5, 6) (Pt A) (Prs 5, 6) (DB).**

6 (I). Conferment of administrative authority.

● **——Art. 245**—Bihar Land Reforms Act, S. 32 (2) — Payment of compensation — Payment in cash and bonds and intervals between instalments — Determination of, left to executive Government — Held limited discretion of such a nature to an administrative body was not incompetent. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950) S. 32 (2). **AIR 1952 SC 252.**

● **— Art. 245** — Power which is not strictly legislative but which can be exercised by legislature— Legislature can delegate such power, Ram Kishan v. State **1951 All LJ 64: 52 Cr LJ 333: 1951 All WR (HC) 128: 1951 All Cri R 23: ILR (1952) 1 All 376: AIR 1951 All 181 (191, 192, 194, 195) (Prs 46, 49, 57, 60) (FB).**

——Art. 245, Sch. VII, List II, Entry 5 — Madras Village Panchayats Act (10 of 1950), S. 112 (2) (i) — Validity.

If the Legislature expressly provided for tribunals and authorised Government to appoint authorities to man those tribunals, it cannot be said that the conferment of such power is bad. In effect and substance, what the Legislature purported to do by enacting Section 112 (2) (i) is nothing more than authorising them to appoint authorities for conducting elections. The section, therefore, cannot in any way be questioned on the ground of excessive delegation. AIR 1951 SC 332 Foll.; (1955) 1MLJ 201 and AIR 1957 Andh Pra 393, Rel. on. **ILR (1956) Andhra 383.**

——Arts. 245 and 246— "Laws in Force" — Entrustment of power under Art. 258 (1) — Nature of — Whether executive in nature. See Bombay Reorganisation Act (11 of 1960), S. 87. **AIR 1963 Guj 80 (DB).**

— Art. 245 — (Hyderabad) Special Tribunals Regulation — Provision laying down that tribunal would get jurisdiction only where Military Governor transfers case is not unconstitutional — Provision does not abrogate the extant law viz. Criminal P. C. and does not amount to any delegation of legislative power. See (Hyderabad) Special Tribunals Regulations (5 of 1358 Fasli) **AIR 1953 Hyd 145.**

——Art. 245 — Delegation under Section 3 (2) M. P. Official Languages Act, 1950 is not delegation of legislative functions but only of administrative powers — Delegation is not improper — Notification under Section 3 (2), M. P. Official Languages Act, (1950) — Effect of. See M. P. Official Languages Act (1950), Section 3 (2). **AIR 1959 Madh Pra 208 (DB).**

——Art. 245 — Bihar Sugar Factories Control Act (7 of 1937), Ss. 29 (3) and 30 (2) (t) — Challenge on ground of unconstitutional delegation.

The power of legislating on policy or principle has not been delegated by Section 29 (3) to the State Government. What is delegated by the section is only the power to set up an administrative machinery for the execution of the law and such a delegation is constitutionally permissible. Therefore, Section 29 (3) cannot be challenged on the ground that there is an unconstitutional delegation of legislative power. The language of Section 30 (2) (t) is identical to that of Section 29 (3). Therefore, the attack on the constitutional validity of Section 30 (2) (t) must also fail. **1956 BLJR 754: 1956 Pat LR 467: ILR 35 Pat 847: AIR 1957 Pat 40 (44) (Pt C) (Pr 10) (DB).**

● **——Art. 245** — Delegation of Administrative power — Delegation with retrospective effect. See East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S. 41. **AIR 1959 Punj 453 (FB).**

——Art. 245 — Municipal Committee — Ministerial, administrative and legislative functions of — Power to defend or institute suit — Delegation of to an agent — Validity. See Municipalities — Punjab Municipalities Act (3 of 1911), Section 33. **('57) 59 Punj LR 470.**

——Art. 245 — Delegation of authority—Punjab Passengers and Goods Taxation Act (16 of 1952) — There is no delegation of legislative authority in Act — Only some executive powers have been given to the authority. **AIR 1955 NUC (Punj) 1887 (DB).**

6 (j). Sub-delegation of power.
See Note 6 (e).

6 (k). Legislation relating to foreigners.

——**Art. 245** — Foreigners Order (1948), Para. 7 — Validity — Para. 7 is not invalid — Neither does the provision confer an unbriddled and unguided power to Central Government nor is it a piece of delegated legislation. See Foreigners Act (1946), Section 3. **1962 (2) Cri LJ 166: AIR 1962 All 383 (DB).**

6 (l). Defence of India Act.

●——**Art. 245** — Defence of India Act, Sections 3 (2) (15) (i) and 40 cannot be challenged on the ground of excessive delegation — Rule 30 (1) (b) of Defence of India Rules is not therefore, ultra vires. See Defence of India Act (1962), S. 3 (2), (15) (i). **1964 (1) Cri LJ 269: AIR 1964 SC 381.**

——**Art. 245** — Excessive delegation — Defence of India Act, Section 3 (2) — Validity of. See Defence of India Act (1962), S. 3 (1). **1964 (1) Cri LJ 662: AIR 1964 Cal 279 (DB).**

6 (m). Marketing laws.

●——**Art. 245** — Bombay Agricultural Produce Markets Act, 1939 (Bom. 22 of 1939), Section 29 — Delegated legislation — Agricultural produce specified in Schedule to Act — Power given in Section 29 to State Government to amend schedule — Ample guidance to State Government contained in provisions of Act — Section 29 is constitutional. AIR 1953 SC 25, Rel. on. Mohammad Hussain Gulam Mohammad v. State of Bombay, **(1962) 2 SCR 659 : (1961) 2 Guj LR (SC) 21 : AIR 1962 SC 97 (102, 103) (Pt B) (Pr 6).**

——**Art. 245** — Section is not invalid due to excessive delegation. See Madras Commercial Crops Markets Act (20 of 1933), Section 2 (i.-a.). **AIR 1964 Andh Pra 416.**

——**Art. 245 — Hyderabad Markets Act (2 of 1339-F), Section 2 (1) — Validity — Provisions do not confer uncontrolled power on Government — Hyderabad Markets Act (2 of 1339-F), S. 2 (1).**

Section 2 (1) of the Hyderabad Markets Act does not confer uncontrolled power on the State Government to notify any commodities as "agricultural produce." The section establishes definite criteria and standards in that it defines the agricultural produce. AIR 1962 SC 97; AIR 1959 SC 309 and AIR 1960 SC 554, Rel. on. **ILR (1964) Andh Pra 1223: (1963) 2 Andh LT 485: AIR 1964 Andh Pra 373 (376) (Pt A) (Pr 13) (DB).**

——**Art. 245 — Section 6 (1) (i) Bombay Agricultural Produce Markets Act — Not invalid on ground of excessive delegation.**

It is clear from Section 6 (1) (i) that the power conferred on the State Government was to make a list, by a rule, of all those organisations which in its opinion should be entitled to representation on the market committee. If the selection of the organisations is entrusted to a high authority like the Government which can be trusted to perform that duty justly and reasonably, the delegation of that power to it is not open to the challenge of excessive delegation. If any organisation of agriculturists was arbitrarily and whimsically excluded by the Government from a rule made by it, what can be challenged and struck down is the misuse of the power conferred on the Government by Section 6 (1) (i) of the Act and not the conferment of that power to the Government by the legislature. **1962 Mys LJ (Sup) 272 (DB).**

——**Art. 245** — Delegation of power — Levy of licence fee by market committee by its by-law — Rule making authority fixing maximum fee and leaving each market committee with discretion to fix fees below that maximum — No case of excessive delegation. (Obiter). See Rajasthan Agricultural Produce Markets Act (38 of 1961), Section 37. **ILR (1965) 15 Raj 897 : 1965 Raj LW 358: AIR 1966 Raj 142 (DB).**

6 (n). Tenancy Acts.

●——**Art. 245** — Delegated legislation — Bombay Tenancy and Agricultural Lands Act (67 of 1948), Section 6 (2) — Validity. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), Section 6 (2). **AIR 1961 SC 4.**

●——**Arts. 245, 363** — Zamindars not parties to agreement between acceding State and Dominion Government cannot rely upon provisions of agreement and attack extension of U. P. Act 1 of 1951 to acceding State — Notification attacked on ground that it changed the definition of "Estate" in Act — In view of amendment of Act by Act 14 of 1958, the contention held fell — Power to extend Act to new areas was not excessive delegation of legislative power — Amendment Act does not save pending actions — (Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 2). See Ibid, Art. 363. **AIR 1959 SC 909.**

●——**Art. 245 — Bombay Tenancy and Agricultural Lands (Amendment) Act (13 of 1956), Section 7 — Validity.**

Individuals would be benefited by the variations contemplated in Section 7 of Bombay Act (13 of 1956), but for that purpose the State Government has got to be satisfied that it is expedient in the public interest to do so. The broad principles and policy have been laid down by the legislature, the criteria have been fixed according to which the State Government has to be satisfied that it is expedient to vary the ceiling area and economic holding already prescribed by the legislature and the mere matter of working out the details having regard to those criteria which are specifically mentioned therein which has been delegated to the State Government does not amount to any excessive delegation of legislative power. This power of variation of the ceiling area and the economic holding is vested in the State Government. Section 7 of the Act cannot be impugned on the ground of excessive delegation of legislative power: AIR 1957 Bom 252, **Overruled.** Sri Ram Ram Narain Medhi v. State of Bombay, **1958 SCA 491: (1959) 2 Mad LJ (SC) 1: 61 Bom LR 811: (1959) 2 Andh WR (SC) 1: 1959 SCJ 679: (1959) Supp (1) SCR 489 : AIR 1959 SC 459 (473, 474) (Pt F) (Prs 47, 48).**

——**Art. 245** — Delegated legislation — Validity. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), Section 6. **AIR 1954 All 515.**

——**Art. 245** — Assam Fixation of Celing on Land Act, Section 2 (c) (i) — If invalid on ground of delegation of legislative power. See Tenancy Laws — Assam Fixation of Ceiling on Land Holdings Act (1 of 1957), Section 2 (c) (i). **AIR 1959 Assam 147 (DB).**

——**Art. 245** — Validity of Bombay Act (67 of 1948). See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), Section 6 (2). **AIR 1954 Bom 397 (DB).**

——**Art. 245** — W. B. Estates Acquisition Act (1954), Section 16 (1) (a) (ii) — W. B. Estates Acquisition Rules (1955), Rule 15 — Validity — Not ultra vires on the ground of unauthorised delegation of legislative power. See Tenancy Laws

— W. B. Estates Acquisition Act (1 of 1954), Section 16 (1) (a) (ii). **AIR 1964 Cal 552.**

——**Art. 245** — W. B. Estates Acquisition Act 1 of 1954 — Delegation of power under — Not excessive — Exercise does not affect fundamental rights of intermediaries. See Tenancy Laws—West Bengal Estates Acquisition Act (1 of 1954), Section 5-A. **('62) 66 Cal WN 1024.**

——**Art. 245**—S. 6 (2) Mysore Tenancy Act—Validity — Section cannot be challenged on ground of delegated legislation — Legislature has laid down policy to guide executive in fixing lower rate of maximum rent payable by tenants in particular area. See Tenancy Laws — Mysore Tenancy Act (13 of 1952), Section 6 (2). **AIR 1960 Mys 236.**

——Art. 245 — Delegated legislation — Tenancy Laws — Bihar Land Reforms Act (30 of 1950) (as amended in 1953), Section 4 (h) — It does not amount to delegation of legislative function.

The latter part of Section 4 (h) which empowers the Collector to lay down such terms as may appear to the Collector to be fair and equitable before taking possession of the property does not amount to delegation of legislative function. **ILR 34 Pat 585: AIR 1955 Pat 445 (446) (Pt A) (Pr 4) (DB).**

——**Art. 245** — Section is not discriminatory — Administrator given discretion to implement Act in respect of estates in any area — There is no excessive delegation. See Tenancy Laws — Tripura Land Revenue and Land Reforms Act (43 of 1960), Section 134 (1). **AIR 1963 Tri 1.**

6 (o). Excise laws.

●——**Art. 245** — Central Excise Rules (1944), R. 8 (1)—Constitutional validity — Rule does not suffer from vice of excessive delegation of power to exempt — Notification under — Notifications No. 74 of 1959, dated 31st July, 1959 and 70 of 1960, dated 30th April, 1960 — Validity — Excise duty on cotton fabrics produced on power looms — Exemption granted to co-operative societies of weavers — No violation of Arts. 14, 19 (1) (f) and (g) of Constitution. See Central Excise Rules (1944), Rule 8 (1). **AIR 1963 SC 98.**

——**Art. 245** — Delegated legislation — Section 36 (2), Eastern Bengal and Assam Excise Act (1 of 1910) — Rules under Rule 218 — Validity. See Eastern Bengal and Assam Excise Act (1 of 1910), Section 36 (2). **AIR 1960 Assam 218 (DB).**

——**Art. 245** — Delegated legislation. See East Bengal and Assam Excise Act (1 of 1910), Section 17 (3). **1958 Cri LJ 1461: AIR 1958 Assam 173 (DB).**

——**Art. 245** — Central Excise Rules (1944), Rule 8 — Validity — No excessive delegation of power — Does not contravene Art. 14 or 19 (1) (f) of the Constitution. See Central Excises and Salt Act (1944), Section 37 (2) (xvii). **AIR 1964 Punj 192 (DB).**

——**Art. 245** — Punjab Excise Act — Rules issued under, by State Government — Notification No. 769-ET-52/1273 issued by Government — No question of delegated legislation arises. See Punjab Intoxicating Spirituous Preparation, Import, Export, Transport, Possession and Sale Rules (1952). **1953 Cri LJ 549: AIR 1953 Punj 77 (DB).**

6 (p). Industrial Disputes Act.

●——**Art. 245 — U. P. Industrial Disputes Act (28 of 1947), Section 3, Cls. (c), (d) and (g) — Validity — If bad for excessive delegation.**

Section 3 of the U. P. Industrial Disputes Act, 1947, so far as Cls. (c), (d) and (g) are concerned, does not suffer from the excessive delegation and is not unconstitutional on that ground. AIR 1956 All 689, Affirmed.

Section 3 gives power to the State Government to make certain provisions by general or special order, if, in its opinion, it is necessary for securing public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community. The forming of such opinion is a conduct precedent to the making of the order. If, such an opinion was formed and an order was passed thereafter, the subsequent order would be a valid exercise of the power conferred by the section. The fact that in the notification, the formation of the opinion is not recited will not take away the power to make the order which had already arisen and led to the making of the order. The only exception to this course would be where the statute requires that there should be a recital in the order itself before it can be validly made. AIR 1952 SC 317 and AIR 1954 SC 359 and AIR 1955 SC 41, Rel. on.

Where the recital of the opinion is not on the face of the order, the order will not become illegal ab initio and only a further burden is thrown on the authority passing the order to satisfy the Court by other means that the conditions precedent were complied with. Observations of Spens, C. J., in AIR 1943 FC 75 (92) which were approved by P. C. in AIR 1945 PC 156 (161), Rel. on. (1922) 67 Law Ed. 124 and (1924) 68 Law Ed 549, Expl. and Disting.; (1935) 79 Law Ed 446, Disting.

Held, that Section 3 of the Act is constitutional so far as Cls. (c), (d) and (g) are concerned and orders Nos. 615 and 671 passed on March 15, 1951, are legal and valid. Swadeshi Cotton Mills Co., Ltd. v. State Industrial Tribunal, U. P., **(1962) 1 SCA 55: ILR (1961) 2 All 149: (1961) 3 Fac LR 527: (1962) 1 SCR 422: (1962) 1 SCJ 398: (1961) 2 Lab LJ 419: (1961-62) 20 FJR 325: AIR 1961 SC 1381 (1384,1385, 1386, 1387, 1388) (Prs 5, 6, 9, 11, 15).**

——**Art. 245** — Delegated legislation — U. P. Industrial Disputes Act (28 of 1947), Section 3 (c), (d), (g) — Section is not ultra vires and unconstitutional on ground of delegation of essential legislative powers to a non-legislative body. AIR 1954 All 538 (FB) and AIR 1954 All 350, Foll. **AIR 1955 NUC (All) 1732 (DB).**

——**Art. 245** — Delegated legislation. See U. P. Industrial Disputes Act (28 of 1947), S. 3 (B and C). **AIR 1954 All 705.**

●——**Art. 245** — S. 3, U. P. Industrial Disputes Act — Validity — Not invalid on ground that it delegates legislative or rule making power of unspecified character to Executive Government. See U. P. Industrial Disputes Act (28 of 1947), S. 3. **AIR 1954 All 538 (FB).**

——**Arts. 245 and 14** — Industrial Disputes Act (1947), Section 2 (a) — Power conferred on Central Government to treat settlement of disputes in some industries as its exclusive concern — Validity. See Ibid, Art. 14. **AIR 1956 Mysore 7.**

6 (q). Acts relating to municipalities.

●——**Art. 245** — Delegated Legislation. See Municipalities — City of Bangalore Municipal Corporation Act (69 of 1949), Section 97 (e). **AIR 1962 SC 1263.**

●——**Art. 245** — Delegation of legislative functions — Validity. See Municipalities — Bombay District Municipalities Act (3 of 1901), S. 59 (1) (xi). **AIR 1959 SC 586.**

——**Art. 245** — Delegation of power by legislature — Subordinate or ancillary legislation — Municipal legislation — Levy of water tax — Delega-

tion of power to State Government to fix radius for imposition of levy by rule — **Held** no delegation of legislative power — U. P. Municipalities Act (2 of 1916), Section 129. **1961 All LJ 386: 1961 All WR (HC) 262: AIR 1961 All 583 (589, 590) (Pt B) (Prs 20, 24).**

——**Art. 245** — Section does not provide arbitrary powers — No excessive delegation — Constitution of India, Arts. 14 and 245. See Municipalities — Madras District Municipalities Act (5 of 1920) as Adopted by Andhra Pradesh and Amended by Andhra Act (4 of 1956), Section 132-A. **AIR 1964 Andh Pra 280 (DB).**

——**Art. 245 — Delegation of legislative powers — Bengal Municipal Act (15 of 1932), Ss. 245 and 503 — Bye-laws — Validity.**

Bye-laws made under Section 245 of the Bengal Municipal Act, 1932, so far as they provide for penalties and create offences are not illegal and ultra vires of the Constitution on the ground of delegation of essential legislative function. Even apart from Section 503 which confers express power to punish breaches of bye-laws the power given by Section 245 carries with it a power to make breaches of bye-laws punishable by action or distress.

Even under Section 503 of the Act there has been proper delegation because under that section the direction of the Commissioners of the Municipality with the sanction of the State Government as to how a breach of the bye-law shall be punishable has been strictly defined. **ILR (1960) 2 Cal 299: 1960 Cri LJ 900: AIR 1960 Cal 436 (437, 438) (Pt A) (Prs 8, 9, 10) (DB).**

——**Art. 245** — Constitutional validity of Section 131 (1) (kk) — Orissa Municipal Act, Cl. (kk) of Section 131 (1) does not suffer from excessive delegation and is valid — Constitution of India, Art. 245. See Municipalities — Orissa Municipal Act (23 of 1950), Section 131 (1) (kk). **AIR 1963 Orissa 171 (DB).**

——**Art. 245** — Legislature delegating power to authority to prepare assessment list — Mode of assessment to be laid down by State in Rules — Provision for appeal and revision — Assessment held not left entirely to discretion of authority. See under Municipalities — Rajasthan Municipalities Act (38 of 1959), S. 114. **ILR (1964) 14 Raj 1033.**

——**Art. 245 — Rajasthan Town Municipal Election Rules (1951), Rule 13 (1) — Validity — (Municipalities — Rajasthan Town Municipal Election Rules (1951), R. 13 (1)) — (Elections).**

The Rajasthan Town Municipalities Act lays down the policy for the election of a member to the Municipal Board. Having laid down the policy the Legislature could leave to the Government how that policy was to be carried out. In the matter of the election of a municipal member, the Legislature has left it to the Government to prescribe further qualifications for a candidate in accordance with the exigencies of the situation. The Government was the best judge to decide as to what should be the qualifications for a member of the Municipal Board. By doing so it cannot be said the Legislature has effected itself and that the rules made by the Government are made by virtue of the power which could not be conferred. **1958 Raj LW 568: ILR (1958) 8 Raj 248.**

6 (r). Police Acts.

●——**Art. 245 — Delegated legislation — Section 61-A of Calcutta Police Act and Section 38-A of Calcutta Suburban Police Act and notifications of Police Commissioner thereunder — Validity.**

Section 61-A of the Calcutta Police Act and Section 38-A of the Calcutta Suburban Act and the notifications thereunder by the Police Commissioner with the previous consent of the State Government, banning the use of cycle-carts in the city of Calcutta and its suburbs cannot be challenged on the ground of there being excessive and illegal delegation inasmuch as all powers are delegated to the Police Commissioner and no standards are laid down in the Act saying what tests the Commissioner should apply to prescribe or prohibit types of vehicle. AIR 1954 SC 465, Applied.

It is not a case of unconstitutional delegated legislation for the following reasons:

(i) The delegation is limited by statute to the highest police executive, namely the Police Commissioner.

(ii) This power of the Commissioner of Police is only exercisable 'with the previous sanction of the State Government' as expressly enjoined in the section. If the State Government acts unreasonably in such a context then the particular act always be struck down by the Court as can constitutionally unreasonable but then it is not a case of unconstitutional delegation.

(iii) There is the requirement of publication in the official Gazette. That means that sufficient publicity has to be given to such an order.

(iv) The contexts in which these sections occur are sufficient guide for prescribing types of vehicles. AIR 1954 SC 465, Applied. Paschim Banga Malbahi Cycle Mazdoor Union v. Commr. of Police, Calcutta. **ILR (1961) 2 Cal 594: 65 Cal WN 213: AIR 1961 Cal 125 (135, 136, 141, 142) (Pt E) (Prs 38, 40, 64, 66) (SB).**

——**Art. 245** — Use of loud-speaker — Taking out of license — Provisions are reasonable restriction on right of freedom of speech, in interest of public order — Power is not arbitrary — Provision cannot be attacked on grounds of delegation. See Bombay Police Act (22 of 1951), S. 33 (1) (r) (iii). **1963 (2) Cri LJ 502 : AIR 1963 Guj 250 (DB).**

——**Art. 245** — Mysore Police Act not ultra vires, Art. 19 (1) (b) and (d) — Nor does it amount to a legislative delegation. See Mysore Police Act, (5 of 1908), S. 45. **1960 Cr LJ 379: AIR 1960 Mys 57 (DB).**

6 (s). Rent Control legislation.

——**Art. 245** — Scope — Rule under Act — Validity of — Delegation within competence of legislature. See Houses and Rents—U. P. (Temporary Control of Rent and Eviction Rules (1949), R. 6. **AIR 1959 All 675 (DB).**

●——**Art. 245** — U. P. Act (25 of 1947) is not a delegated legislation — Government could validly extend Act for one year beyond 30-9-1948. See Houses and Rents — U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 1 (5). **AIR 1955 NUC (All) 147 (FB).**

●——**Art. 245 —Delegated legislation—West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), Ss. 47 (2) (g), 33 — West Bengal Premises Rent Control Rules — Rule 9 — Rule is ultra vires in so far as it made Criminal P. C. applicable to enquiries into offences created by Act — Violation of prohibition under S. 33, is offence — Procedure for trial — Rule 9, is in excess of delegation under S. 47 (2) (g) — Criminal P. C. (1898), S. 5 (2) — West Bengal Premises Rent Control Rules (1950), R. 9— Houses and Rents —West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), Ss. 47**

(2) (g), 33 — Bengal General Clauses Act, S. 3 (30).

Though S. 47 (2) (g) of the Act contains no express words, limiting the power of the rule-making authority in the matter of prescribing rules of procedure, the limitation is implied; otherwise S. 47 (2) (g) itself would have become bad because of delegation of excessive and unrestrained legislative power to a rule-making authority. Section 47 (2) (g) of the Act did not delegate to the State Government the power to prescribe for trial of offences under the Act, a procedure different from that in the Code of Criminal Procedure. AIR 1954 SC 569, Rel. on.

B. N. Mookerjee, J.:— Essential legislative functions cannot be delegated. In the face of section 5 (2) of the Code of Criminal Procedure, the prescribing of a different procedure for a statutory offence would in essence, be an essential legislative function. Accordingly power in that behalf cannot be delegated. Sethia Properties v. T. R. Bhavanani, **ILR (1961) 1 Cal 861 : 1961 (1) Cr LJ 472 : 64 Cal WN 899: AIR 1961 Cal 199 (203, 207, 210, 211, 214) (Prs 36; 37; 38; 54; 56; 66; 67; 68; 73; 75; 80; 81) (SB).**

——**Art. 245 — Delegated legislation — Mysore House Rent and Accommodation Control Act (30 of 1951), S. 3 (3) (a) — Rules under S. 25, R. 4 (a) and (b) — Validity.**

Rule 4 is ultra vires of the powers of the rule making authority and therefore must be struck down.

Rule 4 (a) does not comply with the requirements laid down in S. 25 (1). It completely overrides S. 3 (3)(a). The Controller is a quasi-judicial officer, particularly in the matter of allotment of premises. That character is completely negatived by R. 4 (a) which converts him into a ministerial officer requiring him to carry out the behest of the Deputy Commissioner. R. 4 (a) is thus far in excess of the powers conferred. R. 4 (a) is in conflict with R. 4 (b). **38 Mys LJ 863 : ILR (1960) Mys 974 : AIR 1960 Mys 313 (313, 314, 315) (Prs 8; 9).**

——Art. 245 — Section 2 of C. P. and Berar Regulation of Letting of Accommodation Act, 11 of 1946 — It is not invalid on ground of delegation of legislative power. See Houses and Rents — C. P. and Berar Regulation of Letting of Accommodation Act (11 of 1946), S. 2. **AIR 1955 Nag 246.**

6 (t). Panchayat Acts.

——**Art. 245— M. B. Panchayat Act (58 of 1949), S. 38 (b) and R. 214 under S. 115 — Both are not bad on account of excessive delegation.**

S. 38 (b) of the Madhya Bharat Panchayat Act (58 of 1949) is not bad for excessive or complete delegation of the legislative power to the Government without any indication either of the policy or any other provision to canalise the power delegated to the Government. The delegation is very well within the limits indicated in the judgment in AIR 1953 Mad 105 on the analogy of the American rulings which are usually more conservative in this regard than the Indian rulings.

The sub-delegation by the Government to the Director of Panchayat under R. 213 is intra vires and the power of delegation conferred on Government by S. 115 of the Act has application to the rule making powers conferred by the next section. There are certain requirements in regard to the manner and the form in which such delegation has to be made and once these are observed, the delegation by rule or order is not ultra vires. So, as far as this delegation goes it is competent within the frame work of the Act. R. 214 of the Rules framed in pursuance of the Government's rule-making power under S. 115 of the Act providing for the fixing of maximum and minimum rates by the Director of Rural Uplift and enabling the Gram Panchayat to levy tax within those limits does not involve excessive delegation by the Legislature of its essential legislative function. **ILR (1964) Madh Pra 199 : 1964 Jab LJ 185 : AIR 1964 Madh Pra 81 (83, 86, 91) (Pt A) (Prs 2, 15, 16, 17, 35) (DB).**

——**Art. 245** — Panchayats — Punjab Gram Panchayat Act (4 of 1953), S. 8 (2) (a) — Validity of — Setting aside of an election — Considerations before Tribunal — Policy and purpose of Act not indicated by legislature — Discretion vested in authority uncanalised and unguided — Section held unconstitutional. See Panchayats — Punjab Gram Panchayat Act (4 of 1953), S. 8 (2) (a). **('62) 64 Punj LR 213.**

6 (u). Sales-tax Acts.

——**Art. 245** — U. P. Sales Tax Rules (1948), S. 2 (d) (1) — Definition of importer whether illegal or inoperative on the ground of its being ultra vires the rule making power of legislature or for the reason that it is delegation beyond permissible limits. See Sales Tax — U. P. Sales Tax Rules (1948), S. 2 (d-1). **AIR 1955 All 653.**

——**Art. 245** — Madras General Sales Tax Act — Whether invalid on ground of unconstitutional delegation of taxing power. See Madras General Sales Tax Act. **AIR 1954 Mad 1030.**

——**Art. 245** — Sales Tax — Mysore Sales Tax Act (25 of 1957), Ss. 5, 6 — Rules framed under Act, R. 25 — Validity — No abdication of legislative power — Right of appeal is not fundamental right — Persons imposed of sales tax and those imposed of licence fee — Differentiation justified — Rule retrospective. See Sales tax — Mysore Sales Tax Act (25 of 1957), S. 5. **(1963) 14 STC 84 (Mys) (DB).**

——**Art. 245 — Delegation of Legislative powers — S. 40 (2) of Mysore Act (25 of 1957) —Validity — Provisions not invalid on ground of delegation of legislative powers — (Sales Tax — Mysore Sales Tax Act (25 of 1957), S. 40 (2)).**

It cannot be said that the provisions of sub-S. (2) of S. 40 were ultra vires the powers of the legislature on the ground that the legislature by the said provision delegated to the State Government its essential legislative functions. The Tribunal to be constituted to sit in revision over the decision of the Deputy Commissioner of Sales Tax should have the requisite capacity and competency to deal with revision petitions. There is sufficient indication in the Act as to the type of persons who have to be appointed. AIR 1957 SC 414, Foll. **(1960) 11 STC 94 (Mys).**

6 (v). Essential Supplies (Temporary Powers) Act.

——**Art. 245** — Essential Supplies (Temporary Powers) Act, S. 3 — Not void on ground of illegal delegation by legislature. See Essential Supplies (Temporary Powers) Act (1946), S. 3. **AIR 1952 All 866 (FB).**

——**Art. 245** — Act whether invalid for permitting delegating legislative powers. See Essential Supplies (Temporary Powers) Act (24 of 1946). **AIR 1953 Cal 548.**

6 (w). Factories Act.

——**Art. 245** — Delegation — Factories Act, S. 84 — Validity of — If delegation of legislative power,

See Factories Act (1948), S. 85. **AIR 1959 All 24.**

——Art. 245 — Delegated legislation — Factories Act (1948), S. 85 (1)—Validity—Vires of notification, issued under S. 85 (1) — (Factories Act (1948), S. 85 (1)).

To alter the essential character of an Act, or to change any material particulars is to legislate, and the power to legislate cannot be delegated by a Legislature which is not unfettered. What the Factories Act (1948) aims at is to regulate labour in factories with a view to obviate the chance of exploitation of labour. Power has been given to the State Government to decide with reference to local conditions, whether it is desirable that all, or some of the provisions of the Act should be applied to a particular place wherein a particular trade or industry is carried on which is not already included in S. 2 (m) of the Act. S. 85 (1), therefore, is neither illegal nor ultra vires.

As the notification, dated 11th June, 1954. does not travel beyond the authority which S. 85 (1) of the Act confers on the State Government, the notification must also be held to be ultra vires. **(1956-57) 11 FJR 96 : 1956 BLJR 717 : (1957) 1 Lab LJ 536 : ILR 35 Pat 877 : AIR 1957 Pat 247 (251, 252) (Pt D) (Prs 23, 24) (DB).**

6 (x). Motor Vehicles Act.

——Art. 245 — Delegation of powers — Ancillary legislation — (Motor Vehicles Act (1939), Ss. 44, 64 and 68) — Validity — (Motor Vehicles Rules (Andhra), Rr. 140-A (V) (3), 147 — Validity of R. 140-A (V) (3)).

Rule 140-A (V) (3) of the Motor Vehicles Rules, which empowers the Board to delegate to its Secretary the power to grant or refuse interim stay, is valid. The prohibition against delegation by the Central Board to its Secretaries under R. 140-A (V) does not however extend to the power to grant or refuse interim stay of orders of the Regional Transport Authorities which are appealed against. It is a case where the statute itself confers power on the Central Board to dispose of appeals but empowers it to delegate the ancillary power to grant or refuse stay to its Secretary, and it cannot be held that the rule is invalid.

Instead of the rule itself providing for the exercise of the power to grant or refuse stay by the secretary, it empowered the Board to delegate that power. There is no valid ground for holding that the rule is invalid. Nor is the delegation repugnant to R. 140-A (V) and ultimately to R. 147 itself. **AIR 1957 Andh Pra 830 (830, 831, 832) (Pt A) (Prs 3; 6; 7; 8; 10).**

——Art. 245 — Motor Vehicles Act (1939), S. 44 (5)—Madras Motor Vehicles Rules (1940), R. 134-A — Validity of —Does not amount to delegation of legislative or judicial function. See Motor Vehicles Act (1939), S. 44 (5). **AIR 1956 Andhra 129.**

——Art. 245 — Delegated legislation — Sections 44 (5) and 68, Motor Vehicles Act, whether unconstitutional on the ground that they amount to excessive delegation of legislative functions. See Motor Vehicles Act (1939), S. 44 (5). **AIR 1957 Mad 387 (DB).**

——Art. 245 — Punjab Motor Vehicles Rules (1940), R. 4-20 (c) — Validity — Rule authorising R. T. A. to prescribe uniforms for drivers and conductors and attaching it as a condition of permit — Rule if ultra vires on ground of delegation of legislative powers or violation of a fundamental rights under Art. 19 (1) (g). See Motor Vehicles Act (1939), S. 62 (2) (f). **AIR 1957 Punj 145.**

6 (y). Arms Act.

——Arts. 245, 226 —Delegation of legislative functions — Arms Act (1959), S.1 (3) — Not unconstitutional on ground of delegated legislation.

S. 1 (3) of the Arms Act (1959), giving power to the Central Government to lay down the date of commencement of the Act does not amount to delegated legislation and is not unconstitutional on that ground. With regard to the date of commencement of an Act duly passed by the legislature, the Courts of law need not be as strict as in the interpretation of enactments passed by the legislature. The legislature gives expression to its legislative policy while making the law leaving the implementation thereof to the Government or a subordinate authority. In determining from which date an enactment is to come into force, different matters have to be taken into consideration. In case the Government does not, within a reasonable period, issue a notification with regard to the commencement of the Act, the aggrieved parties have an alternative remedy. They can invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution of India when it can be considered whether the circumstances justify the issue of a writ of mandamus or not. **1963 All LJ 1108 : 1963 All WR (HC) 807 : 1964 All Cr R 11 : 1964 (2) Cr LJ 124: AIR 1964 All 339 (339, 340) (Pt B) (Prs 6, 8, 9).**

——Art. 245 — Power delegated under S. 14, Arms Act, 1878— Government is made competent only with matters of details and make rules for effectuating principles embodied in S. 14 —Such delegation is permitted. See Arms Act (11 of 1878), S. 14. **1953 Cri LJ 1409 : AIR 1953 MB 236 (DB).**

6 (z). Other instances.

● **—Art. 245**—Delegation of Legislative Functions —Citizenship Act, S. 9 (2) — Whether offend Act or is invalid as amounting to excessive delegation of legislative functions. See Citizenship Act (1955), S. 9 (2). **1962 (2) Cri LJ 215 : AIR 1962 SC 1052.**

● **——Art. 245** — Slum Areas (Improvement and Clearance) Act (1956), S. 19 — Constitutionality — Does not violate equal protection of laws guaranteed by Art. 14 of Constitution — There is enough guidance in Act for exercise of discretion by competent authority under S. 19 (1) — S. 19 (3) not invalid on ground of excessive delegation of legislative power. See Slum Areas (Improvement and Clearance) Act (1956), S. 19. **AIR 1961 SC 1602.**

● **—Art. 245** — Delegated Legislation — Drugs and Magic-Remedies (Objectionable Advertisements) Act (1954), S. 3 (d) — Validity — Delegated legislation and conditional legislation — Distinction — Portion of S. 3 (d) held invalid. See Drugs and Magic Remedies (Objectionable Advertisements) Act (1954), S. 3 (d). **1960 Cr LJ 735 : AIR 1960 SC 554.**

● **——Art. 245** — Delegation — Validity of Iron and Steel (Control of Production and Distribution) Order (1941), Cl. 11-B — Not unconstitutional on ground of excessive delegation. See Iron and Steel (Control of Production and Distribution) Order (1941), Cl. 11-B. **1960 Cr LJ 664: AIR 1960 SC 475.**

● **——Art. 245** — Delegation of rule making power — All India Services (Discipline and Appeal) Rules 1955, promulgated under S. 3 of the All India Services Act — Validity. See Ibid, Art. 312. **AIR 1959 SC 512.**

● **——Art. 245** — Delegation — Notification, dated 11th December,1956 — Not bad on ground of

delegation of essential legislative functions. See Commissions of Inquiry Act (1952), S. 3. **AIR 1958 SC 538.**

●——**Art. 245** —Section 296 (2), Government of India Act — Obligation on Provincial Legislature to constitute tribunal — S. 3 (3), Assam Revenue Tribunal (Transfer of Powers) Act, if ultra vires — Delegated legislation. See Government of India Act (1935), S. 296(2). **AIR 1957 SC 414.**

●——**Art. 245 — Delegated legislation — U. P. Sugarcane (Regulation of Supply and Purchase) Act (24 of 1953), Ss. 15 and 16 (1) (b) — If delegated legislation and void.**

There is no provision in the U. P. Sugarcane (Regulation of Supply and Purchase) Act (24 of 1953) which would amount to a delegation of legislative power to any officials of the State Government. The provisions contained in S. 15 and S. 16 (1) (b) read with S. 16 (2) (b) of the Act are certainly no piece of delegated legislation and the vires of the Act is not affected thereby. Tika Ramji v. State of Uttar Pradesh, **1956 SCJ 625 : 1956 SCA 979 : 1956 All WR (HC) 657 : 1956 SCR 393 : AIR 1956 SC 676 (712) (Pt J) (Pr 52).**

●——**Art. 245 — Minimum Wages Act (1948), S. 27 — Legislative policy of the Act — Provision in S. 27 deals with subsidiary power — S. 27 is valid.**

The legislative policy is apparent on the face of the Minimum Wages Act, 1948. What it aims at, is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour. The Legislature undoubtedly intended to apply this Act not to all industries but to those industries only where wages of all labourers in a particular industry were very low.

Conditions of labour vary under different circumstances and from State to State. It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to a particular trade or industry which is not already included in the list.

Hence, in enacting S. 27 the legislature has not in any way stripped itself of essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purposes and the policy of the Act. S. 27, therefore, is neither illegal nor ultra vires. Edward Mills Co., Ltd. v. State of Ajmer. **1955 SCA 24 : 1955 SCR 735 : (1955) Andhra WR (SC) 1 : (1955) 1 MLJ (SC) 1 : 1955 SCJ 42 : AIR 1955 SC 25 (32, 33) (Pt C) (Pr 17).**

——**Art. 245**— U. P. Imposition of Ceiling on Land Holdings Act (1 of 1961)— No provision in Act delegates unguided legislative power on the executive. See U. P. Imposition of Ceiling on Land Holdings Act (1 of 1961). **AIR 1965 All 175.**

●——**Art. 245 — Delegation of legislative powers U. P. Large Land Holdings Tax Act (31 of 1957) — Act not invalid — (U. P. Large Land Holdings Tax Act (31 of 1957), S. 5).**

The power to fix the multiple within the limits of $12\frac{1}{2}$ times and the principles contemplated by sub-S. (2) of S. 5 cannot amount to delegation of any essential legislative function. The Act does not suffer from the defect of delegation of essential legislative functions. Oudh Sugar Mills, Ltd. v. State of U. P., **ILR (1960) 1 All 487 : 1959 All LJ 754 : 1959 AWR (HC) 544 (2): AIR 1960 All 136 (150) (Pt F) (Pr 44) (FB).**

——**Art. 245** — Delegation — Limits — Notification under S. 38, U. P. Town Areas Act if exceeds permissible limits of delegation. See Municipalities — U. P. Town Areas Act (2 of 1914), S. 38. **AIR 1957 All 366.**

——**Art. 245 — U. P. Road Transport Services (Development) Act (9 of 1955), S. 3 — Delegated legislation — S. 3 of Act is not void.**

Section 3 of the Act fully lays down the standard and the policy for the guidance of the State Government. It is not therefore, void on account of going beyond the provisions of permissible delegation. **AIR 1957 All 320 (331, 332) (Pt I) (Prs 39, 40) (DB).**
[**Reversed** on another point in AIR 1959 SC 648.]

——**Art. 245** — Scope — U. P. Sugarcane Cess Act (22 of 1956), S. 3 (1) — Validity — Conferment of power on State Government to determine amount of cess does not exceed permitted limits of delegated legislation. See Ibid, Art. 14. **AIR 1957 All 159 (DB).**

——**Art. 245** — Ss. 46 and 47 of Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 — Are not unconstitutional on ground of delegation of essential legislative functions to executive and judiciary. See Andhra Pradesh and Madras Alteration of Boundaries Act (1959), S. 46. **AIR 1961 Andh Pra 50.**

——**Art. 245 — Delegated legislation — Excessive delegation — Assam Liquor Prohibition Act (1 of 1953), S. 2 (3) — Validity.**

When all the provisions of the Assam Liquor Prohibition Act are taken into consideration it cannot be said that the power given to the State Government by notification to declare any substance as a liquor is uncontrolled so as to be hit by the doctrine of excessive delegation. When any particular notification is challenged on the ground that it is an unreasonable restriction on the rights of the petitioner, it may be examinable by the Court; but the Act cannot be struck down on that ground. AIR 1951 SC 318, Rel. on. **ILR (1960) 12 Assam 396 : AIR 1961 Assam 16 (17) (Pt C) (Pr 6) (DB).**

——**Art. 245** — Bombay Commissioners of Divisions Act (8 of 1958), Ss. 3 (2), 3 (4) — Delegation of legislative powers — Principles — Ss. 3 (2) and 3 (4) are not invalid on ground of excessive delegation — Mere capability of abuse of power does not alter its nature. AIR 1951 SC 332 and AIR 1954 SC 569, Rel. on. **67 Bom LR 101 : 1965 Mah LJ 290 : ILR (1965) Bom 394 : AIR 1965 Bom 224 (236, 237) (Pt A) (Prs 28, 29, 30, 31) (DB).**

——**Art. 245** — Delegated legislation — Essential Services Maintenance Ordinance (1960), Ss. 2 (1) (a) and 3 — Ordinance is not bad on account of excessive delegation of legislative power to Central Government. **(1963) 2 Lab LJ 264 : 63 Bom LR 774 : 1961 Nag LJ 695 : (1961-62) 21 FJR 441 : AIR 1962 Bom 53 (64) (Pt C) (Pr 39) (DB).**

——**Art. 245** — Saurashtra Act (26 of 1956) — Validity. See Saurashtra Local Development Fund Act (26 of 1956), S. 7 (2). **AIR 1959 Bom 43 (DB).**

——**Art. 245** — West Bengal Land (Requisition and Acquisition) Act (2 of 1948), S. 3 (1) — Order of requisition of land — Satisfaction of person passing the order and who is duly authorised in that behalf by the State Government is sufficient — It is not essential that he should go through the process of State Government's satisfaction through the Minister in charge as required by the Standing Rules and Business and Orders of Government — S. 3 is not unconstitutional on ground of uncontrolled delegation. See West

Bengal Land (Requisition and Acquisition) Act (2 of 1948), S. 3 (1). **AIR 1963 Cal 373.**

——**Art. 245** — Mines Act — Validity — Rule against delegated legislation held not offended. See Mines Act (1952), S. 58 (d). **ILR (1957) 3 Cal 504 : 1957 Cr LJ 122.**

——**Art. 245** — West Bengal Clinical Establishments Act (56 of 1950) — Act and Rules framed thereunder are not ultra vires. **AIR 1955 NUC (Cal) 5922.**

——**Arts. 245 and 246—S. 3 (1) (a) (iii) and (2) of Preventive Detention Act — Validity — (Public Safety — Preventive Detention Act (1950), S. 3).**

It cannot be said that the question whether the impugned provision of S. 3 of the P. D. Act was legislation within the meaning of Arts. 245 and 246 of the Constitution was not decided in Gopalan's case, AIR 1950 SC 27. The provision in S. 3 of the P. D. Act is not bad as being an instance of unwarranted delegation of legislative power. Incidentally, if the contention that such provisions are invalid be upheld not only will S. 3 (1) (a) (iii) and S. 3 (2) of the P. D. Act fall, but also the other provisions of S. 3 and with it the entire Act will fall—a sweeping result indeed. The fact that what were essential commodities was laid down in certain statutes, e. g. Essential Supplies Act, etc., cannot be considered to be a valid ground for nullifying the impugned provisions of the Preventive Detention Act. AIR 1950 SC 27; AIR 1951 SC 332, Foll; AIR 1951 SC 270, Explained. **58 Cal WN 659 : 1954 Cr LJ 1722 : AIR 1954 Cal 591 (593, 594) (Pt A) (Prs 5, 6, 8) (DB).**

——**Art. 245** — Right to assemble under Art. 19 (1) (b) — Not an absolute right — Jammu and Kashmir Security Rules, R. 50 — Validity of — Rule is not ultra vires the Constitution — Prohibition of public meetings not unreasonable restriction — Rule does not constitute delegated legislation, in view of preamble to Ordinance 1 of Smt. 2003 and heading of the rule. See Ibid, Art. 19 (1) (b). **AIR 1964 J and K 23 (DB).**

——**Art. 245** — Madhya Pradesh Abolition of Cash Grants Act (16 of 1963), S. 2 (1) — No vagueness about definition of 'Cash grant' in S. 2 (1) of Act — There is in that provision no delegation to State Government of any power. **1964 Jab LJ 527 : 1964 MPLJ 874 : AIR 1965 Madh Pra 77 (82) (Pt B) (Pr 8) (DB).**

——**Art. 245 — Delegated legislation — S. 35 (3), States Reorganisation Act (1956) — Validity — (States Reorganisation Act (1956), S. 35 (3)).**

Under S. 35 (1), it is not as if the Legislature having decided as to the law that should govern, had left merely the time when, or the area over which, it should operate to the determination of an executive authority. The specification by the Chairman is just the exercise of statutory power and partakes no more of the character of legislation than any other act of administration or even the decisions of a quasi-judicial authority or Tribunal created by statute. If the naming by the Chairman of the members to be eliminated were held to be a legislative act, the Courts have no hesitation in holding it to be excessive delegation and therefore, invalid on that account. 3 AC 889, Dist. **(1956-57) 12 Ele LR 345 (Mad).**

——**Arts. 245 and 16 (4)** — Mysore Munsiffs (Recruitment and Promotions) Rules (1954), R. 7 (2) — Direction in R. 7 (2) does not amount to delegation of power for reservation of seats. See Ibid, Art. 16 (4). **AIR 1956 Mysore 20.**

——**Art. 245** — Bihar High Schools (Control and Regulation of Administration) Act (13 of 1960), S. 5 (1) — Validity — Delegation of legislative authority — What amounts to S. 5 (1) deals with formation of managing committee and not with its policy — Section not ultra vires on account of excessive delegation. See Bihar High Schools (Control and Regulation of Administration) Act (13 of 1960), S. 5 (1). **AIR 1965 Pat 124 (DB).**

——**Art. 245** — Bihar Essential Services Maintenance Act (1 of 1948), Ss. 1, 3 — Scope of S. 3 — Does not amount to delegated legislation — Act not void. See Bihar Essential Services Maintenance Act (1 of 1948), S. 1. **AIR 1956 Patna 188.**

——**Art. 245** — Rubber Act (1947, as amended in 1960), Ss. 12, 14 — Section does not violate Art. 14 of Constitution — Power given to executive to frame rules is not uncanalised. See Rubber Act (1947, as amended in 1960), Section 12. **ILR (1965) 2 Punj 663 : 67 Pun LR 1153.**

——**Art. 245** — Punjab Passengers and Goods (Taxation) Act (16 of 1952), S. 6 (4) — Constitutionality — Section not ultra vires on ground that it confers uncontrolled or unregulated power to reopen past assessment. See Punjab Passengers and Goods (Taxation) Act (16 of 1952), S. 6 (4). **AIR 1964 Punj 438 (DB).**

●——**Art. 245** — Jodhpur University Act (17 of 1962), S. 39 — Constitutionality — Not void as conferring excessive delegation of legislative power to State Government. See Jodhpur University Act (17 of 1962), S. 39. **AIR 1964 Raj 161 (FB).**

——**Art. 245 — Rajasthan Limitation Act (Adaptation) Ordinance (6 of 1950), S. 11 — Validity.**

S. 11 cannot be held to be invalid on the ground of any excessive delegation of power or on account of abrogation of any essential legislative function by the legislature. **ILR (1960) 10 Raj 913.**

——**Art. 245** — (Rajasthan) Price Control Order — Validity — Order not void on account of excessive and unauthorised delegation. See Gram (Rajasthan) Price Control Order (1958). **AIR 1959 Raj 206 (DB).**

7. Conditional legislation.

(a) Power to refer cases to Special Court for trial.

(b) Addition of new items to those specially mentioned.

(c) Power to exempt from provisions of an Act.

(d) Extension of duration of Act.

7. Conditional legislation.

●——**Art. 245** — Employees' State Insurance Act (1948), S. 1 (3)—Validity — Not invalid on ground of excessive delegation — It is conditional legislation — See Employees' State Insurance Act (1948), S. 1 (3). **AIR 1964 SC 1260.**

●——**Art. 245 — Delegated legislation and conditional legislation — Rajasthan (Protection of Tenants) Ordinance (9 of 1949), S. 3 — Validity — (Tenancy laws — Rajasthan (Protection of Tenants) Ordinance (9 of 1949), S. 3).**

When an appropriate Legislature enacts a law and authorises an outside authority to bring it into force in such area or at such time as it may decide that is conditional and not delegated legislation, and such legislation is valid. S. 3 of the Rajasthan Ordinance in so far as it authorises the Rajpramukh to extend the life of the Act falls within the category of conditional legis-

lation, and is, in consequence, intra vires. AIR 1949 FC 175, Diss from: (1877-78) 5 IA 178, Rel. on. Inder Singh v. State of Rajasthan, **1957 SCJ 376: 1957 SCA 735: 1957 SCR 605: AIR 1957 SC 510 (515, 516) (Pt A) (Prs 9, 10, 11).**

●——**Art. 245 — Delegated legislation and conditional legislation — Imports and Exports (Control) Act (1947), S. 3 (1) (a) — Validity — (Imports and Exports (Control) Act (1947), S. 3 (1) (a)).**

Legislation which is conditional, properly so-called, must be distinguished from legislation which is delegated. Where the Legislature provides and lays down principles underlying the provisions of a particular statute and also affords guidance for the implementation or enforcement of the said principles, it is open to the Legislature to leave the actual implementation or enforcement to its chosen delegate. The time when the provision should be implemented, the period during which it should be implemented or the place where it should be applied can, in appropriate cases be validly left by the Legislature to its delegate. The Imports and Exports (Control) Act cannot be held as ultra vires on the ground of delegated legislation. AIR 1954 SC 465 and AIR 1957 SC 397 Rel. on. Bhatnagars and Co. v. Union of India, **1957 SCJ 546: 1957 SCA 810: 1957 SCR 700: AIR 1957 SC 478 (485, 486) (Pt D) (Pr 11).**

——**Art. 245** — Foreigners Orders (1948), Para 7— Provision is only a piece of conditional legislation and is therefore not in excess of S. 3, Foreigners Act. **1962 All LJ 123: 1962 All Cri R 78: 1962 All WR (HC) 83: ILR (1961) 2 All 738: 1962 (2) Cri LJ 166: AIR 1962 All 383 (389, 390) (Pt F) (Prs 36, 37) (DB).**

● ——**Art. 245** — U. P. Municipalities Act (2 of 1916), Ss. 1 (2), 87 A— S. 1 (2) only declares territorial extent of the Act but does not prohibit extension of S. 87 A to town areas by section 38 (1) of the U. P. Town Areas Act (2 of 1914). See Municipalities — U. P. Municipalities Act (2 of 1916) S. 1 (2). **AIR 1961 All 200 (FB).**

——**Art. 245 — Delegated legislation — Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 2 — Notifications under Nos. 3168 and 3169 — Validity.**

Where the legislature has passed an Act and empowered a responsible authority to extend that particular Act to a specified locality with such modifications and alterations as the necessities of the situation may require and to repeal those existing laws only which impliedly stand repealed when the Act is so extended the delegation of the power to repeal existing laws in these circumstances cannot be said to be ultra vires.

Held, that the modifications made by the Notifications Nos. 3168 and 3169 while extending the U. P. Act (1 of 1951) to Rampur district did not amount to an alteration affecting the substance, that is the essential nature of the impugned enactment. Nor the provisions regarding the repeal of certain laws already in force in the former territories of Rampur is unconstitutional; for, the notification in repealing the Acts does nothing more than express what was implicit in the situation.

A repeal of this nature is not in reality a repeal by any act of the delegate but by the Act of the legislature itself. Hence, the Notifications are not ultra vires the State Government. AIR 1954 SC 465 Foll. AIR 1951 SC 332 Dist. and Expl. **1955 All LJ 508: 1955 All WR (HC) 450: AIR 1955 All 554 (556, 557) (Prs 13, 17) (DB).**

● ——**Art. 245** — Taking effect of Act made contingent upon subsequent event — Some authority empowered to bring it into effect on the happening of the condition — It is not a case of delegation of legislative power by the legislature. Ram Kishan v. State **1951 All LJ 64: 52 Cr LJ 333: 1951 All WR (HC) 128: 1951 All Cri R 23: ILR (1952) 1 All 376: AIR 1951 All 181 (191, 192, 194, 195) (Prs 46, 49, 57, 60) (FB).**

—— **Art. 245** — Employees' State Insurance Act (1948), Ss. 1 (3), 73-A — Validity — Power of Central Government to bring parts of the Act into force in different areas on differnt dates — No violation of Art. 14 or excessive delegation — Levy of special contribution under S. 73-A before benefit sections are brought into force — Not an unreasonable restriction on right of employers — No violation of Art. 19. See Ibid, Art. 14. **AIR 1962 Assam 120 (DB).**

——**Art. 245** — Character of Provincial Legislature — Delegated Legislature — Power to pass conditional legislation. See Government of India Act (1861), S. 42. **AIR 1954 Bom 261 (DB).**

——**Arts. 245, 21 and 14**—Validity—Authorisation to enforce Act on fulfilment of conditions — No delegation of legislative power to the authority — Hence provisions of Hyderabad Special Tribunals Regulation is not unconstitutional — See Hyderabad Special Tribunals Regulation (5 of 1358 Fasli). **AIR 1953 Hyd 145.**

—— **Art. 245** — Separate notification for bringing Central Excises and Salt Act into force in any area not contemplated — Applicability to Bhopal area — Act extended to Bhopal area by Act LIX of 1959 — Effect — Power to issue notification to bring Act into force — Nature of — Power is a delegated power — Power if can be taken away by implication by legislature by enacting when extending Act to new area, that it shall come into force immediately. See Central Excises and Salt Act (1944), S. 1 (2). **AIR 1961 Madh Pra 353 (DB).**

—— **Art. 245 — Delegated legislation — S. 5, Madras Hindu Religious and Charitable Endowments Act (19 of 1951) — Validity — (Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 5).**

Section 5 no doubt effects the repeal of the enactments set out in their application to institutions and endowments brought within the scope of the Act. This repeal was within the power of Legislature. When by a proper legislative delegation the State Government are vested with power to extend the operation of Act (19 of 1951) to particular institutions S. 5 would certainly be attracted to those institutions and to the extent to which provisions of this Act are made applicable to such endowments the enactments mentioned in S. 5 would cease to apply or would be overborne. But this effect is not by virtue of the "legislative act" of the Government in notifying the institution but because the Legislature has so provided. It would be a true case of a conditional legislation which is within the powers of the Legislatures in India. **71 Mad LW 222: (1958) 1 Mad LJ 248: 1956 Mad WN 177 (2): AIR 1958 Mad 532 (533) (Pt B) (Pr 6).**

——**Art. 245 — Non-legislative power —Delegation of, permissible.**

A Legislature is authorised to delegate a power which is non-legislative in character. Sometimes the delegated power may be in the nature of conditional legislation authorising an authority such as the executive to determine the time of the commencement of an act and the area of its application after determining, if necessary, certain facts. **(1949) 2 Mad LJ 663: 1949 Mad WN 733:**

51 Cri LJ 615: AIR 1950 Mad 243 (246, 247, 248) (Pt E) (Prs 6, 9) (DB).

——Arts. 245 and 246—Power of State Legislature to impose limitation on right of appeal — (Sales Tax — C. P. and Berar Sales Tax Act (21 of 1947), S. 22 (1), Proviso — Validity).

A person has no inherent right of appeal. It must be given by an express enactment and that is the scheme of all Acts, civil or criminal. The right, which is the creature of statute, is limited to the extent permitted by it. As the right of appeal is not an inherent right it cannot come under the category of fundamental rights. It is therefore, open to the Legislature to impose limitations on the right of appeal. AIR 1953 Nag 14, Ref. to.

Hence, the proviso to S. 22 (1) of the C. P. and Berar Sales Tax Act is not ultra vires the State Legislature because it imposes a condition of payment of the tax with penalty, if any, before an appeal is admitted. **1955 Nag LJ 49: (1955) 6 STC 222: ILR (1955) Nag 137: AIR 1955 Nag 99 (103) (Pt F) (Pr 15) (DB).**

——Art. 245 — Legislature — Delegation of power by — Legislative policy and principle laid down — Orissa Municipal Act, 1950 (as amended by Orissa Act 19 of 1951), Section 417-B — Notified area — Extension of provisions of Municipal Act to — Power given to State Government to select sections and apply them as modified to notified area — Notification extending certain section but omitting Sections 4 and 5 therefrom — Notification is valid. AIR 1961 SC 4. Disting. **ILR (1961) Cut 347: (1961) 3 Orissa JD 238: AIR 1962 Orissa 17 (19, 20) (Pt A) (Prs 6, 8) (DB).**

——Art. 245 — Delegated or conditional legislation — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947), Section 1 (3) — Not ultra vires.

The power given to the Provincial Government under Section 1 (3), Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, is not a case of delegated legislation but that of a conditional legislation and as such that provision of law or the Act itself is neither void nor constitutionally bad.

All that has been left for the decision of the Provincial Government under Section 1 is to extend its operation to the areas which they think proper or to cut away its life to a period fixed and thereafter to extend it again if they so like. There is no power given to the Provincial Government in the case of this Act to cut away its life on making any modification in the provisions of the Act as originally enacted by the Legislature. AIR 1950 Orissa 50, Rel. on. **1956 BLJR 410: 1956 Pat LR 291: AIR 1956 Pat 496 (500) (Pt B) (Pr 7) (DB).**

——Art. 245 — Delegated authority — Extension of law.

Extension of a law amounts to enacting a law; if such extension is done by an authority who has itself no power of legislation but only purports to act under a delegated authority, such extension is not valid. Case-law Ref. **1955 Raj LW 355: ILR (1954) 4 Raj 861: AIR 1954 Raj 224 (225, 226, 228) (Pt D) (Prs 7, 20) (DB).**

7 (a). Power to refer cases to Special Court for trial.

——Art. 245 — Power to direct offences or classes of offences or classes of cases to be tried by special Court — Validity. See Public Safety — Saurashtra State Public Safety Measures (Third Amendment) Ordinance (66 of 1949), S. 11. **1952 Cri LJ 805: AIR 1952 SC 123.**

——Art. 245 — Validity of Acts — Jurisdiction of Courts. See (Hyd) Special Tribunal Regulation (5 of 1358-F), Section 3. **AIR 1955 NUC (Hyd) 5624 (DB).**

7 (b). Addition of new items to those specially mentioned.

—Art. 245 — Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (1 of 1947) Section 3 — Power given to Government to add to items in schedule — Validity. See Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (1 of 1947), Section 3. **AIR 1952 Orissa 260.**

7 (c). Power to exempt from provisions of an Act.

——Art. 245 — Land Acquisition Act, Section 17 (4) — Power conferred on State Government to exempt case of urgency from application of Section 5-A — Does not amount to a repeal of Section 5-A. See Land Acquisition Act (1894), Section 4. **AIR 1963 All 24.**

——Art. 245 — Taxation law — Delegation of power to Municipal Corporation to select cases for exemption and to determine manner of calculation. See Constitution of India, Art. 110 (2). **AIR 1959 Cal 704 (DB).**

——Arts. 245, 246, 14 — Extent of legislative powers — Right to except from operation of law particular class of persons — Classification must be reasonable — Equality between persons — Interpretation of — Mysore House Rent and Accommodation Control Act (30 of 1951), Section 20 is not unconstitutional. See Ibid, Art. 14. **(1963) 1 Mys LJ 444.**

——Art. 245 — Scope — Madras Sugar Factories Control Act (1949), as amended by Mysore Act (7 of 1954), Section 14 (4) — Validity — Levy of tax on entry of sugarcane within particular area — Selection of persons from whom tax is to be imposed — If can be delegated to administrative body. See Madras Sugar Factories Control Act (20 of 1949) as Amended by Madras Sugar Factories Control (Mysore Amendment) Act (7 of 1954), Section 14 (4). **AIR 1958 Mys 64 (DB).**

——Art. 245 — Delegated legislation — Rent Control legislation — Delegation of power to State Government to exempt particular building or class of buildings from applicability of statute — Not void on ground of excessive delegation — East Punjab Urban Rent Restriction Act (3 of 1949), Section 3, does not confer any legislative power — Constitutional validity — Exercise of power of exemption does not amount to the exercise of the powers of repeal — Exemption implies merely suspension of statute for the time being — Repeal implies obliteration of statute. AIR 1951 Nag 58 (FB); AIR 1959 Madh Pra 208; AIR 1960 SC 554 & AIR 1961 SC 44, Rel. on. **ILR (1962) 1 Punj 407: 64 Punj LR 1: AIR 1962 Punj 204 (210, 211, 213) (Pt A) (Prs 11, 13, 14, 15, 17, 18) (DB).**

——Arts. 245 and 265 — Tax — Exemption from.

Power to exempt from tax is sovereign legislative power and no State can fetter its own much less the future legislative authority of its successor. ILR (1958) 8 Raj 700 and AIR 1960 Raj 92, Rel. on. **1964 Raj LW 313: ILR (1964) 14 Raj 667: AIR 1964 Raj 205 (213) (Pt D) (Pr 31) (DB).**

7 (d). Extension of duration of Act.

——Art. 245 — Sub-section (5) of Section 1 of the U. P. Act (25 of 1947) — Provision authorising Government to extend duration of Act for a further period is not ultra vires. See Houses and Rents — U. P. (Temporary) Accommodation Requisition Act (25 of 1947), S. 1 (5). **AIR 1955 All 48 (FB).**

——**Art. 245 — Delegated Legislation — Essential Supplies (Temporary Powers) Act, 1946, S. 1.**

The question of delegation does not arise in the case of the extension of the period of duration of the Essential Supplies (Temporary Powers) Act, 1946 as the intention in Sec. 1, sub-section 3, enacting that the Act would cease to have effect on the expiration of the period mentioned in Section 4, India (Central Government and Legislature) Act, 1946, was that without any further action on the part of the Legislature the Act should continue to be in force up to the end of the period during which the Indian Legislature would have powers to legislate under the Imperial Act. Once it is taken that the Legislature intended that and provided for it by legislation, it could not be said that there was as a matter of fact any further legislation. **53 Bom LR 268: 52 Cri LJ 954: ILR (1951) Bom 626: AIR 1951 Bom 369 (377, 378) (Pt E) (Pr 22) (DB).**

● ——**Art. 245 — Legislation.**

Period during which Hyderabad Defence Regulation was operative — Lapse of Regulation — Temporary legislation — Principles. See Hyderabad Defence Regulation (1348-F), Preamble. **1954 Cri LJ 1093: AIR 1954 Hyd 129 (FB).**

——**Art. 245 — Delegated legislation — Houses and Rents — Madhya Bharat Sthan Niyanatran Vidhan (1950), S. 1 (4), Proviso — Not ultra vires.**

The proviso to Section 1 (4) of the Madhya Bharat Sthan Niyantran Vidhan which authorises the Government to extend the duration of the Act for a further period of two years from 30-6-1951 is not invalid on the ground of delegation of legislative powers. AIR 1951 SC 484, Foll.

The notification of the Government extending the Act is not Legislation; the fixation of the maximum duration of the Act is a legislative act of the Legislature itself, the effect of the proviso to S. 1 (4) being to confer upon the Government the discretion to determine conditions necessary to give effect to the legislative act of the Legislature providing for the extension of the Act for a further period of two years. **ILR (1955) Madh Bha 406: AIR 1955 MB 177 (178, 179) (Pt B) (Prs 5, 6) (DB).**

——**Art. 245 — Delegated legislation — Power conferred on executive to extend operation of Act — (Houses and Rents — M. B. Sthan Niyantran Vidhan (15 of 1950), Section 2 (4)).**

Power conferred upon the executive Government to extend the operation of an Act is not a delegated power of legislation but is merely subsidiary to the enforcement of the Act. Therefore, the order of the Madhya Bharat Government extending the duration of the M. B. Sthan Niyantran Vidhan by two years under its Notification No. 66 (8) JJ 51, dated 26th March, 1951 in the case of Mhow Cantonment is not bad because it amounts to a delegated legislation. It was a conditional legislation when made. AIR 1952 Bom 16 and AIR 1952 Assam 69 (FB), Rel. on. **MBLR 1954 (Civ) 392: MBLJ 1955 HC 61: AIR 1955 MB 76 (78) (Pt C) (Prs 28, 29).**

——**Art. 245 — Delegated or conditional legislation — Power to extend operation or modify Act.**

The power to extend the operation of the Act beyond the initial period mentioned in the Act prima facie is a legislative power. It is for the Legislature to state how long the particular legislation will be in operation. That cannot be left to the discretion of some other body. The power to modify an Act of Legislature without any limitation on the extent of power of modification is undoubtedly legislative power. Where the power to extend and the power to modify are given by the same provision, they are one power and not two separable powers. Where the Legislature passes a temporary Act and specifies the period for which it will be initially in force, and then gives power to some other body to extend it without specifying the period up to which it can be extended, the power of extension is purely a legislative power and cannot be delegated. But where the Legislature passes a temporary law and fixes a maximum period for its continuance, but in the first instance applies it for a period shorter than the maximum period, and also provides a machinery for its extension from time to time up to the aggregate period, the power of extension so given is not delegated or condidional legislation. It is merely a method for reaching the maximum period by instalments to be worked out in a particular manner. But where along with this power of extension within the maximum fixed by the Legislature, the power of modification is also given the two become one power and as the power of modification is essentially a legislative power, the extension would be invalidated even though there may be no actual modification. AIR 1949 FC 175 and AIR 1951 SC 484, Rel. on. **1954 Raj LW 587: ILR (1954) 4 Raj 958: AIR 1954 Raj 252 (259, 260) (Pt F) (Pr 30) (DB).**

7 A. Temporary legislation.

See Note 7 (d).

8. Subordinate and ancillary legislation.

● ——**Art. 245 — Rules framed under delegated authority — Validity — Test.**

Per Shah and Sikri, JJ.— When power to frame rules is conferred by the Act upon the State Government that power may be exercised within the strict limits of the authority conferred. If in making a rule the State transcends its authority, the rule will be invalid, for statutory rules made in exercise of delegated authority are valid and binding only if made within the limits of authority conferred. Validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorised. State of Kerala v. Charia Abdulla and Co., **(1965) 2 SCJ 461: (1965) 2 ITJ 351: (1965) 16 STC 875: 1965 Ker LJ 903: (1965) 1 SCWR 680: AIR 1965 SC 1583 (1589) (Pt B) (Pr 14).**

● ——**Art. 245 —** Mines and Minerals (Regulation and Development Act (1948) (as it was before its amendment by Act 77 of 1957), Section 5 (1) — Mineral Concession Rules (1949), Rules 37, 39 and 48 — Transfer and assignment of mining lease — Word 'grant' used in Section 5 — Meaning of — Rules 37 and 48 are intra vires — Petitioner acquiring colliery in transgression of these rules — He cannot question about constitutional validity of Rule 39. Biswanath Prasad v. Union of India, **1965 BLJR 621: AIR 1965 SC 821 (824, 825) (Pt B) (Pr 10).**

● ——**Art. 245 —** Foreign Exchange Regulation Act (7 of 1947), Sections 8 (1) and 23 (1-A) — Subordinate legislation — Question regarding date when it can be said to have been passed and date when it has come into effect—Determination of — Notifications under Section 8 (1) by Central Government and Reserve Bank of India — Contravention of, by foreigner — Prosecution under Section 8 (1) read with Section 23 (1-A) — Absence of knowledge of Notification not a valid defence — Absence of statutory requirement as to mode of publication — Publication in Gazette of India is effective to give notice of it to persons concerned — AIR 1964 Bom 274, **Reversed.** State of Maharashtra v. M. H. George, **1965 (1) Cri LJ 641: (1965) 1 SCWR 430: (1965) 1 SCA 750: (1965) 35 Com Cas 557: 67 Bom LR 583: 1965 SCD 735 : (1966) 1 SCJ 363 : 1966 Mad LJ**

(Cri) 248 : AIR 1965 SC 722 (742, 743) (Pt B) (Prs 44, 45, 46).

●——**Art. 245** — Rules framed under U. P. Panchayat Raj Act, Rule 84 — Scope of Section 49 (4) — Criminal case — One of parties belonging to place outside — Constitution of Bench — Rule 84 is ultra vires. See U. P. Panchayat Raj Act (27 of 1947), S. 49 (4). **1955 Cri LJ 1010: AIR 1955 SC 435.**

●——**Art. 245** — Ancillary or subsidiary legislation. See Ibid, Sch. VII, List I, Entry 97. **AIR 1965 All 420 (FB).**

——**Art. 245** — Subordinate legislation — Rule 44 U. P. Sales Tax Rules, 1948 in so far as it prescribes as to what amounts to turnover, is beyond rule-making power of State Government. See Sales-tax — U. P. Sales-Tax Rules (1948), Rule 44. **AIR 1964 All 176 (DB).**

●——**Art. 245 — Delegated legislation—Reasonableness — Justiciable standard.**

It is a fundamental principle of our law that rules or regulations or orders made under a power conferred by the Legislature upon a subordinate authority must be reasonable. This furnishes a justiciable standard for the Courts to apply to all subordinate legislation. By this wholesome rule no subordinate legislation may make rules and regulations which may be considered unreasonable. Public interest is thus safeguarded and the arbitrariness of executive bodies is thus curbed and controlled. AIR 1951 All 674 (FB), Ref. Bhushan Lal v. State, **('52) 1952 All WR (HC) 327: 1952 All Cr R 84: 1952 All LJ 412: 1952 Cri LJ 1676: ILR (1953) 2 All 226: AIR 1952 All 866 (870, 871) (Pt B) (Pr 33) (FB).**

●——**Art. 245** — Power to make rules and regulations within definite limitations — Conferring of power on specific officials—Act compete in itself — Does not offend rule against transfer or delegation of legislative powers. Ramkrishan v. State, **1951 All LJ 64 : 52 Cr LJ 333: 1951 All WR (HC) 128 : 1951 All Cri R 23 : ILR (1952) 1 All 376: AIR 1951 All 181 (191, 192, 194, 195) (Prs 46, 49, 57, 60) (FB).**

——**Art. 245 — Delegated legislation — Power of making rules conferred by Act.**

Desai, J. :— What is delegated legislation ? If, a Legislature, while legislating in respect of a certain matter, confers powers to make rules in respect of that matter on some authority, it cannot be said to be delegating legislative powers. If what the legislature does, amounts to law in respect of that matter, it cannot at the same time amount to delegated legislation. When an authority makes rules in exercise of the powers conferred upon it by the legislature the Act is the real authority behind the rules and the Legislature retains control over the authority and the rules. So long as it retains control it cannot be said that it has delegated the power. **ILR (1952) 2 All 360 : 1952 Cri LJ 1119 : AIR 1951 All 44 (51, 52) (Pt D) (Pr 12) (DB).**

——**Arts. 245, 14, 19** — Andhra Inams (Abolition and Conversion into Ryotwari) Act (37 of 1956), S. 17 — Rules under R. 16 — Validity — Rule granting power to issue injunctions to prevent eviction of tenants entitled to protection — Rule whether made beyond rule making power of Government — Rule whether hit by Arts. 14 and 19 of the Constitution or void as illegal delegation of legislative power. See Tenancy Laws — Andhra Inams (Abolition and Conversion into Ryotwari) Act (37 of 1956), S. 17. **AIR 1962 Andh Pra 220.**

●——**Art. 245** — Subordinate or ancillary legislation. See Sales Tax — Madras General Sales Tax Act. (9 of 1939), S. 3. **AIR 1958 Andh Pra 356 (FB).**

——**Art. 245** — Rule making power — Extent of. See Sales-tax — Assam Sales Tax Act (57 of 1947), S. 52 (1). **AIR 1959 Assam 216 (DB).**

——**Art. 245 — Rule-making power — Arbitrary exercise — Rule of pith and substance — Applicability — Assam Land and Revenue Regulation, R. 12 — If ultra vires — (Assam Land and Revenue Regulation (1 of 1886), Ss. 16 and 155 (f) and R. 12).**

Where the Legislature confers on a person or body of persons large powers for the purposes of administering an Act, it normally prescribes the principles on which these powers are to be exercised. If there are no rules for guiding and controlling the exercise of discretion by the person or by body of persons, the power is regarded as arbitrary and even unreasonable.

The State Government when exercising its rule making power performs a legislative function. When it confers on itself power which is absolutely unfettered, it exposes itself to the criticism that arbitrary power has been assumed. The rule of pith and substance which provides the test for determining whether the impugned Act is within its legislative competence or not would apply when the question is whether the rule-making authority has exceeded its powers. It is the substance and not the form that would provide the answer to the question.

The direction in R. 12 which allows the State Government to settle a fishery otherwise than by sale and makes the order of settlement by the State Government final, is inconsistent with S. 16 and as such ultra vires the State Government and therefore, invalid and unenforceable. AIR 1953 SC 309, Foll. **ILR (1955) 7 Assam 510: AIR 1956 Assam 48 (50, 51, 52) (Pt B) (Prs 8; 9; 12) (DB).**

[**Overruled** in AIR 1957 SC 377.]

——**Art. 245 — Delegated Legislation — Civil P. C. (1908), S. 9.**

The principle that whenever power is conferred upon the Legislature to pass laws in a field mentioned, the power carries with it the power to pass laws on matters which may be called subsidiary or ancillary cannot possibly be applied where subordinate powers of legislation are conferred upon a body, whether it may be Municipality which is empowered to make bye-laws, or it may be the Central Government itself, empowered to provide by an order for regulating the production, distribution and supply of, and trade and commerce in, essential commodities like cotton etc. It cannot act beyond the powers, except, of course to the extent that any other powers which it takes upon itself are justified by the doctrine of implied powers; but where the doctrine of implied powers cannot be availed of, it is not permissible to a body, to which powers of subordinate legislation have been given, to say that the power which has been given to it carried with it what may be called subsidiary or ancillary powers of operating beyond the field within which it can operate : AIR 1941 FC 16 and AIR 1951 Bom 210, Ref. **53 Bom LR 689 : 21 Bom Cr C 189 : 52 Cri LJ 1381 : ILR (1952) Bom 105 : AIR 1951 Bom 397 (401, 403) (Pt B) (Prs 5; 10) (DB).**

——**Art. 245 — Subordinate or ancillary legislation — Validity — Power to make rules — Enumeration of particular power does not curtail general power to make rules for carrying out purposes of Statute — Rule 7 framed under Bengal (Rural) Primary Education Act intra vires — Bengal (Rural) Primary Education Act (7 of 1930) Ss. 66 (1) and 23 (1) (g).**

The enumeration of particular powers in an

Act does not in any way curtail the general power given under the Act to make any rules for the purposes of carrying out the purposes of the Act, provided such rule is not inconsistent with the provisions of the Act. Whatever may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorised ought not, unless expressly prohibted, to be held, by judicial construction to be ultra vires. A subordinate legislation should be invalidated only if such reasonable construction in favour of its vires is not possible. (1958) 1 WLR 546 and (1898) AC 720 and AIR 1945 PC 156 and (1880) 5 AC 473, Rel. on.

Rule 7 of the Rules framed under Bengal (Rural) Primary Education Act dealing with appointment and transfers of primary school teachers is not ultra vires the Act. The transfer of primary teachers comes within the purposes of the Act. The Preamble of the Act makes it clear that the object of the Act is the better "management and control of primary education" in the State. In proper circumstances, the transfer of a teacher from one school to another may be conducive to a better management of the system of education through particular institutions. It is also evident that any such provision will not be inconsistent with the provisions of the Act. If the Board can make a new appointment which would include the power of dismissal, it would be of little avail to contend that the purposes of the Act would be defeated if the Board gets the power to transfer. Alternatively, even though the power to transfer may not be directly included in the power to appoint, it may be regarded as ancillary. Thus, an appointment involves the question of suitability. If after appointing a teacher to a particular school, the Board finds that he would be more suitable for another institution, it cannot be said that the Board should not have the power to transfer him to make an effective use of the power to appoint given to it by the statute. **AIR 1964 Cal 568 (571) (Pt A) (Prs 13 to 15).**

——**Art. 245 — Delegated Legislation — Subordinate or ancillary legislation — Rule-making power in statute — Rules made under — Non-recital of section under which it is made — Validity.**

In order to justify a Rule, the Rule itself need not show on its face under what particular section of the Act it is being made. So long as the Rule can be justified under the rule-making power, the non-recital of the fact that it has been so made will not make the Rule bad or invalid. **65 Cal WN 670 : ILR (1961) 1 Cal 501 : AIR 1961 Cal 217 (220) (Pt B) (Pr 20) (DB).**

——**Art. 245 — Delegated legislation — Rule-making power — Delegation — Rules.**

Delegated legislation, confers on Governmental authorities the power to supplement the provisions of a statute by the making of rules which can be divided into three categories.

In the first category, the rules are an integral part of the statute. If there is any inconsistency between the provisions, the ordinary rules of interpretation will come into play. In the second category the legal consequences are the same as in the first. In the third category, the rules made are only in furtherance of the provisions of the Act, and therefore, they must confine themselves within the four corners of the Act. AIR 1954 Cal 436 and AIR 1956 Andhra 232, Foll. **AIR 1960 Cal 296 (297) (Pt C) (Pr 6).**

——**Art. 245 — Delegated legislation — Coal Mines Provident Fund and Bonus Schemes Act (1948), S. 9 — Validity.**

The legislative body instead of prescribing the precise penalty may lay down the limit or standard, leaving it to the non-legislative body to prescribe the penalty within such limits or in accordance with the standard laid down. In such a case where the non-legislative body avails itself of the power, it cannot be said that it has exceeded limits. Section 9 is not ultra vires and S. 70 of the scheme is not an unconstitutional exercise of a delegated power. **(1959) 1 Lab LJ 587 : 63 Cal WN 147 : AIR 1959 Cal 208 (211, 212) (Pt B) (Pr 12).**

——**Art. 245 — Doctrine of ancillary or subsidiary powers — Provision whether incidental or ancillary to effective legislation on subject.**

What is incidental or ancillary in a given case must depend upon the main legislation and the circumstances of the particular case. It is in the last analysis a question of degree and it is not possible to lay down any hard and fast rule on the basis of which it can be said that a particular provision is necessarily incidental to effective legislation or not. But one thing is certain that the question of incidentality must be determined ab extra, irrespective of Parliamentary assumption on the matter. The provision must be regarded in its true nature and character and it must be ascertained having regard to the object or purpose of the provision as also the effect produced by it as to whether it is really and truly a provision relating to an ancillary or subsidiary matter or whether under the guise of making a provision on an ancillary or subsidiary matter what it really seeks to do is to trespass into some other field. (1914) 19 CLR 298, Rel. on. **(1965) 16 STC 329 : AIR 1965 Guj 60 (67) (Pt F) (Pr 12) (DB).**

——**Art. 245 — Delegated legislation.**

Rule making power conferred upon any other body or authority is a form of delegated legislation. **ILR (1956) Hyd 58 : AIR 1956 Hyd 35 (38) (Pt E) (Pr 16) (DB).**

——**Art. 245** — General Clauses Act (1897), S. 21 — Where rules are to be framed for "carrying out the purpose of the Act" such rules cannot travel beyond four corners of the Act itself — Interpretation of statutes — Statutory rules — Vires. See General Clauses Act (1897), S. 21. **AIR 1956 Hyd 35.**

●——**Art. 245 — Legislation— Subordinate legislation — Publication.**

Per Palnitkar; J.— In the case of subordinate legislation the general rule is that the legislation must be published properly and in the manner considered best adapted for the purpose of informing the persons concerned. Pannalal Lahoti v. State of Hyderabad. **ILR (1954) Hyd 441 : 1954 Cr LJ 1093 : AIR 1954 Hyd 129 (138) (Pt F) (Pr 44) (FB).**

——**Arts. 245 and 246** — Cochin Abkari Act (1 of 1077 M. E.), Ss. 69, 29 — Validity — There is conflict between S. 69 read with S. 29 of the Act and Arts. 245 (1) and 247 (3) of the Constitution — G. O. Ms. No. 253/63 Rev., dated 25-3-1963 is illegal and has to be struck down. See Ibid, Art. 372. **AIR 1965 Ker. 8.**

——**Art. 245** — M. P. Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962), S. 3 — Madhya Pradesh Agricultural Produce Markets (Validation) Ordinance (2 of 1962) — Both enactments purporting to validate executive action taken under statute are not incompetent — Legislature has plenary powers to make laws regarding matters covered by entry in legislative list of Constitution — Such validation is ancillary legislative power. See Madhya Pradesh Agricul-

tural Produce Markets (Validation) Act, 1962 (12 of 1962), S. 3. **AIR 1965 Madh Pra 6 (DB).**

——**Art. 245 — Subordinate Legislation.**

The law of the land, besides the common law and statute law, includes Orders in Council, rules, regulations or bye-laws, made under statutory powers, which are compendiously described by the term subordinate legislation. So far as bye-laws conforming with prescribed form are concerned, their validity depends upon the question of their reasonableness, or of their consistence with the general law or with the statute under which they are made. Rules made under a rule making power conferred by a statute, are, on the other hand, part and parcel of the statute itself. **1957 MPC 694 : ILR (1957) Madh Pra 117 : 1957 MPLJ 830 : 1957 Jab LJ 1057 : AIR 1958 Madh Pra 193 (194, 195) (Pt A) (Pr 4) (DB).**

——**Art. 245** — R. 49-A, C. P. and Berar Motor Vehicles Rules, 1940—Validity—Whether in excess of rule making power — (Motor Vehicles Act (1939), S. 68 (1)). See C. P. and Berar Motor Vehicles Rules (1940), R. 49-A. **AIR 1958 Madhya Pra 193.**

——**Arts. 245 and 246** — Subsidary and ancillary legislation — Competency of State Legislature to enact law for forfeiture by State of sales-tax illegally collected. See Ibid, Sch. 7, List 2, Entry 54. **AIR 1963 Mad 116 (DB).**

——**Art. 245** — Subsidiary legislation — Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (1 of 1947), S. 3 — Delegation to subordinate agency of ancillary power to make regulations and rules for administering the Act. See Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (1 of 1947), S.3. **AIR 1952 Orissa 260.**

——**Art. 245** — Subordinate legislation — Bihar High Schools (Control and Regulation of Administration) Act (13 of 1960), S. 8 (1) and (3) — Bihar Government Notification No. 1460, dated 13-5-1963, issued in exercise of the powers conferred by S. 8 (1) — Notification purporting to amend previous Resolution of 1958 — Contention that State Govt. purported to amend Resolution of 1958 of Education Dept. (which had force of statutory rule) under S. 8 (2), by administrative action and not by making a rule in accordance with procedure prescribed by Ss. 8 (1) and 8 (3) and hence amendment made by notification was legally invalid — Held, the Notification was not in the nature of administrative action of State Govt. but it was piece of subordinate legislation by the Govt. of Bihar by taking recourse to the rule-making power conferred under S. 8 (1) and, as legislative requirements under Ss. 8 (1) and 8 (3), had been complied with, Notification dated 13-5-1963, was legally valid — Bihar High Schools (Control and Regulation of Administration) Act (13 of 1960), S. 8 (1) and (3) — Bihar Govt. Notification No. 1460, dated 13-5-1963, purporting to amend previous Rules of 1958 — Validity. Bihar Govt. Notification No. 1460, dated 13-5-1963 — Validity. **1964 BLJR 722.**

——**Art. 245** — Capital of Punjab (Development and Regulation) Act (27 of 1952), S. 22 (3) — Provision of laying rules before Houses of State Legislature — Effect of — Rules to be treated as sections for all purposes. See Capital of Punjab (Development and Regulation) Act (27 of 1952), S. 22 (3). **AIR 1964 Punj 533 (DB).**

——**Art. 245**— Suit for injunction against Market Committee restraining it from recovering market fees on ground that levy was illegal and ultra vires — Jurisdiction of civil Court not barred — R. 51 is ultra vires of S. 31. See Civil P. C. (1908), S. 9. **AIR 1962 Punj 426 (DB).**

——**Art. 245** —Scope — Separation of executive and judicial functions under Gram Panchayat Act — Violation of — Directive principles of Art. 50 of the Constitution Act not ultra vires Constitution. See Panchayats — Punjab Gram Panchayat Act (4 of 1953). **1957 Cri LJ 796 : AIR 1957 Punj 149 (DB).**

●——**Art. 245** — Power of Parliament to enact law for expelling citizen outside India —Section 7 of Abducted Persons (Recovery and Restoration) Act — Validity. See Ibid, Art. 19 (1) (d). **1952 Cri LJ 1313 : AIR 1952 Punj 309 (FB).**

9. Retrospective laws.

(a) Power of legislature to make retrospective laws.

(b) Retrospective operation of delegated legislation.

9. Retrospective laws.

——**Art. 245 — Ex post facto legislation — Meaning.**

The mere fact that a law or a rule looks back and takes into account certain events that have already taken place does not necessarily mean that the said law or rule operates or acts from a date anterior to its promulgation. A law or rule may take into account the previous events or facts but may, nevertheless, operate only prospectively as from the date of its promulgation. A more accurate expression to be used to describe a law which acts or operates as from a date anterior to its promulgation would be 'retroactive legislation' or 'ex post facto legislation'. Such ex post facto legislation may either take away the rights created by previous transaction or validate what was in its inception invalid. Commonest form of ex post facto legislation is one which validates what was in its inception invaild. **1963 Mys LJ (Sup) 525 : AIR 1963 Mys 265 (274) (Pt B) (Pr 42) (DB).**

——**Arts. 245 and 309, Proviso — Retrospective Laws — Amendment to statutory rules —Mysore Recruitment of Gazetted Probationers Rules, 1959 — Mysore Gazetted Probationers (Special) Rules, 1960, R. 9 — Prospective rules creating no obligation on statutory bodies — Mandamus — Maintainability — Constitution of India, Art. 226.**

An amendment to a statute or a rule can be characterised as retrospective if it brings about deprivation or impairment of any vested right acquired under the existing laws or creates a new obligation or imposes a new duty or attracts a new disability in respect of transactions or considerations already past.

Held, that the amendments to the Mysore Recruitment of Gazetted Probationers Rules, 1959 were prospective and the petitioner's difficulty was not a disability which could make the amendments retrospective; (ii) since the petitioner had not acquired any right to the post of a Gazetted Probationer when the Governor made amendments to the Special Rules of 1960, the possibility of the petitioner not being able to attain the post of a Gazetted probationer, by direct recruitment, by reason of the maximum age limit being lowered could not amount to the creation of a new disability in respect of a past transaction or consideration; (iii) The writ of mandamus sought was a purposeless mandamus and could not issue. As the Public Service Commission had no power to make any selection of the persons to be appointed as Gazetted Probationers after the Gover-

nor amended the Special Rules, there was no statutory duty on the part of the Commission to make a selection the performance of which could be compelled by mandamus. **1963 Mys LJ (Sup) 261: AIR 1963 Mys 263 (264, 265) (Prs 2, 3, 4) (DB).**

9 (a). Power of legislature to make retrospective laws.

● ——**Arts. 245, 368 — Constitution (17th Amendment) Act 1964, S. 3 — Validity — Power to amend Constitution if can be exercised retrospectively — Act not unconstitutional on ground that it validates Acts added to Ninth Schedule but declared invalid.**

Per Gajendragadkar, C. J. Wanchoo and Raghubar Dayal, JJ.:

It cannot be urged that inasmuch as the impugned Act purports in substance to set aside the decisions of Courts of competent jurisdiction by which some of the Acts added to the Ninth Schedule have been declared to be invalid, it is unconstitutional. Legislative power to make laws in respect of areas entrusted to the legislative jurisdiction of different legislative bodies, can be exercised both prospectively and retrospectively. The constituent power conferred by Art. 368 on the Parliament can also be exercised both prospectively and retrospectively. On several occassions, legislatures think it necessary to validate laws which have been declared to be invalid by Courts of competent jurisdiction and in so doing, they have necessarily to provide for the intended validation to take effect notwithstanding any judgment, decree or order passed by a Court of competent jurisdiction to the contrary. Sajjan Singh v. State of Rajasthan, **(1965) 1 SCA 875: (1965) 1 Mad LJ (SC) 57: (1965) 1 SCJ 377: (1965) 1 Andh WR (SC) 57: (1965) 1 SCWR 593: AIR 1965 SC 845 (854) (Pt C) (Pr 16).**

● ——**Art. 245** — Power of State Legislature to legislate laws having retrospective effect — Legislative competency when law is enacted if sufficient — Sales Tax — Madras General Sales Tax (Special Provisions) Act (11 of 1963), S. 2 (1)— Validity — Effect of declaration under Central Act LII of 1952, as regards hides and skins — Did not affect legislative competency of State to enact provision relating to pre-Constitution Act — Section not invalid for want of President's assent. See Sales Tax — Madras General Sales Tax (Special Provisions) Act (11 of 1963), S. 2 (1). **AIR 1964 SC 1729.**

● ——**Art. 245** — Orissa Government Notification dated 1st July, 1947 granting exemption in respect of gold ornaments in exercise of powers under S. 6, Orissa Sales Tax Act (1947) — S. 2 of Validation Act is not ultra vires on the ground that it withdraws exemption with retrospective effect. See Sales Tax — Orissa Sales Tax Validation Act (7 of 1961), S. 2. **AIR 1964 SC 1581.**

● ——**Arts. 245 and 246 — Competency of Legislature — Retrospective Laws — Action taken under law which is void because of its contravention of fundamental rights — Legislature can pass law retrospectively validating such action.**

Where a law is invalid for the reason that it has been passed by a Legislature without legislative competence, and action is taken under its provisions, the said action can be validated by a subsequent law clothed by the same Legislature after it is clothed with the necessary legislative power. If the Legislature can by retrospective legislation cure the invalidity in action taken in pursuance of laws which were void for want of legislative competence and can validate such actions by appropriate provisions, the same power can be equally effectively exercised by the Legislature invalidating actions taken under laws which are void for the reason that they contravened fundamental rights. The infirmity proceeding from lack of legislative competence as well as the infirmity proceeding from the contravention of fundamental rights lead to the same result and that is that the offending legislation is void and non est. Hence, it is not correct to say that where the contravention of fundamental rights is concerned, the Legislature cannot pass a law retrospectively validating actions taken under a law which was void because it contravened fundamental rights. AIR 1959 SC 648, Expl., Case Law Ref. West Ramnad Electric Distribution Co., Ltd. v. State of Madras, **(1964) 1 SCJ 484: (1964) 1 Mad LJ (SC) 126: (1964) Andh WR (SC) 126: (1963) 2 SCR 747: (1963) 2 SCA 422: AIR 1962 SC 1753 (1760; 1761) (Pt C) (Pr 16).**

● ——**Art. 245 — Laws affecting vested rights.**

The legislature can interfere with the vested rights of persons in the exercise of its legislative power. That is not adjudicating between the parties affected by the Act. Kochuni v. State of Madras and Kerala, **1960 Ker LJ 1077: 1960 Ker LT (SC) 31: (1960) 2 SCA 412: (1960) 3 SCR 887: (1961) 2 SCJ 443: AIR 1960 SC 1080 (1109, 1110) (Pt O) (Prs 76, 78).**

——**Arts. 245, and 19 (g) (f)** — Court-fees Act (1870), S. 37—U. P. Court-fees (U. P. Amendment) Ordinance (2 of 1960), S. 2 — Retrospective legislation affecting right to file appeal on payment of court-fees — Constitutional validity — Appeal filed on payment of proper court-fee, pending on date of promulgation of Ordinance — Demand for additional court-fee according to Ordinance, whether contravenes Art. 19 (1) (f) of the Constitution. See Court Fees Act (1870), S. 37. **1962 All LJ 480.**

——**Art. 245** — Scope — Arts. 123, 246 and 248 — Effect of. See Administration of Evacuee Property (Chief Commissioners Province) Ordinance (12 of 1949). **AIR 1957 All 561 (DB).**

——**Art. 245** — Retrospective levy of tax. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 3 (As Amended in 1955). **AIR 1958 Andh Pra 558 (DB).**

——**Art. 245 — Legislation with retrospective effect — Competence of State Legislature.**

The Legislature of a State is a sovereign authority in the sphere of legislation on State subjects, and in the exercise of that authority it has competence to enact legislation with retrospective effect. **59 Bom LR 274: ILR (1957) Bom 420: AIR 1957 Bom 130 (133) (Pt C) (Pr 7).**

[**Reversed** on another point in AIR 1963 SC 358.]

——**Art. 245** — Legislature — Powers of — Unless there is a compelling public necessity the legislature cannot pass an Act having retrospective operation. **55 Cal WN 433: AIR 1951 Cal 85 (88) (Pt C) (Pr 34).**

[**Reversed** on another point in AIR 1954 SC 92.]

——**Art. 245** — Retrospective law — Legislative authority competent to make law, can make it to take effect retrospectively. **AIR 1955 NUC (Hyd) 2368 (DB).**

——**Art. 245** — Enactment of new rule of law with retrospective effect — It is proper exercise of legislative function within the competence of State Legislature. **ILR (1954) Hyd 766: AIR 1955 Hyd 257 (258, 259) (Pt B) (Pr 6) (DB).**

——**Arts. 245 and 246** — Retrospective imposition of tax — Validity. See Kerala Luxury Tax on Tobacco (Validation) Act (9 of 1964), Preamble. **AIR 1966 Ker 46.**

——**Art. 245** — The fact that transfer of cases under S. 10, Criminal Law Amendment Act would amount to retrospective legislation would not make the Act invalid — Law made by Parliament cannot be impeached merely on ground that it operates ex post facto. See Criminal Law Amendment Act (1952), S. 10. **1954 Cri LJ 1739: AIR 1954 Madh B 206 (DB).**

——**Art. 245** — Power of legislatures to make retrospective laws — Extent of. See Ibid, Art. 20. **AIR 1952 Madh B 181 (DB).**

——**Art. 245** — Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali Sanshodhan Adhyadesh (1965), (Ordinance No. 3/65), S. 3 — Constitutional validity — Ordinance is not invalid — It is not repugnant to an 'existing law' and is not a colourable legislation — Even though it retrospectively validates certain Acts it is within competence of State Legislature. See Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali Sanshodhan Adhyadesh (1965), (Ordinance No. 3/65). **AIR 1966 Madh Pra 110 (DB).**

——**Art. 245 — Power to enact retroactive legislation.**

Subject to any limitation imposed by the Constitution, Parliament and State Legislature can give to their laws, otherwise valid retrospective or prospective operation. AIR 1961 SC 1486 and AIR 1954 SC 158; AIR 1958 SC 468 and AIR 1961 SC 1534, Rel. on. **ILR (1963) Madh Pra 985: 1962 MPLJ 849: 1962 MPC 321: 1962 Jab LJ 987: AIR 1962 Madh Pra 342 (348) (Pt D) (Pr 13) (DB).**

——**Art. 245** — Retrospective law incidentally putting an end to finality of decision of Court— No judicial power is exercised by legislature — Law not bad on that account. **1962 MPC 216: 1962 MPLJ 935: 1962 Jab LJ 725: ILR (1963) MP 737: AIR 1962 Madh Pra 245 (250; 251; 252) (Pt A) (Prs 11, 13, 14, 15) (DB).**

——**Art. 245** — Retrospective operation — Matters to be taken into account. See Madhya Bharat Interest Act (17 of 1956), S. 3. **AIR 1958 Madh Pra 21 (DB).**

——**Art. 245 — Power of Parliament to alter retrospectively period of limitation within which assessment once completed could be reopened — (Income-tax Act (1922), S. 34 (1-A) — Validity).**

Parliament has power to enact a legislation which alters retrospectively the period of limitation within which assessments once completed could be reopened.

Section 34 (1-A), Income-tax Act, as introduced by the Amending Act (33 of 1954), expressly refers to the assessments which could be reopened by specific reference to particular assessment years. The date, 17th July, 1954, was obviously a reference to the date when the Ordinance which this amending Act replaced was promulgated, and the purpose of the mention of this date in the enactment was to confer on and continue the validity of the notices which had already been issued and the proceedings initiated thereby. **(1957) 32 ITR 439: AIR 1958 Mad 220 (227) (Pt C) (Prs 30; 31) (DB).**

——**Art. 245 — Power to enact retrospective law for levy or collection of tax.**

Under the Constitution, Parliament is not incompetent to make a retrospective provision for levy or collection of a tax relating to a period anterior to 26th January, 1950. **AIR 1954 SC** 158, Foll. **(1957) 32 ITR 439: AIR 1958 Mad 220 (227) (Pt D) (Pr 32) (DB).**

●——**Art. 245 — Power of legislatures.**

The powers of legislation given to the Parliament or to the Legislatures of the State are very wide as indicated in Art. 245, and it cannot be doubted that a sovereign Legislature has power to enact prospective as well retrospective laws. Brij Bhukan v. S. D. O., Siwan., **1954 BLJR 513: 33 Pat 690: AIR 1955 Pat 1 (34) (Pt Z-b) (Pr 27) (SB).**

——**Art. 245** — Administration of Evacuee Propetry Act (1950), S. 17 — Attachment in execution of decree effected prior to Act — Right to get property sold is taken away. See Administration of Evacuee Property Act (1950), S. 17. **AIR 1956 Pepsu 58.**

——**Art. 245** — Retrospective legislation affecting fundamental right — Power of State Legislature to enact. See Ibid, Art. 13 (2). **AIR 1963 Punj 319 (DB).**

——**Art. 245 — Displaced Persons (Debts Adjustment) Act (1951), Ss. 18 and 36 — Validity.**

There is no bar to the passing of an Act within the competence of a Legislature with retrospective effect. There is on the other hand always a presumption of constitutionality in favour of statutes. Ss. 18 and 36 of the Debts Adjustment Act are not ultra vires of the Constitution on the ground of being retrospective in operation. **1960 CIS (IJ) 8: 62 Punj LR 241: AIR 1960 Punj 523 (526) (Pt E) (Pr 11).**

●——**Art. 245** — Legislature has power to enact laws with retrospective effect — Jodhpur University (Amendment) Ordinance (3 of 1963) amending S. 39 of Jodhpur University Act (17 of 1962) with retrospective effect is not ultra vires. 1901 AC 297 and (1862) 31 LJPM and A 129, Rel. on. Virendra Kapur v. University of Jodhpur, **1964 Raj LW 328: ILR (1964) 14 Raj 463: AIR 1964 Raj 161 (166) (Pt C) (Pr 17) (FB).**

——**Art. 245** — Retrospective operation of amendments — Constitutionality. See Sales Tax — Rajasthan Sales Tax Act (29 of 1954), S. 10 (5) (As Amended by Ordinance III of 1956). **ILR (1958) 8 Raj 947.**

9 (b). Retrospective operation of delegated legislation.

——**Art. 245** —Vested rights—If can be taken away — Notification under S. 88 (1) (d), Bombay Act (67 of 1948) — Retrospective effect— If affects tenant's vested rights. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 88 (1) (d). **AIR 1957 Bom 130.**

——**Art. 245** — Subordinate authority cannot act retrospectively under delegated authority. See Income-tax Act (1961), S. 2 (44) (as amended by Finance Act (1963), S. 4). **AIR 1966 Ker 5 (DB).**

——**Art. 245** — Scope — T. C. Buildings (Lease and Rent Control) Order, S. 6 (c) — Validity— Power of delegate to give retrospective operation to subordinate delegated legislation. See Houses and Rents — T. C. Buildings (Lease and Rent) Control Order (1950), S. 6 (c). **AIR 1957 Ker 59.**

——**Art. 245** — Retrospective laws — Service Rules under Art. 309, Proviso, having retrospective operation — Ultra vires — Rule making power of Governor under Art. 309, Proviso does not extend to give retrospective operation to rules. See Ibid, Art. 309, Proviso. **AIR 1965 Mys 25 (DB).**

——**Art. 245** — Delegated legislation — Retroactive legislation — Distinction between powers of legislature and other rule making bodies — Framing of Service Rules having retroactive operation — Ultra vires rule making powers of Governor under Art. 309, Proviso. See Ibid, Art. 309, Proviso. **AIR 1963 Mys 265 (DB).**

——**Art. 245** —Mysore Sales Tax Act (25 of 1957) — R. 25 of Rules framed under — Rule is retrospective. See Sales Tax — Mysore Sales Tax Act (25 of 1957), S. 5. **(1963) 14 STC 84 (Mys) (DB).**

——**Art. 245 — Delegation of Legislative powers to executive body — Exercise of — If to be only prospectively.**

Unless the power to legislate, conferred on an executive body by the Legislature, expressly mentions that such power can be exercised retrospectively, it can only be exercised prospectively. Hence a power conferred by the Legislature on a subsidiary body, e. g., Government, to issue notifications, if couched in general language can unless it is expressly stated that the same can be exercised retrospectively, only be exercised prospectively. A Legislative body unlike the executive body can always legislate retrospectively unless there is any prohibition under the Constitution which has created it. AIR 1958 Mad 249 and AIR 1957 SC 246, Dist. **38 Mys LJ 635: ILR (1959) Mys 688: AIR 1960 Mys 326 (330, 331) (Pt A) (Prs 13; 14) (DB).**

——**Art. 245** — Legislative power — Delegation of to pass retrospective orders. See Houses and Rents — C. P. and Berar Letting Houses and Rent Control Order (1949), Cl. 8 (c). **ILR (1956) Nag 569.**

——**Art. 245**—Delegation of power by Legislature—Delegation of authority with power to make rules under the Act — Delegated authority carries with it the power to amend rules already made — Power to amend also to include power to repeal a rule with retrospective effect. See Panchayats—Bihar Panchayat Raj Act, 1947 (Act 7 of 1948), S. 80. **(1964) BLJR 855.**

——**Arts. 245, Pre, 20** — Scope — R. 33 of the Sind Canal Rules — Validity — (Interpretation of Statutes — Retrospective effect) — (Civil P. C. (1908), Preamble — Retrospective effect. See Ibid, Pre. **AIR 1956 Pepsu 40.**

10. Validating laws.

●——**Arts. 245 and 246 and Sch. 7, List II, Entry 18 — Constitution (17th Amendment) Act, 1964)— Act is not ultra vires of Parliament under Arts. 245 and 246 — It is not land legislation falling under Sch. 7, List II, Entry 18 but merely validates land legislation passed by States.**

Per Gajendragadkar, C. J., Wanchoo and Raghubar Dayal, JJ.:

The contention that since the Constitution (17th Amendment) Act 1964 is a legislative measure in relation to land falling within Entry 18 of Sch. List II, it falls within the exclusive powers of the State Legislatures and is ultra vires the power of Parliament under Arts. 245 and 246 of the Constitution is misconceived. What the impugned Act purports to do is not to make any land legislation but to protect and validate the legislative measures in respect of agrarian reforms passed by different State Legislatures in the country by granting them immunity from attack based on the plea that they contravene fundamental rights. Sajjan Singh v. State of Rajasthan **(1965) 1 SCA 875: (1965) 1 Mad LJ (SC) 57: (1965) 1 SCJ 377: (1965) 1 Andh WR (SC) 57: (1965) 1 SCWR 593: AIR 1965 SC 845 (853) (Pt B) (Pr 15).**

●——**Arts. 245, Preamble, 286 (2)**—Madras General Sales Tax Act (1939), S. 22, Explanation — Repugnancy to Art. 286 (2) of Constitution — Subsequent enactments of Sales Tax Laws Validating Act — Effect — Invalidity of S. 22, Explanation, if removed — (Interpretation of Statutes — Constitutionality — Invalidity — Void and null statutes) — (Sales Tax — Sales Tax Laws Validation Act (7 of 1956), S. 2). See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 22, Explanation. **AIR 1958 SC 468.**

[**Held overruled** on another point by AIR 1959 SC 648 in AIR 1961 Mys 3.]

●——**Arts. 245, 32, 246** — Orissa Hindu Religious Endowments Act (2 of 1952 as amended in 1954), S. 79 A — Validity — Orissa Hindu Religious Endowments Act (2 of 1952 as amended in 1954) S. 79 A). See Ibid, Art. 32. **AIR 1956 SC 432.**

●——**Arts. 245, 246, Pre. 265, Sch. VII, List I, Item 97** — Constitutional limitations—Retrospective validation taxing laws — Constitutionality — State Act imposing cess, declared void ab initio by Supreme Court on ground of incompetency of State Legislature — Power of Parliament to enact retrospective validation taxing laws — Parliament passing Act merely declaring action taken under State law as valid, without furnishing authority of law required for it—Act invalid on ground of incompetency — U. P. Sugarcane Cess (Validation) Act (Central Act 4 of 1961) — Unconstitutional — Writ Petn. No. 2311 of 1961 dated 2-11-1962 (All), **Overruled;** AIR 1958 SC 468 (489); AIR 1962 Madh Pra 342; AIR 1962 Madh Pra 245, Rel. on; AIR 1962 SC 1753 Foll. Lakshmi Kant Jhunjhunwala v. State of U. P. **ILR (1965) 2 All 24: 1965 All LJ 386: AIR 1965 All 420 (423, 424, 425, 428, 429, 432) (Pt B) (Prs 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 32, 35, 36, 37, 38, 43, 45) (FB).**

——**Art. 245** — Legislature cannot validate unconstitutional Act — U. P. Act of 1953 declared unconstitutional— Actions taken or orders passed thereunder cannot be validated by S. 17, U. P. Ordinance 4 of 1953. **AIR 1962 All 350 (352, 353) (Pt B) (Prs 9 10, 13).**

——**Art. 245 — Power of Legislature to validate provision made under its delegated authority — (Sales tax — U. P. Sales tax (Validation) Act (15 of 1958), S. 3).**

Where a Legislature is competent to pass any enactment making any particular provision it can validate a similar provision made under its delegated authority because it was competent to pass a valid legislation covering that subject. If it can legislate on that subject, it can validate the delegated legislation. In such a case, to validate delegated legislation would amount to independent legislation. The effect of S. 3 of the U. P. Sales-tax (Validation) Act, 1958, is to convert a notification issued on 31-3-1956 by a State Government, which was not valid, into a valid notification issued in exercise of the proper delegated authority conferred on the State Government by the U. P. Legislature. **1958 All LJ 719: (1959) 10 STC 424: AIR 1959 All 208 (210, 211) (Pt C) (Pr 3) (DB).**

——**Art. 245** — Scope — U. P. Administration of Evacuee Property Ordinance — Validity — U. P. Ordinance(1 of 1949) was ultra vires the Governor — Ordinance not validated by Government of India (Third Amendment) Act. See U. P. Administration of Evacuee Property Ordinance (1 of 1949). **AIR 1957 All 561 (DB).**

——Art. 245 — Powers of the Legislature — Retrospective validation of invalid orders.

The Legislature can retrospectively validate orders which were not valid when they were passed. To hold that the Legislature has no power to give retrospective effect to Acts passed by it would be to hold that it could never pass Acts of indemnity. By an order passed by U. P. Act (14 of 1951) orders which were invalid have been validated. **1951 ALJ 620.**

● **——Art. 245** — M. P. Janapada Election Matters Validating Act (1 of 1955) S 3 — Act validating what was void by introducing a legal fiction — Validity of Act. See Madhya Pradesh Jana Pada Election Matters Validating Act (1 of 1955), S. 3. **AIR 1957 Bom 266 (FB).**

——Art. 245—Hyderabad Houses (Rent Eviction and Lease) Control Act (20 of 1954), S. 31 — Validity — (Houses and Rents) — Hyderabad Houses (Rent, Eviction and Lease) Control Act (20 of 1954) Ss. 31, 21).

It is open to the Legislature acting within the sphere of its constitutional authority to pass a validating statute or to give a retrospective effect to a new statute notwithstanding the fact that the earlier law governing the same matter is declared by Courts of law as invalid, unenforceable or inoperative.

The first sub-section of S. 31 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act merely enacts the replacement of an earlier order and the other sub-section does not pronounce on the merits of the cases but merely lays down that the orders and decisions given under the Hyderabad Rent Control Order, 1353-F, shall be deemed to be as far as possible, orders under the new enactment. The application of the new law to the facts of each case is left to the judicial authorities and the pending proceedings are not decided by the force of the new enactment.

The section in substance is an exercise of the incidental power of varying a rule of law and making a new law retrospective and this is a function which the Legislature is competent to perform effectively under Item 18 of List 2 of the 7th Schedule of the Constitution. Hence S. 31 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act of 1954 is not ultra vires the legislative powers of the Hyderabad Legislative Assembly.

Held, further that consistently with the view that the enactment of a new rule of law with retrospective effect was a proper exercise af the legislative function and within the competence of the State Legislature the right to apply in revision under S. 21 rested in the applicants if the orders impugned suffered from the defects referred to in that section. The writ applications were allowed to be converted into applications for revision of the orders challenged therein under S. 21 of the Act. Case-law discussed. **ILR (1954) Hyd 766: AIR 1955 Hyd 257 (258, 259) (Pt A) (Prs 6, 7, 8, 9) (DB).**

——Art. 245—Madhya Pradesh Agricultural Produce Markets (Validation) Act (12 of 1962), S. 3. Madhya Pradesh Agricultural Produce Markets (Validation) Ordinance 1962 (2 of 1962) — S. 3 is sufficient to validate past acts or things done— Not essential to amend impugned statute. See Madhya Pradesh Agricultural Produce Markets (Validation) Act (12 of 1962), S. 3. **AIR 1965 Madh Pra 6 (DB).**

——Art. 245 — Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962), S. 3 — Agricultural Produce Markets (Validation) Ordinance 1962 (2 of 1962) — Section 3 of Validating Act purporting to validate an action struck down by the judgment cannot be challenged as a judicial act performed by legislative authority — Arrogation of judicial power by legislative authority, what amounts to. See Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962), S. 3. **AIR 1965 Madh Pra 6 (DB).**

——Art. 245 —Validating law incidentally putting end to finality of decision of Court — Not an exercise of judicial power and is not bad on that ground. **1962 MPC 216: 1962 MPLJ 935: 1962 Jab LJ 725: ILR (1963) MP 637: AIR 1962 Madh Pra 245 (250, 251, 252) (Pt A) (Prs 11, 13, 14, 15) (DB).**

——Art. 245 — Sales Tax Law Validation Act (1956), — Parliament held did not transgress its powers under Art. 286 (2). See Sales Tax — Sales Tax Law Validation Act (1956), S. 2. **AIR 1957 Mad 368 (DB).**

——Arts. 245, 246 and 286 (2) and Sch. VII List I, Entry 42 — Power of Parliament to legislate retrospectively.

Held, on facts that the Sales Tax Law Validation Act is within the legislative power conferred by Art. 286 (2) read with entry No. 42 of the Union list and that it is not invalid or unconstitutional because it is retrospective in operation. AIR 1946 P. C. 66 Disting. **70 Mad LW 186: (1957) 8 STC 177: (1957) 2 MLJ 167: AIR 1957 Mad 368 (372, 373) (Pt C) (Prs 13, 15) (DB).**

——Art. 245—Validating Laws—Order to suspend levy of tax on explanation sales, an administrative order only — Administrative order cannot become statutory order merely by subsequent passing of Validating Act — Orissa Sales Tax Laws (Validation) Act 1955 (7 of 1956)— Orissa Sales Tax Act (14 of 1947) S. 7. **(1965) 16 STC 693: ILR (1964) Cut 565: (1964) 6 OJD 305: AIR 1965 Orissa 190 (193) (Pt C) (Pr 9) (DB).**

——Arts. 245, 286 (1) (a), Explanation—Validating Laws — Explanation sales made liable to tax by Validating Act — Assessment order was passed prior to Validating Act and when order suspending levy of tax was in force —Assessment can be made after passing of Validating Act — Orissa Sales Tax Laws (Validation) Act (7 of 1956), **(1965) 16 STC 693: ILR (1964) Cut 565: (1964) 6 OJD 305: AIR 1965 Orissa 190 (193) (Pt D) (Pr 11) (DB).**

——Art. 245 — Punjab Development of Damaged Areas (Validation) Act (VIII of 1963), Section 2— Validated provisions made effective retrospectively — Validating enactment cannot be held to be void on this account.

If an enactment is struck down as invalid for a technical defect, it would be open to the legislature to validate the provisions of the enactment, struck down as invalid, with effect from the date the said invalid enactment was passed. The validating legislation cannot be said to be void simply because it retrospectively makes the enactment or provisions thereof valid from the date the invalid Act was passed.

Thus, where the previous schemes for development of damaged areas were held to be invalid simply on the ground that there was no proper notification declaring the area in dispute as a "damaged" area under the relevant legislation, and the defect was sought to be remedied by the validating Act, with the result that the schemes, which fully conformed with the provisions with regard to publication and sanction by the Government, became valid.

Held, that the validating legislation could not be held to be void because it retrospectively made the schemes valid. **ILR (1965) 2 Punj 501: AIR 1965 Punj 212 (216) (Pt C) (Prs 9, 10) (DB).**

●——**Art. 245—Punjab Consoldiation of Land Proceedings Act, Ss. 3 and 4** — Competence of State Legislature to pass the Act. See Punjab Consolidation of Land Proceedings (Validation) Act (6 of 1957) S. 3. **60 Pun LR 461: ILR (1958) Punj 2136: AIR 1959 Punj 8 (11, 12, 13) (Pt A) (Prs 1, 2, 3a, 4) (FB).**

[**Overruled** on another point in AIR 1959 SC 519.]

11. "Subject to the provisions of this Constitution."

●——**Art. 245** — Restriction on trade — Licence — Imposition of Calcutta Municipal Act (33 of 1951), Section 437 (1) (b) — Validity. See Ibid, Art. 19 (1) (g). **1964 (2) Cri LJ 354: AIR 1964 SC 1279.**

●——**Art. 245** — Exemption given by Art. 289 (1) — Power of Parliament to legislate to take away the exemption — Immunity of property and income of States from Union taxation — Scope and extent of levy of customs duties (export or import) and excise duties by Union on property of State — Levy not covered by exemption can be validly imposed. See Ibid, Art. 289 (1). **AIR 1963 SC 1760.**

●——**Art. 245** — Bihar Act 1 of 1951 — Validity of—Does not infringe Art. 19 (1) (f) and Arts. 25, 26 and 27 — Nor does it impose an unauthorised tax. See Bihar Hindu Religious Trusts Act (1 of 1951), S. 2 (b). **AIR 1959 SC 1073.**

●——**Art. 245 (1)** — Power of Legislature to make laws in regard to entries in Seventh Schedule — U. P. Transport Service (Development) Act — Validity. See Ibid, Art. 13. **AIR 1959 SC 648.**

●——**Arts. 245 and 246 — Indian Legislatures — Plenary powers of legislation—Entries in Legislative Lists — Interpretation — Rule of pith and substance.**

The legislatures in our country possess plenary powers of legislation. The supremacy of the legislatures is confined to the topics mentioned as Entries in the Lists conferring respectively powers on them. These entries though meant to be mutually exclusive, are sometimes not really so. They occasionally overlap, and are to be regarded as enumeration simplex of broad categories. Where there is a conflict between rival lists, it is necessary to examine the impugned legislation in its pith and substance, and only if that pith and substance falls substantially within an Entry or Entries conferring legislative powers, is the legislation valid. ILR 4 Cal 172 (PC) and AIR 1941 FC 47 and AIR 1947 PC 60, Rel. on.

The power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given. State of Rajasthan v. G. Chawla, **1959 SCJ 485: 1959 Mad LJ (Cr) 309: 1959 Cr LJ 660: (1959) 1 SCR (Supp) 904: AIR 1959 SC 544 (545, 546) (Pt A) (Pr 8).**

●——**Art. 245** — Part III (Gen.), Part IV (Gen.), and Art. 246 — Legislation by State to implement directive principles — Legislation cannot override fundamental rights — Principle of harmonious construction to be followed. See Ibid, Pt. III (Gen.). **AIR 1958 SC 956.**

●——**Art. 245** — Scope — Tax imposed by Section 12-A, Bombay Act (54 of 1948) — Validity — Constitution of India, Sch. VII, List II, Entry 62. See Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948), S. 12-A. **AIR 1957 SC 699.**

●——**Art. 245** — Powers of State Legislature to legislate — Extent of. See Ibid, Art. 31-A. **AIR 1955 SC 540.**

●——**Art. 245** — 'Void' in Art. 13 (1), meaning of — Effect of declaration of voidness of statute — Declaration of unconstitutionality brought about by lack of legislative power, effect of. See Ibid, Art. 13 (1). **1955 Cri LJ 215: AIR 1955 SC 123.**

●——**Art. 245 (1)** — Sections 123 (5) and 124 (5), Representation of the People Act, are not ultra vires, Art. 19 (1) (a). See Representation of the People Act (1951), S. 123 (5). **AIR 1954 SC 686.**

●——**Arts. 245 and 246, Sch. VII, List 1** — Retrospective operation of Arts. 245, 256-A—Absence of such operation if affects Parliament's power to make retroactive law — Validity of Section 2 (14-A), Income-tax Act. See Income-tax Act (1922), Section 2 (14-A) (as Amended by Finance Act, 1950). **AIR 1954 SC 158.**

●——**Arts. 245 (1), 246 — Legislative power of Parliament how far limited.**

Per Das J.:— By Art. 245 (1) the legislative power of Parliament is definitely made "subject to the provisions of this Constitution". A perusal of Art. 19 makes it abundantly clear that none of the seven rights enumerated in Cl. (1) of that Article is an absolute right, for each of these rights is liable to be curtailed by laws made or to be made by the State to the extent mentioned in the several Cls. (2) to (6) of that Article. Those clauses save the power of the State to make laws imposing certain specified restrictions on the several rights. The unlimited legislative power given by Art. 246 read with the different legislative lists in Sch. 7 is cut down by the provisions of Art. 19 and all laws made by the State with respect to these rights must in order to be valid, observe these limitations. Whether any law has in fact transgressed these limitations is to be ascertained by the Court and if in its view the restrictions imposed by the law are greater than what is permitted by Cls. (2) to (6) of Art. 19, whichever is applicable, the Court will declare the same to be unconstitutional and, therefore, void under Art. 13. A. K. Gopalan v. State of Madras, **(1950) 2 Mad LJ 42: 63 Mad LW 638: 1950 SCJ 174: 51 Cri LJ 1383: 1950 SCR 88: 1950 Mad WN 495: 1950 Mad WN (Cri) 127: AIR 1950 SC 27 (109) (Pt ZN) (Pr 216).**

●——**Art. 245** — U. P. Sales Tax (Validation) Act (15 of 1958), Section 4 — Validity — Affects discretion of High Court under Art. 226 and hence Contravenes Art. 245 under which article the legislature derives its power to legislate. See Ibid, Art. 226. **AIR 1959 All 557 (FB).**

——**Art. 245** — Construction of Constitution — Rules as to repugnancy between law and Constitution — Effect. See Ibid, Art. 13. **1958 Cri LJ 462: AIR 1958 All 293. (DB).**

●——**Art. 245 — Delegated Legislation — Legislature — Delegation of powers — U. P. Act (1 of 1951), if invalid on ground of illegal delegation of powers by State legislature — U. P. Abolition of Zamindari and Land Reforms Act (1 of 1951) — Constitution of India, Arts. 13, 246.**

Legislative powers are conferred on the legislatures of India by the Constitution and it is in the Constitution that there must be found the extent and the limits of the powers so conferred. The Constitution has placed a limitation on the matters in respect of which a State Legislature may make laws; and it has further provided that no laws made by a legislature on a matter within its own field shall contravene any of the fundamental rights set forth in Chapter 3. If the framers of the Constitution did not think fit to impose restrictions on the manner in which legislature may

exercise its powers it is not for the Courts to be astute to invent or evolve them. 5-IA 178; AIR 1950 SC 27, Rel. on.

A legislature must of course legislate; it cannot abdicate its powers. But provided it preserves its own capacity intact, there is no reason why it should not delegate powers of subordinate legislation to such other authorities as it deems proper. (Permissible heads of delegation of powers by legislature discussed).

U. P. Act 1 of 1951 is not void on the ground of illegal delegation of its powers by the State Legislature. Surya Palsingh v. Government of U. P., **1951 All LJ 365: 1951 RD (BR) 122: ILR (1952) 2 All 46: 1951 All WR (HC) 317: AIR 1951 All 674 (696, 697) (Pt V) (Prs 119, 120, 121, 123) (FB).**

——Art. 245 — Government of India Act (1935), Ss. 99 and 296 — Force of.

It is true that the power to legislate by the Provincial Government is derived from Ss. 99 and 100. Government of India Act, 1935, read with the relevant Legislative Lists. But in legislating on the field the Provincial Government is subject to the other provisions of that Act and Section 296 is one of them. In other words, in making such a legislation the Legislature must respect the provisions of Section 296 of the Act and carry out the obligations imposed by that section. **AIR 1956 Assam 142 (147) (Pt C) (Pr 11) (DB).**

[**Reversed** on another point in AIR 1957 SC 414.]

●**——Arts. 245 and 226 — Powers of High Court — Election — M. P. Janapad Election matters Validating Act (1 of 1955), S. 3 — Exercise of Legislative function.**

Under the present Constitution of India, the powers of the High Court under Art. 226 cannot be taken away by the Legislature and no law passed by a State Legislature can prevent a party from approaching the High Court under Art. 226 and invoking its jurisdiction under that Article. Gulabrao Keshavrao v. Pandurang Bhanji, **ILR (1957) Bom 714: 60 Bom LR 12: 1957 Nag LJ 419: AIR 1957 Bom 266 (268, 269) (Pt C) (Pr 6) (FB).**

●**——Arts. 245 and 226 — Jurisdiction of High Court — Effect of M. P. Act (1 of 1955) — (Election — Madhya Pradesh Janpada Election Matters Validating Act (1 of 1955), S. 3).**

There is no provision in M. P. Act (1 of 1955) which prevents anyone from approaching the High Court under Art. 226 or the High Court passing any order under Art. 226. Thus the jurisdiction of the High Court is not taken away by the Act. Gulabrao Keshavrao v. Pandurang Bhanji. **ILR (1957) Bom 714 : 60 Bom LR 12 : 1957 Nag LJ 419 : AIR 1957 Bom 266 (268, 269) (Pt D) (Pr 6) (FB).**

——Art. 245, 286 and 303 — Limitations on Legislative powers of States.

The powers conferred upon the Legislature under Art. 245 are subject to the provisions of the Constitution. The powers are not unlimited and the Constitution itself provides various limitations upon those powers, and although the language of Art. 286 is not identical with the language in Art. 303, if the Constitution provides that no law of a State shall authorise the imposition of a tax, it does contain a restriction or a limitation upon the legislative power of the Legislature, AIR 1946 PC 66, Relied on. **55 Bom LR 246 (DB).**

[**Reversed** on another point in **AIR 1953 SC** 252, which itself was **overruled** in **AIR 1955 SC** 661.]

——Art. 245 — Power of Parliament to amend 'existing law' so as to make the amendment effective as from a time when Parliament itself was not in existence. See Income-tax (Amendment) Act (71 of 1950), S. 2. **AIR 1951 Bom 438 (DB).**

●**——Art. 245 — Federalism — What connotes — Limitation of authority.**

Per Manohar Pershad, J.: — Federalism connotes, among other things, the supremacy of a written Constitution setting up a Central Government, clothed with legislative, executive and judicial powers, which are exercised within the limits of authority prescribed by the Constitution. This limitation of authority is in contrast to the supremacy of the legislature under a unitary form of Government. There are no practical limits to the authority of a Supreme Legislature, such as the Imperial Parliament of Great Britain except the lack of executive power to enforce its enactment. But in a federation neither the legislature of the Central Government nor the legislature of any component entity is Supreme. Each such legislature can only assert its supremacy within the limits assigned by the Constitution. Pannalal Lahoti v. State of Hyderabad. **ILR (1954) Hyd 441: 1954 Cr LJ 1093: AIR 1954 Hyd 129 (139) (Pt G) (Pr 64) (FB).**

——Art. 245 — Scope — Levy of sales tax — T. C. General Sales Tax Act in respect of works contract, after Constitution — Legality. See Ibid, Art. 277. **AIR 1957 Kerala 146 (DB).**

[**Overruled** on another point in AIR 1958 SC 560.]

——Art. 245 and Sch. VII — Articles, if controlled by Schedule.

The meaning and scope of the Articles in the Constitution is not controlled by the various items in the list of Sch. VII. On the contrary, the scope and meaning of these various items is controlled by the various Articles of the Constitution. **ILR (1952) Madh Bha 231 : AIR 1950 Madh B 46 (50) (Pt C) (Pr 10) (DB).**

●**——Arts. 245 and 19 (1) (f) and (g) — Validity of — Essential Supplies (Temporary Powers) Act (1946), S. 3 — (Essential Supplies (Temporary Powers) Act (1946), S. 5).**

It cannot be said that the delegation which is made by S. 3 of the Essential Supplies (Temporary Powers) Act is bad, inasmuch as it constitutes an unreasonable restraint upon the freedom guaranteed by Art. 19 (1) (f) and (g) of the Constitution. AIR 1954 SC 465, Foll. State v. Haidarali, **1957 Jab LJ 658: 1957 MPC 473: 1957 MPLJ 549 : 1957 Cr LJ 1266 : AIR 1957 Madh Pra 179 (181) (Pt A) (Pr 4) (FB).**

[**Held Reversed** on another point by Cri. Appeal 162 of 1957 D/-16-12-1959 in 1961 (1) Cri LJ 674 (MP).]

——Art. 245 — Duty of legislature to exercise, legislative powers within limits laid down by Constitution. See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 20. **AIR 1952 Mad 613 (DB).**

● **—Art. 245 —** Subject to the provisions of this Constitution. See Ibid, Art. 31. **AIR 1955 NUC (Nag) 1341 (FB).**

——Art. 245 — Power under to legislate is subject to provisions of Constitution — Hence Orissa Municipal Act and Rules thereunder making decision of election tribunal final are subject to Arts.

226 and 227. See Municipalities—Orissa Municipal Act (23 of 1950), S. 21. **AIR 1952 Orissa 244 (DB).**

●——**Art. 245 — Legislatures — Powers of — Written Constitution.**

Per Ray, C. J.:— No legislative authority that is subject to a written Constitution which it is bound to obey possesses sovereign powers to the fullest extent. No legislative authority can make laws that are not according to, and consistent with, the fundamental laws that have been prescribed for its Government by the people, who are superior to both the law-making and the Constitution themselves. Prahalad Jena v. State, **ILR (1950) Cut 222: 51 Cri LJ 1189: AIR 1950 Ori 157 (166) (Pt H) (Pr 22) (FB).**

——**Art. 245 — Legislative powers of State — Limitation on.**

Though generally the State Legislature has under Art. 245 plenary power to legislate with respect to any matter within its own ambit, its enactment must be incompetent and void if in exercising that power it directly affects any right guaranteed by Part III of the Constitution and transgresses the limitations within which the legislation is permissible under the provisions of that Part. **('51) 30 Pat 1085: AIR 1952 Pat 166 (172) (Pt F) (Pr 27) (DB).**

●——**Arts. 245, 246 and 301 and Sch. VII, List II, Entry 56 — Scope.**

Article 245 is concerned with legislative power which is made subject to the other provisions of the Constitution. It is followed by Art. 246 which refers to the various lists defining the powers of the Parliament as well as the State Legislature and also providing for concurrent legislation, vide list III. It is obvious therefore, that legislative power conferred on Parliament as well as the State legislatures is subject to the provisions of the Constitution. Art. 301 is one such provision. Automobile Transport (Raj), Ltd. v. State, **1957 Raj LW 456: ILR (1957) 7 Raj 794: AIR 1958 Raj 114 (119) (Pt C) (Pr 20) (FB).**

12. "Law", meaning of.

See also Ibid, Art. 13.

●——**Art. 245 — Law — When becomes operative — Jaipur Opium Act (1923) — Validity.**

Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some reasonable way so that all men may know what it is. Promulgation or publication of some reasonable sort is essential.

In the absence of some specific law or custom to the contrary a mere resolution of a Council of Ministers in the Jaipur State without further proclamation or promulgation would not be sufficient to make a law operative.

Hence, Jaipur Opium Act which purported to be enacted by a Resolution of the Council of Ministers and was not published in the Gazette is not a law validly made. Harla v. The State of Rajasthan, **1952 Mad WN 67: 1952 Mad WN (Cri) 15: (1951) SCJ 735: 1952 Cr LJ 54: 65 Mad LW 2: 88 Cal LJ 265: 1952 SCR 110: AIR 1951 SC 467 (468, 469) (Pt B) (Prs 7, 13, 14).**

——**Art. 245** — Minimum Wages Act, S. 10 (2) — Notification under — Nature of — Notification whether law within meaning of Art. 13 (3) (a) of Constitution. See Minimum Wages Act (1948), S. 10 (2). **AIR 1960 Bom 299.**

——**Art. 245** — Madras Prevention of Insults to National Honour Act (14 of 1957), S. 5 — Constitutional validity — Section is competent for State Legislature to enact under entry 1 of Lists 2 and 3 — Phrases "Public Order' and "Criminal Law" — Meaning — Section does not violate Art. 19 (1) (f) of Constitution. See Madras Prevention of Insults to National Honour Act (14 of 1957), S. 5. **1965 (1) Cri LJ 49: AIR 1965 Mad 11 (DB).**

——**Art. 245 — Law, meaning of — Departmental regulations.**

The Rules in the Bihar and Orissa Education Code are merely departmental regulations which do not create any statutory or legally binding rights. **AIR 1952 Orissa 259 (259) (Pr 1) (DB).**

——**Art. 245 — Law — Meaning of — Sathi Lands (Restoration) Act (34 of 1950), S. 2.**

Law in its legislative sense is of much wider import than the juristic notion of law as the command of a sovereign or as a rule lying down a general course of conduct. The term "law" in Art. 245 must be construed so as to include in its scope all legislative Acts enacted in the prescribed manner and form. Sathi Lands (Restoration) Act was therefore, 'Law' in the strict sense and the declaration contained in it was not in the nature of a mere decree in respect of certain individuals' rights. 5 IA 178, Rel. on. **AIR 1952 Pat 194 (195, 196) (Pt A) (Pr 8) (DB).**

[Reversed on another point in AIR 1953 SC 215.]

——**Art. 245** — Personal grant by ruler of Nabha as a sovereign — It is law — Grant repudiated by new Pepsu State — Repudiation is not act of State and is justiciable in municipal Courts — Act of State. **AIR 1960 Punjab 644.**

——**Art. 245** — Law Firman of Maharana of Udaipur — Firman is declaration of the sovereign power and is law and binding on all. **ILR (1962) 12 Raj 406: 1962 Raj LW 317: AIR 1962 Raj 196, (207) (Pt E) (Pr 47) (DB).**

——**Arts. 245, 226 — Sovereign authority — Powers of, as Chief executive, judicial and legislative authority — Order of Maharaja of Jaipur on 6th April, 1949, levying fine of Rs. 10,000 on jagirdar for illicit distillation — Order held illegal — (Government of Jaipur Act (1944), Ss. 28 and 42) — (Jaipur Excise Law (1924), S. 21).**

In the former State of Jaipur, when His Highness the Maharaja passed on the 6th of April, 1949, an order imposing a fine of Rs. 10,000 on the applicant Jagirdar, for illicit distilling, the Jaipur Excise Law of 1924 was in force. According to S. 21 of that law any person, who manufactured any excisable article in contravention of the law, was liable to imprisonment for two years, or fine up to Rs. 2,000 or both. It was, therefore, open to the State to prosecute the applicant under S. 21 of the Jaipur Excise Law in a competent Court, and in that case the applicant would have been liable to punishment as provided by that section. Therefore, the order of the Maharaja, passed on 6th April, 1949, upon the recommendation of the authorities could not be justified under that law.

The order could not also be passed by the Maharaja as a Sovereign of the State, because the order had no force of law.

A sovereign has executive, legislative and judicial powers. Therefore, every order that a sovereign may pass does not necessarily have the force of law. It may be only an executive order or a judicial order.

Besides even a sovereign when it has made certain law, which will govern its actions, must act according to that law. When the order was passed there was the Government of Jaipur Act which prescribed how the sovereign authority would be exercised. S. 28 provided how laws would be passed with respect to excluded matters, and ■

cannot be said that the order of 6th April, 1949, was a law within the meaning of S. 28 of the Act.

The order could not also be considered to be one under S. 42 of the Act. Under this section Acts, Proclamations and Orders could be passed by His Highness without reference to the Legislative Council. The use of the Words 'without reference to the Legislative Council' clearly indicates that the Acts, Proclamations and Orders passed under it must be of a nature which required reference to the Legislative Council. If the Acts, Proclamations and Orders passed under S. 42 were not of that nature they could not be pssed under that section. The order of the 6th April, 1949, was not of the nature which required reference to the Legislative Council.

Nor could it be said that this order was in the exercise of the judicial powers of the sovereign, when there was a regular judicial system in the former State of Jaipur with the High Court at its head, and the Ruler did not reserve to himself any judicial powers, the High Court being the highest judicial authority in the State?

The order of 6th April, 1949, could not have the force of law. Simply because it was passed by the Ruler of Jaipur it could not be an order under the judicial powers of the sovereign.

If it was an executive order relating to a subject excluded under S. 27, Government of Jaipur Act, it might have been justified on the ground that it was the order of sovereign in relation to an excluded subject and had to be carried out. Had the order been for confiscation of part of the jagir, which was the excluded subject under S. 27 (e) of the Government of Jaipur Act, it might have been possible to justify it as an executive order with reference to an excluded subject but His Highness did not pass an order confiscating the jagir. What he did was to impose a fine of Rs. 10,000 on the applicant. There was no warrant for such an order being passed by His Highness the Maharaja of Jaipur in April, 1949, when the Government of Jaipur Act, 1944, was in force. The power to impose a fine for illicit distillation was only conferred under S. 21 of the Jaipur Excise Law, and such a fine could only be imposed by a Court of law and not by His Highness the Maharaja of Jaipur even though he was sovereign Ruler of Jaipur on that date.

The State of Rajasthan, therefore, cannot realize any part of this fine (after the Constitution) as the order imposing the fine was illegal when it was passed. **1954 Raj LW 543 : ILR (1954) 4 Raj 743 : AIR 1954 Raj 200 (203, 204) (Pt C) (Prs 13, 14, 15, 16 to 19) (DB).**

13. Territorial extent of legislative power.
(a) Extra territorial laws.
(b) State legislature.
(c) Sufficient territorial nexus and taxation power of State.

13. Territorial extent of legislative power.

——Arts. 245, 246 — Extra-territorial operation. (Per Venkatarama Ayyar, J., in a dissenting Judgment).

The powers of Union and the State under Ss. 99 (1) and 100 of the Government of India Act, 1935, as also under Articles 245 (1) and 246 in respect of the matters mentioned in their respective lists have the same content and quality and if legislation with extra-territorial operation is within the competence of the Union it is equally within the competence of the State. The words "extra-territorial operation" are used in two different senses as connoting firstly, laws in respect of acts or events which take place inside the State but have operation outside, and secondly, laws with reference to the nationals of a State in respect of their acts outside; in its former sense, the laws are strictly speaking intra-territorial though loosely termed 'extra-territorial' and under Art. 245 (1) it is within the competence of the Parliament and of the State Legislature to enacts laws with extra-territorial operation in that sense. The words "laws with extra-territorial operation" in Art. 245 (2) must be understood in their strict sense as having reference to the laws of a State for their nationals in respect of acts done outside the State. Otherwise, the provision would be redundant as regards legislation by Parliament and inconsistent as regards laws enacted by States. Bengal Immunity Co. v. State of Bihar, **(1955) 6 STC 446: (1955) 2 SCR 603: (1955) SCJ 672: 1955 SCA 1140: (1955) 2 MLJ (SC) 168 : 1955 Andhra WR (SC) 422 : AIR 1955 SC 661 (750, 751) (Pts ZC) (Prs 199, 200).**

● **——Art. 245**—Territorial extent of Act and locale of its effective operation. See U. P. Municipalities Acc (2 of 1916), S. 1 (2). **AIR 1961 All 200 (FB).**

● **——Art. 245** — Power of legislation — Central and Provincial Legislatures — Extra territorial powers of Legislation — Interpretation of statutes. See Government of India Act, S. 99. **1958 Cr LJ 161: AIR 1958 Bom 68 (FB).**

——Art. 245 — Extra territorial jurisdiction — Suit under S. 92 C. P. Code — Some of properties and defendants outside jurisdiction — [C. P. Code (1908), S. 92].

All jurisdiction is in a sense territorial. No State by legislation can confer upon its Courts the authority to deal with the rights and obligations in respect of land not situated within its limits, nor against persons not residing, permanently or temporarily, within the realm. Though normally where the charity is a foreign charity, it is administered in a foreign country, and even the trustees are residing in a foreign country, the High Court would not be entitled to administer that charity or to give directions with regard to administration of that charity to persons who are not subject to its process the fact that some of the properties are within the jurisdiction confers jurisdiction upon the High Court to entertain the suit under S. 92, C. P. Code. Even if the High Court be incompetent to grant the reliefs, which interfere with the administration of the trust in the foreign countries such as framing a scheme, removal of trustees and appointment of new trustees and corresponding reliefs, the Court can at least protect the property within its jurisdiction for the benefit of the trust, and to that end pass all such consequential orders as may be necessary. 21 Ind. App. 171 (PC), AIR 1942 Bom 208, AIR 1944 PC 39, Rel. on. **56 Bom LR 955: AIR 1955 Bom 55 (59, 60, 61) (Pt E) (Prs 7, 8, 11, 12, 13).**

——Art. 245 — Preventive Detention Act (1950), Ss. 5, 3A and 4 (a) and (b) (as amended by Act 4 of 1951) — Construction of S. 5 — See Public Safety — Preventive Detention Act (1950) (as amended by Act (4 of 1951), S. 5). **AIR 1953 Cal 81.**

——Arts. 245 and 246 .— Notification No. 5327 L. R. Zan, dated 10-5-1955 vesting the properties in the former State of Seraikella in the State of Bihar —— Validity ——Notification held was not outside jurisdiction of Bihar Legislature. See Tenancy Laws —— Bihar Land Reforms Act (30 of 1950), S. 3 (i). **AIR 1963 Pat 475 (DB).**

——Arts. 245 and 395 — Powers of Parliament —— Enactment of law imposing income-tax in Rajasthan in respect of income prior to 26th January, 1950 —— Instrument of Accession (Rajasthan) ——Government of India Act, S. 101.

The Parliament has no power to enact a law imposing income-tax in Rajasthan in respect of income prior to 26th January, 1950, when the Constitution of India was promulgated. By Art. 395 of the Constitution, the Government of India Act, 1935, was repealed and by Art. 245 (i) the power to make laws for the whole or any part of the territory of India from 26th January, 1950 was conferred on the Parliament. This, of course, included the power to make laws for the imposition of income-tax which is item 82 of List 1 but only from 26th January, 1950, onwards and not retrospectively. Under the provisions of S. 101, Government of India Act, the power to legislate was exercisable only in accordance with the Instrument of Accession and the limitations contained therein. The Instrument of Accession by the Rajpramukh of Rajasthan positively excluded the authority of the Dominion Legislature in the matter of legislation for the purpose of imposition of income-tax. In the circumstances, before 26th January, 1950, no law could be enacted making Rajasthan a "taxable territory" before 26th January, 1950. The previous operation of S. 101, Government of India Act, could not be affected by subsequent legislation by reason of S. 6 of the General Clauses Act which is made applicable for the interpretation of the Constitution by Art. 367 of the Constitution. ILR (1951) 1 Raj 96: 1951 RLW 56: (1951) 20 ITR 214: AIR 1951 Raj 94 (2) (103) (Pt G) (Pr 24) (DB).

[**Reversed** in AIR 1954 SC 158].

13 (a). Extra-territorial laws.

●——**Art. 245** — Goods carried in State only for short distance —— Does not render tax invalid on ground of extra territoriality. See Assam Taxation (on Goods Carried by Road or on Inland Waterways) Act (10 of 1961), S. 3. **AIR 1964 SC 925.**

●——**Art. 245** — Section 3 of Rajasthan Passengers and Goods Taxation Act, S. 3 (3) —— Not ultra vires on ground that it has extra territorial operation. See Rajasthan Passengers and Goods Taxation Act (XVIII of 1959), S. 3 (3). **AIR 1961 SC 1480.**

●——**Art. 245** — Bihar Hindu Religious Trusts Act (1951) — Validity — Principle of territorial nexus. See Bihar Hindu Religious Trusts Act (1 of 1951), S. 3. **AIR 1959 SC 1002.**

●——**Art. 245** — Extra-territorial operation. See Debt Laws — U. P. Encumbered Estates Act (25 of 1934), S. 14 (7). **AIR 1959 SC 809.**

●——**Art. 245 — Powers of Ruler of former Indian State to enact extra-territorial laws.**

The Rulers of the former Indian States had, prior to 1947, the authority to pass extra-territorial laws relating to offences committed by their own subjects and vesting in their own Courts the power to try them, except where the contrary is made out by evidence in the case of any individual State. Shiv Bahadur Singh v. State of V. P., **(1953) SCJ 563: 1953 Cri LJ 1480: 1953 SCA 803: 1953 SCR 1188: AIR 1953 SC 394 (403) (Pt J) (Pr 21).**

——**Art. 245** — Scope of — Exclusion of claims of Saurashtra Government — Does not amount to extra-territorial operation of Act. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948), S. 51. **AIR 1957 Bom 155 (DB).**

——**Art. 245 (1)** — Jurisdiction of State Government to detain person outside jurisdiction — Constitutionality — See Public Safety — Preventive Detention Art (1950) S. 5. **ILR (1956) Bom 715.**

——**Arts. 245 (2), 246 and 248 and Sch. VII List I, Item 82 — Income-tax (Amendment) Act (33 of 1954), S. 2 — Income-tax Act (1922), S. 34 (1-A) to (1-D) — Constitutionality — Extra-territorial operation.**

The Parliament was competent to enact the Income-tax (Amendment) Act (33 of 1954) which introduced sub-Ss. (1-A) to (1-D) in S. 34 of the Income-tax Act by virtue of Art. 246 read with Sch. VII, List I, Item 82 of the Constitution. The Act is not rendered invalid by any provisions of the Constitution and is a valid piece of legislation.

The Indian Income-tax (Amendment Act) (33 of 1954) has no extra-territorial operation. Even if that law had extra-territorial operation, by the express words of Art. 245 (2) of the Constitution, the law cannot be pronounced to be invalid on the ground that it would have extra-territorial operation. AIR 1958 Mad 220, Dissented from;AIR 1945 PC 62, Rel. on.

Art. 245 of the Constitution can in no sense be said to be a limitation on the legislative power of the Union of India to legislate with regard to such tax. The subject-matters with regard to which the Parliament can legislate are specified in Art. 246 of the Constitution read with the Union List and the Concurrent List. The tax is income-tax within the meaning of item 82 of the Union List and Parliament has power to legislate with respect to the tax. Parliament has also power to make the law under the residuary powers by Art. 248 of the Constitution. **(1962) 44 ITR 315: 65 Cal WN 60: AIR 1960 Cal 619 (620, 621, 622) (Pt A) (Prs 5, 8, 14, 15, 16, 17, 18 19) (DB).**

13 (b). State legislature.

●——**Art. 245 — Extra territorial operation of State law — Qustion as to — Hyderabad Endowments Regulations (1940), Ss. 4, 12 — M. P. Public Trusts Act (30 of 1951), Ss. 2 (4), 4 — Religious public trusts — Public temple and some of its property situate in Hyderabad — Other income yielding properties situate in M. P. — Hyderabad Regulations will apply — Registration of trust under Act 30 of 1951 — Effect — Scope of S. 2 (4) of M. P. Act.**

Where the trust is situate in a particular State, the law of that State will apply to the trust, even though any part of the trust property, whether large or small, is situate outside the State where the trust is situate.

Where a public temple is situate in Hyderabad in the State of Andhra Pradesh and there is also some property of the temple there though the major part of the income yielding endowed property is situate outside in the State of Madhya Pradesh, the Hyderabad Endowments Regulations will apply to the trust as the trust is situate in the State of Andhra Pradesh and the fact that some of the endowed properties are not in Andhra Pradesh would make no difference. Further,the fact that the trust has been registered under the Madhya Pradesh Public Trusts Act (30 of 1951), cannot exclude the operation of the Regulations in the case of this trust, for the trust is undoubtedly situate within the area where the Regulations are in force.

It is obvious that public trust as defined in S. 2 (4) of the Madhya Pradesh Act (30 of 1951), must be a public trust situate in the State of Madhya Pradesh. Even though S. 2 (4) does not say so in terms, the definition must be confined to public trusts situate in Madhya Pradesh. Therefore S. 2 (4) must be interpreted to apply only to public trusts situate in Madhya Pradesh. This conclusion is supported by S. 3. As the public trust in this case must be held to be

situate in Andhra Pradesh and not in Madhya Pradesh where only some of the endowed trust properties are, the registration of the trust under the Madhya Pradesh Act cannot be a bar against the enforcement of the relevant provisions of the Hyderabad Regulations, because even if it may be necessary for the purpose of management of the property in Madhya Pradesh to register this trust also in Madhya Pradesh, that would not exclude the jurisdiction of the State of Andhra Pradesh, to legislate with respect to this trust which is undoubtedly situate in Andhra Pradesh, though some property of the trust is in Madhya Pradesh. AIR 1959 SC 1002, Foll. Anant Prasad Lakshminivas Ganeriwah v. State of Andhra Pradesh, **(1964) 1 SCJ 615: (1964) 2 Mad LJ (SC) 1: (1964) 2 Andh WR (SC) 1: 1963 Supp (1) SCR 844: AIR 1963 SC 853 (858, 859) (Pt A) (Prs 10, 12).**

●——**Art. 245** — Extent of powers of State Legislature — Madras Marumakkathayam (Removal of Doubts) Act (32 of 1955) passed by Madras Legislature could not have any extra-territorial operation so as to affect properties in the quondam Cochin State. Kochuni v. States of Madras and Kerala. **1960 Ker LJ 1077: 1960 Ker LT (SC) 31: (1960) 2 SCA 412: (1961) 2 SCJ 443: (1960) 3 SCR 887: AIR 1960 SC 1080 (1085) (Pt A) (Pr 11)**

●——**Art. 245** — State legislation — Necessity of territorial nexus — Territorial nexus as to marriage and crime — Validity of S. 4 (b) of Bombay Act (25 of 1946). See Government of India Act (1935), S. 99. **1958 Cr LJ 161: AIR 1958 Bom 68 (FB).**

●——**Art. 245 — State Legislature — Competency.**

It is not open under the Indian Constitution to a State to enforce social legislation outside its boundaries. If social legislation has to be enforced all over the country, then the proper method of doing it is to approach the Central Government to pass a law if the subject-matter is within the Concurrent List. The State v. Narayandas Mangilal Dayame. **59 Bom LR 901: 1958 Cr. LJ 161: ILR (1957) Bom 880: AIR 1958 Bom 68 (73) (Pt F) (Pr 9) (FB).**

——**Arts. 245 and 246 (3) — State legislation — Tests of validity.**

The competence of the State Legislature arises by virtue of the provisions of Art. 245 and Art. 246 (3) of the Constitution. A State Legislature has the competence to make laws mentioned in the relevant Lists for the whole or any part of the State. There must also be a territorial nexus between the subject-matter and the State. If the Legislature legislates in respect of a topic mentioned in the relevant list and the legislation goes beyond the State, then it would not be competent legislation.

If these two tests are satisfied namely that the legislation is competent in the sense that it is covered by a topic mentioned in the relevant list and also it is not extra-territorial, then the third question to be considered is whether the Constitution has placed any restrictions upon the power of the Legislature to legislate on that particular topic.

In order to decide the legislative competence with regard to the impugned Act, the Courts must first look at the Act itself and consider what the scheme of the Act is and what is the subject-matter with which the Act is dealing. **ILR (1955) Bom 680: 57 Bom LR 288: AIR 1956 Bom 1 (4) (Pt A) (Prs 3, 4) (DB).**
[**Reversed** on another point in AIR 1957 SC 699.]

——**Arts. 245, 345** — Limitation Act (1908), Art. 52 — Municipalities — U. P. Municipalities Act (2 of 1916), S. 326 (3) — Suit to recover price of goods sold to Municipality in Uttar Pradesh — Suit filed in Court beyond Uttar Pradesh — Special limitation prescribed in S. 326 (3) does not apply — Suit is governed by Art 52, Limitation Act — (Words and Phrases — "Action") — See Limitation Act 1908, Art. 52. **AIR 1956 Cal 216.**

——**Arts. 245 and 254 — (Government of India Act (1915), S. 79) — Power of local Legislature to make law — Extent of its extra-territorial jurisdiction.**

Under S. 79 of the Government of India Act, 1915, the local Legislature could make laws for the territories of its own Province. Where the field of legislation was occupied by any law made by an authority other than the local Legislature, it could legislate with regard to the occupied field only with the consent of the Governor-General in Council. Even with such assent, it could not however, repeal or alter such law as to other Provinces. The local Legislature could not also make any law with regard to the matters specified in sub-S. (3) of S. 79 without the assent of the Governor-General. Even with such assent, it could not legislate for territories outside that Province.

The local Legislature, whose powers were conditioned by S. 80-A of the Government of India Act, 1915, (as substituted for S. 79 in 1919) could not by an enactment affect rights in land outside the Province; nor could it pass laws restricting the jurisdiction of Courts of another Province; nor laws regulating the powers and procedure of Courts of another Province.

It cannot, however, be said that the laws of a local Legislature, cannot affect persons and properties outside the Province. For, the Courts, of this country very often have to recognise the extra-territorial consequences of a foreign law. **ILR (1957) 3 Cal 113: AIR 1956 Cal 216 (217,218) (Pt B) (Prs 13, 16, 17, 18, 19, 20) (DB).**

——**Art. 245 — Special law prevailing in one State when becomes foreign law — (International Law).**

For many purposes, the special laws prevailing in sub-divisions of a single political State of which the forum is a part is as much foreign law as the laws of a State under a foreign political sovereignty. **ILR (1957) 3 Cal 113: AIR 1956 Cal 216 (219) (Pt E) (Pr 24) (DB).**

●——**Arts. 245 and 246 — Taxing law — Extent of operation of State Legislature.**

An Act of a State Legislature cannot operate to any extent beyond the State's boundaries. For a State's power of taxation however vast in its character and searching in its extent, is confined to subjects which are within its jurisdiction and the tax laws of a State can have no extra-territorial operation. The law of a State relating to assessment of taxes may have a retrospective effect. Still it is necessarily limited to persons, property or business within the jurisdiction and further it is only such tax as could have been authorised originally that could be levied retrospectively. Ananthanarayanan Iyer v. Agricultural Income-tax and Sales Tax Officer. **1958 Ker LT 1144: 1958 Ker LJ 1286: ILR (1959) Ker 125: AIR 1959 Ker 182 (188) (Pt C) (Pr 16) (FB).**

——**Art. 245 — Scope — Madras Aliyasanthana Act (9 of 1949) — Validity of — Extra-territorial operation.**

The Madras Aliyasanthana Act is to be construed as applying to land and properties situate within the Province of Madras and when so con-

strued the Act is valid and operative to govern the title in respect of properties included in the suits for partition of Kutumba property. **(1942) 5 FLJ (PC) 1: ILR (1956) Mad 785: AIR 1956 Mad 642 (651) (Pt G) (Pr 28) (DB).**

——**Art. 245** — Test of validity of Act — Act of Provincial legislature — One of the tests is to see whether its operation does not extend beyond the boundaries of the province. **36 Mys LJ 73 ILR (1957) Mys 423: AIR 1958 Mys 102 (106, 107, 108) (Pt B) (Prs 21, 22, 25, 27, 28) (DB).**

——**Art. 245** — Applicability of Bihar Hindu Religious Trusts Act to Baidyanath temple — State Legislature's competence to legislate for territories outside its jurisdiction. See Bihar Hindu Religious Trusts Act (1 of 1951), S. 29. **AIR 1954 Pat 262 (DB).**

[**Reversed** on another ground in AIR 1959 SC 1073.]

——**Art. 245** — Extra-territorial jurisdiction — Powers of State Legislature. See Government of India Act (1919), S. 80-A. **AIR 1954 Pat 164 (DB).**

[**Reversed** on another point in AIR 1959 SC 809.]

——**Art. 245 and Sch. 7, List 2, Entry 17 — Rule 33 of Sirhind Canal Rules — Validity.**

"The Sirhind Canal Rules", including Rule 33, were adopted and enacted as law for the State by the State Legislature of Pepsu State. This was well within its powers under entry 17 of the State list. **AIR 1956 Pepsu 40 (47) (Pt F) (Pr 26) (DB).**

——**Art. 245** — Punjab Passengers and Goods Taxation Act whether is within the legislative and territorial competence of the State notwithstanding the fact that it imposes fare or freight in respect of journey through territories which are outside the State of Punjab. See the Punjab Passengers and Goods Taxation Act (16 of 1952), Proviso to S. 3 (3). **AIR 1954 Punj 364 (DB).**

13 (c). Sufficient territorial nexus and taxation power of State.

■——**Arts. 245 and 286 (2) — Territorial extent of legislative power — Theory of territorial connection or nexus — Applicability to sales tax legislation.**

Per Majority (Bose, J., dissenting):— The theory of territorial connection or nexus should not be confined in its application only to income-tax legislation but would be equally applicable to sales-tax legislation.

The provisions of the Bihar Sales Tax Act (1947) limit its charging section to 'sale'. In order to attract the charging section there must be a completed sale involving the transfer of property in the goods sold from the seller to the buyer. The nexus theory only indicates the circumstance in which a tax imposed by an Act of the Legislature may be enforced in a particular case and unless eventually there is concluded sale in the sense of passing of the property in the goods no tax liability attaches under the Act. The argument that one and the same transaction of sale may be taxed by different States by applying the nexus theory has no force for Art. 286 (2) of the Constitution, as it stood originally, was a complete safeguard against such eventuality and after the amendment of that Article and the relevant entries in the Legislative List such contingency will not arise. Tata Iron and Steel Co., Ltd. v. State of Bihar. **(1958) 9 STC 267: 1958 SCA 469: 1958 SCJ 818: 1959 BLJR 453: ILR 37 Pat 827: 1958 SCR 1355: AIR 1958 SC 452 (461, 462) (Pt B) (Prs 14, 15).**

■——**Art. 245 — Territorial extent of legislative power — Doctrine of territorial nexus — Principles — (Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948)) — Validity of.**

When there is territorial connection between the person sought to be charged and the State seeking to tax him the taxing statute may be upheld. Sufficiency of the territorial connection involves a consideration of two elements, namely, (a) the connection must be real and not illusory and (b) the liability sought to be imposed must be pertinent to that connection. The question whether in a given case there is sufficient territorial nexus is essentially one of fact.

Held, on facts that the standing invitations, the filling up of the forms and the payment of money for the newspaper "Sporting Star" take place within the State which is seeking to tax only the amount received by the petitioners from the State of Bombay. The tax is on gambling although collected from the promoters. All these constitute sufficient territorial nexus which entitles the State of Bombay to impose a tax on the gambling that taxes place within its boundaries and the law cannot be struck down on the ground of extra-territoriality. State of Bombay v. R. M. D. Chamarbaugwala, **1957 SCR 669: 1957 Mad WN (SC) 64: 35 Mys LJ 283: (1957) 2 MLJ (SC) 87: (1957) 2 Andh WR (SC) 87: (1957) SCJ 607: (1957) MLJ (Cr) 558: 59 Bom LR 945: 1957 SCA 867: AIR 1957 SC 699 (711, 712) (Pt E) (Pr 24).**

■——**Arts. 245, 246, 286 — Sales tax legislation operating on non-resident persons.**

(Per Venkatarama Ayyer, J., in a dissenting Judgment:— A law enacted by the Indian Legislature in respect of the matters enumerated in the appropriate lists would be valid provided it is for the territory entrusted to their charge; whether it was so or not would depend on whether there was sufficient territorial connection between the person who is sought to be charged or proceeded against under the law and the country which enacts the law; and when such connection exists, the law is not strictly speaking extra-territorial, and it is not ultra vires on the ground that the person is not residing within the State which enacts the law. A sales tax legislation of a State which is otherwise valid is not ultra vires on the ground that the person proposed to be taxed is not resident within the territorial limits of the State. Case-law discussed. Bengal Immunity Co., Ltd. v. State of Bihar, **(1955) 6 STC 446: (1955) 2 SCR 603: ILR 34 Pat 905: (1955) SCJ 672: 1955 SCA 1140: (1955) 2 MLJ (SC) 168: (1955) Andhra WR (SC) 422: AIR 1955 SC 661 (749) (Pt Za) (Pr 197).**

■——**Art. 245** — Theory of territorial nexus — Taxing Statutes having extra-territorial operation. See Travancore Cochin Agricultural Income-tax Act (22 of 1950) (as Amended by Act 8 of 1957), Section 3. **AIR 1959 Ker 182 (FB).**

——**Arts. 245, 246, 286 — Development of sales tax law in India — State of law in pre-Constitution and post-Constitution periods— C. P. and Berar Sales Tax Act (21 of 1947), Section 2 (g), Expl. II — Sales Tax Laws Validation Act (1956).**

In the Pre-Constitution period, the validity of a sales tax law was judged on the nexus theory, so that the State which had sufficient territorial nexus with the goods to be taxed could validly tax their sales by operating on one or more of its essential ingredients. **1961 MPLJ 804: 1961 Jab LJ 1011: 1961 MPC 582: AIR 1962 Madh Pra 229 (232) (Pt A) (Pr 22) (DB).**

——**Arts. 245 (1), 246, 286 (1) and Explanation and Sch. 7, List 2 Entries 92 and 54 — Power of State to tax intra-State and inter-State sales — Contract of sale concluded in another State — Goods delivered in Madras — Liability for taxation under Madras General Sales Tax Act — (Sales Tax — Madras General Sales Tax Act (9 of 1939), Ss. 3 and 22).**

The power of a State to impose taxes is not conditioned on the subject-matter being wholly within its jurisdiction. The exercise of the power will be valid, if there is sufficient territorial connection with reference to the subject-matter. 1948 PC 118, Foll.

The effect of the Explanation to Art. 286 (1) is to remove the limitation imposed by Art. 245 and Art. 286 (1) on the power of a State to enact extra-territorial legislation and permit the State to levy sales tax on an extra-state sale, provided goods thereunder are delivered within the State. The Explanation should accordingly be construed as not taking away the positive powers of taxation conferred under Art. 246 and Entry No. 54 but as enlarging those powers in cases falling within the Explanation.

Under the Constitution, the States enjoy both a power under Entry 54 to tax sale and purchase of goods and a power under Entry 52 to tax goods on their entry into a local area, subject only to the limitation contained in Art. 286. There is no conflict between the power of States to tax sales under Entry 54 and the power to impose taxes on the use of goods to which the Explanation relates.

The words "actual delivery" in the Explanation to Art. 286 (1) can mean only physical delivery and not constructive delivery such as by transfer of documents of title to the goods. The whole object of the Explanation is to give a power of taxation in respect of goods actually entering the State for the purpose of use therein and it will defeat such a purpose if notional delivery of goods as by transfer of document of title to the goods within the State is held to give the State a power to tax, when the goods are actually delivered in another State.

The result may be thus summed up: (1) The State has plenary powers of taxation over intra-State sales. (2) The State has no power to impose a tax on extra-State sales. (3) In respect of inter-State sales, the State in which the contract is concluded is the only State which has the power to impose a tax. (4) Where goods are delivered for consumption in a particular State, that State has the power to impose a use tax or a purchase tax thereon notwithstnding that the transaction of sale is extra-State.

Thus where purchases are made in another State by a person living in Madras and the documents of title are received by post in Madras or the price is paid to the banks in Madras against delivery of documents of title and the contracts in respect of the sales are concluded in the former State, they will be extra-State sales not liable for taxation under the Madras General Sales Tax Act. If, however, the goods are actually delivered in Madras, that will confer on the State of Madras a power to tax the goods under the Explanation to Art. 286 (1) (a) which has become incorporated in the Madras General Sales Tax Act by the Adaptation of Laws (Fourth Amendment) Order, 1952. **(1952) 2 MLJ 614: (1952) 3 STC 405: 65 Mad LW 1041: AIR 1953 Mad 116 (120, 126, 127 128) (Pt C) (Prs 9, 27, 29, 30, 31, 32) (DB).**

——**Art. 245** — Bihar Sales Tax Act (19 of 1947), Ss. 2 (c), 2 (g) and 4 — If invalid on ground of extra territorial operation. See Sales Tax —Bihar Sales Tax Act (19 of 1947), S. 2 (c). **AIR 1955 Pat 87 (DB).**

[Reversed on another point in AIR 1955 SC 661.]

14. Constitutionality of statutes.

(a) Proper approach in deciding question.

(b) Presumption and burden of proof.

(c) Law void in part.

(d) Who can question the constitutionality of a statute.

14. Constitutionality of statutes.

●——**Art. 245** — Statutory rules — Amendment — Notification — Recitation of wrong source of power — Amendments not invalidated. See Indore Industrial Tax Rules (1927), R. 17. **AIR 1964 SC 1329.**

●——**Art. 245 — Constitutionality of statute — Questions of public policy or motives of legislature — Relevancy.**

In determining the constitutionality of a statute the Court is not concerned with the motives of the legislature and whatever justification some people may feel in their criticisms of the political wisdom of a particular legislative or executive action, the Supreme Court cannot be called upon to embark on an enquiry into public policy or investigate into questions of political wisdom or even to pronounce upon motives of the legislature in enacting a law which it is otherwise competent to make. Sarup Singh v. State of Punjab, **1959 Supp (2) SCR 499: (1960) 1 SCA 163: 1959 SCJ 1115: AIR 1959 SC 860 (864) (Pt A) (Pr 5).**

●——**Art. 245** — Ultra vires — Constitutionality of legislation — Duty of Court. See Ibid, **Art. 13. AIR 1954 SC 119.**

●——**Art. 245** — Constitutional validity of statutes — It is always a question of power — Motive is not a relevant consideration. See Interpretation of Statutes. **AIR 1953 SC 375.**

——**Art. 245 — Constitutional validity of statutes — Suppression of Immoral Traffic in Women and Girls Act of 1956 — Validity.**

Hardship is no consideration while dealing with the constitutionality of an Act. Therefore, if the Suppression of Immoral Traffic in Women and Girls Act of 1956 is found to have been constitutionally passed and it is not also otherwise ultra vires, consideration of difficulty in rehabilitating the prostitutes in society or the fact that several causes had led to prostitution over which the girls carrying on prostitution had no control can be no ground for invalidating the Act. **1959 All Cr R 427: 1959 All WR (HC) 509: AIR 1959 All 57 (59) (Pt A) (Pr 2).**

[Overruled on another point in AIR 1964 SC 416.]

——**Art. 245** — Scope — 'Existing law' found to be beyond competence of legislature to make under Constitution — Whether saved by Art. 372. See Ibid, Art. 372. **AIR 1958 All 126.**

——**Art. 245 — Power of Legislature to enact law contrary to principles of natural justice — Limitation — American Constitution and Indian Constitution—Distinction — Due process of law—Applicability, Art. 14.**

If a certain procedure is prescribed by law then unless it contravenes the provisions of Art. 14, it cannot be challenged as invalid upon any supposed principles of natural justice. In this respect it departs from the American Constitution under which the Union and the State Legislature are

forbidden to enact laws affecting the life, liberty or property of individuals except in accordance with the due process of law. Due process of law includes principles of natural justice. The doctrine of due process has not been adopted by the Indian Constitution save in certain cases where its principles have been expressly enacted in the Constitution. **1956 All WR (HC) 643: 1956 All LJ 878: AIR 1957 All 297 (301) (Pt C) (Prs 10, 11) (DB).**

——Art. 245 — Interpretation of Constitution — Powers of High Court.

A Constitution must be so interpreted as to advance the very objects for which it is brought into existence and to ensure the harmonious working of the different organs of the State for the ultimate good of its citizens.

It is for the Courts to give effect to the provisions in the Constitution and not to do away with, or whittle down, the powers conferred by them by a process of construction. Of course, if the functionary concerned acts in excess of the powers conferred upon him, the High Courts will refuse to uphold his action but that is the limit of the function assigned by the Constitution to High Courts. **1956 All LJ 556: 1956 All WR (HC) 570: ILR (1956) 2 All 665: AIR 1956 All 557 (559, 562) (Pt E) (Prs 5, 36, 37) (DB).**

——Art. 245 — Constitutionality of Act — Courts when can declare on.

It is not the function of any Court or Judge to declare void or annul a law the moment it has been promulgated; their function is only interpretative. In other words, when a particular case comes before them in which the right of any party is involved, they decide whether the Act or any part of it is to be disregarded on the ground of its incompatibility with the constitution. **1951 All LJ 246: ILR (1951) 2 All 505: AIR 1951 All 228 (231, 232, 233) (Pt C) (Prs 13, 23) (DB).**

——Art. 245 — Powers of Court to question propriety or reasonableness of legislation — Province of Court in regard to legislation of sovereign and non-sovereign legislatures.

Desai, J.:— A Court has absolutely no jurisdiction over a sovereign Parliament. If it goes wrong, the remedy lies in the hands of the people. It is not for a Court to go into the question of reasonableness or propriety of any enactment of even a non-sovereign legislature. How to legislate is the sole concern of the legislature; a Court has nothing to do with the means with which the legislature hopes to secure its end. **52 Cri LJ 1191: ILR (1952) 2 All 360: AIR 1951 All 44 (48, 49, 50) (Pt B) (Pr 10).**

——Art. 245 — Power of Court to reject an Act as ultra vires — Scope and limits.

Desai, J.:— No Indian Court has any power to reject an Act as ultra vires, though it was within the scope of the legislature, merely on the ground that it involved delegated legislation. The power of Court to reject an Act as ultra vires arises only out of the legislature's exceeding the authority given to it under the Constitution Act. Unless the Court can point its finger to a particular provision of the Constitution Act which is violated by the legislature through the enactment, it cannot rule out the enactment as ultra vires. **ILR (1952) 2 All 360: 1952 Cri LJ 1191: AIR 1951 All 44 (54, 55) (Pt G) (Pr 17) (DB).**

——Arts. 245 and 246 — Validity of Act questioned — Duty of Court.

When the validity of an Act is called in question, the first thing for the Court to do is to examine whether the Act is a law with respect to a topic assigned to the particular Legislature which enacted it. If it is, then the Court is next to consider whether, in the case of an Act passed by a Legislature of a State, its operation extends beyond the boundaries of the State. State laws cannot, in the absence of a territorial nexus, have any extra-territorial operation. If the impugned law satisfies both these tests, then finally the Court has to ascertain if there is anything in other part of the Constitution which places any fetter on the legislative powers of such Legislature. **(1959) 1 Andh WR 285: ILR (1959) AP 648: AIR 1959 Andh Pra 398 (401) (Pt A) (Pr 14) (DB).**

● ——Art. 245 — Constitutionality of an Act — Argument based on hardship — Not tenable.

The Courts are not concerned with any hardship that a piece of legislation may cause where it is obviously within the competence of the Legislature. They have no power to relieve hardship in such cases. The remedies for any real hardship lie elsewhere. H. P. Barua v. State of Assam, **AIR 1955 Assam 249 (262) (Pt M) (Pr 30) (SB).**

[**Reversed** on another point in AIR 1961 SC 232.]

——Art. 245 — Amendment by Industrial Disputes (Appellate Tribunal) Act (1950) — Amendment which is a complementary legislation cannot be challenged so long as it covers the appropriate field of legislation. See Industrial Disputes Act (1947), S. 15. **AIR 1954 Assam 161 (DB).**

——Art. 245 — Validity of Statutes — Duty of Court. See Bombay Prohibition Act (25 of 1949 as amended by Act 26 of 1952), S. 24-A. **AIR 1958 Bombay 181.**

——Arts. 245, 14, 19 (1) (f) — Bombay Tenancy and Agricultural Lands Act (67 of 1948), Ss. 7, 5, 6 and 6-A (as amended by Act 13 of 1956) — Validity — Whether S. 7 is inconsistent with Arts. 14 and 19 (1) (f) of the Constitution — Possible abuse of power by Government whether a ground for challenging its validity. See Tenancy Laws — Bombay Tenancy and Agricultural Lands Act (67 of 1948) as amended by Act (13 of 1956), Section 7. **AIR 1957 Bom 252.**

[**Overruled** on another point in AIR 1959 SC 459.]

——Art. 245 — Preamble and Art. 14. — Unconstitutionality of legislation. See Ibid, Preamble. **AIR 1956 Bombay 368.**

——Arts. 245, 19, 26 — Bombay Police Act (22 of 1951), S. 37 (3) — Validity — Is to be judged on the assumption that persons called upon to exercise the wide powers will exercise them honestly and bona fide — (Bombay Police Act (22 of 1951), Section 37 (3)). See Ibid, Art. 19. **AIR 1956 Bombay 300.**

——Art. 245, Preamble — Sch. VII, List II, Art. 34, List I, Entry 42 — Constitutionality of legislation — Presumption as to — Duty of Court — Construction of constitutional laws — Validity of Section 2 (1) (d) of Bombay Act, LIV of 1948 — (Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948), S. 2 (1) (d)).

It is only if there are clear unequivocal words in the statute which go to show that the Legislature has overstepped its competence or has travelled outside the limitations laid down in the Constitution that the Court will pronounce a Legislation to be ultra vires. AIR 1952 Bom 16, Rel. on.

The Courts must, therefore, interpret and construe the prize competitions included in the first

category of the definition in Section 2 (1) (d) of the Bombay Act 54 of 1948 as only those competitions, the success in which does not depend to a substantial degree upon the exercise of skill. In other words, the Courts must presume that the Legislature was legislating under the topic "gambling" and not under the topic "trade and commerce" and as such S. 2 (1) (d) is valid. **1959 Cri LJ 28: ILR (1955) Bom 680: 57 Bom LR 288: AIR 1956 Bom 1 (8, 9) (Pt E) (Prs 17, 18) (DB).**

[**Reversed** on another point in AIR 1957 SC 699.]

——**Art. 245** — Civil P. C. (1908), S. 100 — New point — Constitutional point. See Civil P. C. (1908), S. 100. **AIR 1959 Cal 328.**

——**Art. 245** — Preamble — Unconstitutionality of legislation — Practice — (Civil P. C. (1908), Pre.) — (Interpretation of Statutes — Unconstitutionality). See Ibid, Preamble. **AIR 1958 Cal 570.**

——**Art. 245 — Amending Act within Legislative powers — It is not justiciable — Effect should be given to it — (Interpretation of Statutes).**

Where the amendment of an Act is within the legislative powers and has been made in accordance with the correct legislative procedure, the justice of such amendment or its integrity is not justiciable in a Court of law; and if the amendment is in form only declaratory or explanatory of the principal Act and retrospective by express enactment, effect must be given to it as if it was a part of the Act. **('56) 60 Cal WN 962.**

——**Art. 245** — Validity of legislation — Extent of power of Court. **AIR 1955 NUC (Hyd) 5624 (DB).**

——**Art. 245 — Powers of Court — State Courts when should express opinion on question of Constitutional Law.**

As a general rule, State Courts should desist from expressing any opinion on constitutional matters unless it is absolutely necessary for the decision of the case. Cooley in his Constitutional Limitations, Vol. I. Pages 333 and 339 has expressed the same view in the following words.

"In any case, where a constitutional question is raised, though it may be legitimately presented by the record, yet, if the record also presents some other and clear ground upon which the Court may rest its judgment, and thereby render the constitutional questions immaterial to the case, that course will be adopted and the question of constitutional power will be left for consideration until a case arises which cannot be disposed of without considering it, and when consequently a decision upon such question will be unavoidable." **ILR (1952) Hyd 122: 1952 Cri LJ 1076: AIR 1952 Hyd 112 (117, 120) (Pt G) (Prs 9, 23) (DB).**

●——**Art. 245 — Constitution — Power of Courts to declare statute unconstitutional — Interpretation of Statutes.**

The Court's duty is to enforce the provisions of the Constitution. If, therefore, a Court finds that a statute is in accordance with the Constitution, it must pronounce it valid. If the Court finds that it is in contravention of the Constitution or transgresses the authority vested in the Legislature, the Court must pronounce it a nullity. Laws may be unwise though constitutional. If a law is unconstitutional it is the duty of the Courts to declare it void. But if a law is unwise an appeal for its removal lies not to the Court but to the electorate in a democratic form of Government. Abdur Rahim v. J. A. Pinto, **52 Cri LJ 1333: ILR (1951) Hyd 1: AIR 1951 Hyd 11 (16) (Pt D) (Pr 35) (FB).**

[**Overruled** on another point in AIR 1953 Hyd 33 (FB).]

●——**Art. 245 — Constitutionality of an Act — Tests of — S. 19, J. and K. Preventive Detention Act — Validity — (Public Safety — J. and K. Preventive Detention Act (4 of 2011), S. 19).**

No statute can be held invalid on the ground that it is opposed to the spirit of the Constitution. Whether an Act is ultra vires or not has to be seen with reference to the provisions of the Constitution alone and nothing else. It is a fundamental rule of Interpretation of Statutes that there should always be a leaning towards holding a statute as constitutional and intra vires. AIR 1951 All 476 (FB) and AIR 1950 SC 27, Rel. on.

Held, that Section 19 of the Preventive Detention Act cannot be said to be ultra vires of the Constitution on the ground that it is not in accordance with the spirit of the Constitution. Ghulam Ahmad v. State, **1954 Cri LJ 1811: AIR 1954 J and K 59 (62) (Pt C) (Pr 10) (FB).**

——**Art. 245** — Constitutional validity of statutes — Judicial review — Extent of — Rule framed under Act — If can be struck down on ground that it fixes short period of limitation. See Madras Plantation Agricultrural Income-tax Rules (1955), Rule 31, Proviso. **AIR 1958 Ker 6.**

——**Art. 245 — Validity of Act — Absence of attack for some time — If bar to challenge later.**

The fact that no one challenged the vires of an Act for the last two years, since it was enacted, will not preclude a person from challenging it on the ground that the law was beyond the competence of the State legislature to make under the Indian Constitution. **1958 Mad WN 161: ILR (1958) Mad 452: 1958 Mad LJ (Cri) 591: (1958) 2 Mad LJ 123: 1959 Cri LJ 731: AIR 1959 Mad 261 (264) (Pt A) (Pr 9) (DB).**

——**Art. 245** — Validity — Act derogating from the jurisdiction of the High Court — Consent of Judges not obtained before enacting the Act — Effect. See (Code of) Criminal Procedure (Madras Amendment) Act (Madras Act 34 of 1955). **AIR 1959 Mad 261.**

——**Art. 245** — Legal fictions — Validity of — Power of legislature to legislate with such fictions added on — Transfer of suit to Revenue Court — Assumption of presentation of application under appropriate Act — Injunction issued by Civil Court — Effect. See Tenancy Laws — Madras Cultivating Tenants Protection Act (25 of 1955), (as amended by Madras Act (14 of 1956), S. 6-A. **(1958) 1 Mad LJ 232.**

——**Art. 245** — Constitutional validity of statute. See Government of India Act (1935), S. 99. **AIR 1956 Mad 642.**

——**Art. 245** — Scope— Madras General Sales Tax Act whether bad as offending Art. 14 or Art. 286 of the Constitution. See Sales Tax — Madras General Sales Tax Act (9 of 1939). **AIR 1954 Mad 1030.**

●——**Art. 245 — Ultra vires — Civil P. C. 1908, Section 9.**

Time alone will not validate an Act which when challenged is found to be ultra vires. Canadian Federation of Agriculture v. Attorney-General of Quebec, **1951 Mad WN 495 (PC).**

——**Art. 245** — Amendment converting into tax what is not really tax — Amendment held unconstitutional. See Sales Tax — Mysore Sales Tax Act (25 of 1957), S. 18 (3), (as amended in 1964). **AIR 1965 Mys 120 (DB).**

——**Arts. 245 and 246 — Colourable legislation — Act within competence of legislature — Motive cannot be questioned.**

If the State Legislature has competence, then the reason behind the law becomes irrelevant. If the Legislature enacts a measure which it has competence to do, it is not open to the Court to examine the motive behind the legislation. The vires of a legislation does not depend on the purpose behind the legislation. It depends on the competence of the concerned legislature to enact the Statute in question. AIR 1953 SC 375, Rel. on. **AIR 1964 Mys 240 (242) (Pt A) (Pr 4) (DB).**

——**Art. 245** — Mysore Village Offices Abolition Act (14 of 1961) — Act does not contravene Constitution of India — Abolition of village offices, is within competence of State Legislature. See Mysore Village Offices Abolition Act (14 of 1961), Section 2 (1) (n). **AIR 1964 Mys 84 (DB).**

——**Art. 245** — Constitutionality of Statute — Statute cannot be questioned on grounds of public policy. See Ibid, Preamble. **AIR 1963 Mys 245.**

——**Art. 245** — Validity of Section 13, Finance Act, 1950 — Contravention of Agreement between the President and the Rajpramukh — Objection that it is constitutionally bad. See Finance Act (1950), S. 13. **AIR 1955 Mys 49 (DB).**

●——**Art. 245 — Ultra vires.**

An Act cannot be declared to be invalid merely because it may be feared that the Government may abuse it in future; nor are the Courts at liberty to declare an Act void, because it is in their opinion opposed to the spirit that is supposed to pervade the Constitution but not expressed in words. Abdul Khader v. State of Mysore, **52 Cri LJ 992: ILR (1951) Mys 284: AIR 1951 Mys 72 (85, 86) (Pt I) (Pr 40) (FB).**

——**Art. 245 — Power to declare an enactment void — Interpretation of statutes — Civil P. C. 1908, Pre.**

A law passed by a competent Legislature should not be declared to be void except in a clear case. Every possible presumption regarding the validity of that law should be drawn until the contrary is shown beyond reasonable doubt. **ILR (1951) Nag 552: 1952 Cri LJ 580: AIR 1951 Nag 43 (44, 45) (Pt B) (Pr 8) (DB).**

●——**Art. 245 — Constitutionality of an Act — Duty of Court — Validity of M. P. Act 13 of 1954 — (M. P. Appropriation (No. 2) Act (13 of 1954), Section 1).**

It is the duty of the Courts to uphold the Constitution. If therefore, the very basis of a law contravenes any provision of the Constitution, the law itself will fall and it would be the duty of the Courts to declare that law unconstitutional.

Held, that the M. P. Appropriation (No. 2) Act, 1954, did not contravene any provision of the Constitution. Piarelal Singh v. State of M. P., **ILR (1954) Nag 764: AIR 1955 Nag 11 (22) (Pt H) (Pr 43) (SB).**

——**Art. 245** — Constitutional validity of Statutes. See Representation of the People Act (1951), Section 126. **1957 Cri LJ 648: AIR 1957 Pat 252 (DB).**

——**Art. 245** — Statute invalid because of constitutional check — It can become valid if constitutional prohibition is removed. See Ibid, Art. 13. **AIR 1957 Pat 44 (DB).**

14 (a). Proper approach in deciding question.

●——**Art. 245 — Constitutional validity of Statute — Determination of — Essentials.**

In cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. State of Bihar v. Hardut Roy Moti Lall Jute Mills, **ILR 39 Pat 303: (1960) 11 STC 17: 1960 SCJ 255: 1960 BLJR 171: (1960) 2 SCR 331: AIR 1960 SC 378 (380) (Pt A) (Pr 7).**

●——**Arts. 245, 246, 48 and Schedule VII, List II, Entry 15** — Statutes enacted under — Acts enacted for prevention of slaughter of cows and cattle — Constitutional validity of — Background against which question should be considered stated — (Bihar Preservation and Improvement of Animals Act (2 of 1956), Preamble — (U. P. Prevention of Cow Slaughter Act (1 of 1956), Preamble) — (C. P. and Berar Animal Preservation Act (52 of 1949), (as amended by M. P. Acts 23 of 1951 and 10 of 1956), Preamble). See Ibid, Art. 48. **AIR 1958 SC 731.**

●——**Arts. 245 and 246 — Constitutional validity of statutes — Tests to be applied.**

When the validity of an Act is called in question the first thing for the Court to do is to examine whether the Act is a law with respect to a topic assigned to the particular Legislature which enacted it. If it is, then the Court is next to consider whether its operation extends beyond the boundaries of the province or the State, as its laws cannot, in the absence of a territorial nexus, have any extra-territorial operation. If the impugned law satisfies both these tests, then finally the Court has to ascertain if there is anything in any other part of the Constitution which places any fetter on the legislative powers of such Legislature. State of Bombay v. R. M. D. Chamarbaugwala, **1957 Mad WN (SC) 64: 1957 SCR 874: 35 Mys LJ 283: (1957) 2 MLJ (SC) 87: (1957) 2 Andh WR (SC) 87: 1957 SCJ 607: (1957) MLJ (Cri) 558: 59 Bom LR 945: 1957 SCA 867: AIR 1957 SC 699 (705) (Pt A) (Para 14).**

●——**Art. 245 — Constitutionality of Act — Duty of Court.**

The Court is only concerned to interpret the law, and if it is valid, to apply the law as it finds it and not to enter upon a discussion as to what the law should be. Purushottam Govindji v. B. M. Desai, **(1955) 28 ITR 891: 1956 Cr LJ 129: 58 Bom LR 498: 1956 Andhra LT 1: 1956 SCJ 75: (1956) 1 Mad LJ (SC) 51: (1955) 2 SCR 887: 1956 SCA 465: AIR 1956 SC 20 (26) (Pt E) (Pr 16).**

●——**Art. 245, Preamble and Sch. VII, Lists** — Constitutional enactment — Rules of interpretation of statutes apply — Construction of entry in list conferring legislative power — Widest possible construction according to ordinary meaning should be put — Reference to legislative practice may be admissible for cutting down meaning of word in order to reconcile two provisions of two legislative lists — (Government of India Act (1935), Sch. VII, Lists)— (Civil P. C. (1908), Preamble). See Interpretation of Statutes. **AIR 1955 SC 58.**

——**Art. 245 and Preamble** — Vires of Act or Notification — Determination of — General principles —(Civil P. C. (1908), Pre.) — (Interpretation of Statutes — Unconstitutionality). See Ibid, Pre. **AIR 1959 All 218.**

——**Arts. 245 and 246 — Vires of Act — Considerations.**

The Court has to judge the vires of the Act with reference to the applicability of the entries in the respective lists. If it does not fall within the ambit of the State list, it would be saved by

the residuary entry and its validity would be unaffected notwithstanding that a State legislative measure contains a similar provision. **ILR (1959) Andh Pra 1340 : 1960 Andh LT 22: (1960) 38 ITR 93 : (1960) 1 Andh WR 153 : AIR 1960 Andh Pra 115 (119, 120) (Pt C) (Pr 24) (DB).**

——Art. 245 — Competency of Legislature to legislate.

A distinction must always be borne in mind between the competence of a legislature and the violation or contravention of fundamental rights. If legislation is not competent, no further question arises. If legislation is competent then the Court has got to consider whether it offends any of the provisions of the Constitution particularly Part III of the Constitution. Therefore, if in a case the legislation itself was incompetent, no question of considering Art. 31 or Art. 31-A would arise. **ILR (1955) Bom 127 : 56 Bom LR 1062 : AIR 1955 Bom 28 (33) (Pt E) (Pr 10) (DB).**

——Art. 245 — Constitutionality of an Act — Determination of.

In deciding whether any particular legislation is unconstitutional, it is necessary to examine with some strictness the substance of the legislation. AIR 1954 SC 119, Rel. on. **ILR (1954) Hyd 640 : AIR 1955 Hyd 41 (42) (Pt A) (Pr 4) (DB).**

——Arts. 245, 246 — Interpretation of legislative entries — Liberal construction — Doctrine of incidental and ancillary power — Scope of — When can be invoked.

The words describing the legislative powers should receive wide and liberal meaning. The enumerated powers must be effectively put in operation by legislation. The doctrine of incidental and ancillary power has necessarily to be invoked to prevent a statute becoming ineffective.

In a statute falling within the enumerated topic of legislation, provisions enacted to ensure and achieve the effectiveness of the Act should not be treated as alien to the subject matter of the legislation. The competency of the legislature to make such provisions cannot be tested as if they stand apart and are severable from the main enactment. A matter not otherwise within the enumerated powers may be legislated upon as an incident to the exercise of an enumerated power. What is 'incidental' in any given case depends upon the main legislation and the circumstances of the particular case. Matters of incidental powers are largely questions of degree, but in considering them, the Court must not lose sight of the fact that once the subject-matter is fairly within the province of the legislature, the justice and wisdom of the provision which it makes in the exercise of its powers over the subject-matter are matters entirely for the legislature and not for the judiciary. **(1962) 13 STC 967 : AIR 1963 Mad 116 (118, 119) (Pt A) (Prs 6, 7, 7-a, 8) (DB).**

[**Overruled** on another point in AIR 1965 SC 922.]

——Arts. 245 and 246 and Sch. VII — Constitutional validity of enactment — Proper method of approach.

The first thing to do, in determining the constitutional validity of an enactment in India, is to turn to Part XI and Schedule VII of the Constitution. Even where the attack on the validity of the enactment is based solely on Part III of the Constitution, a preliminary examination of the amplitude of the power of the concerned legislature to legislate on the subject and the purposes which such legislation might attempt to achieve which create the necessary atmosphere for a competent consideration of the question arising under Part III. C. N. Subramania Iyer v. N. Dharmalinga Padayachi, **1959 Mad WN 1 : ILR (1958) Mad 932 : (1959) 1 MLJ 1 : AIR 1958 Mad 608 (615) (Pt A) (Pr 24) (FB).**

——Art. 245 — Procedure — Question relating to validity of statute. See Ibid, Art. 226. **AIR 1956 Mad 387 (DB).**

——Arts. 245 and 246 — Validity of Coorg Agricultural Income-tax Act — Tests — (Coorg Agricultural Income-tax Act (1 of 1951)).

When the validity of an Act is called in question the Court has to examine whether it passes three tests. The first is whether the Act is a law with respect to a topic assigned to the particular Legislature which enacted it. Next if the Act is one passed by a provincial Legislature, whether its operation extends beyond the boundaries of the Province. Lastly, it must be seen whether there is nothing in any other part of the Constitution which places any fetter on the legislative powers of such Legislature.

The Coorg Agricultural Income-Tax Act satisfies the second test. It also satisfies the first test because it is intra vires the Coorg Legislative Council. It is a legislation with respect to tax on agricultural income and the Coorg Legislature was competent to enact the law by reason of Entry 44 of Sch. II of the Coorg Devolution Rules read with Entry 10 of the same.

While the Coorg Legislative Council had, when it enacted the Agricultural Income-tax Act on 15th January, 1951, the competence to make laws relating to the subjects classified as provincial subjects, Article 246 of the Constitution placed no fetter on the otherwise plenary competence of the Coorg Legislative Council to legislate on those provincial subjects. Hence, the contention that the Act was ultra vires of the Coorg Legislative Council has to fail. **36 Mys LJ 73 : ILR (1957) Mys 423 : AIR 1958 Mysore 102 (106, 107, 108) (Pt B) (Prs 21, 22, 25, 27, 28) (DB).**

——Art. 245 — Ultra vires — Validity of law has to be considered with reference to the provisions of Constitution and nothing else. **ILR (1952) Nag 736 : 1953 Nag LJ 199 : AIR 1953 Nag 40 (51) (Pt N) (Pr 52) (DB).**

——Art. 245 — "Subject to the provisions of this Constitution" — Constitutional validity of Statutes — General principles — Principle that Crown cannot derogate from its own grant — Applicability — (Tenancy Laws — Bihar Land Reforms Act (30 of 1950) — Constitutionality).

Held, on facts that it is well established that the Parliament or the State legislatures are not debarred from legislating so as to vary the effect or cancel the effect of a Crown grant in the absence of any express provision in the Constitution. The ultimate touchstone of constitutionality is the Constitution itself and not any general principle ouside it. AIR 1952 SC 252, Rel. on. **1957 BLJR 245 : AIR 1957 Pat 390 (393) (Pt B) (Pr 5) (DB).**

——Art. 245 — Power given by constitutional instrument — If text is explicit, it is conclusive in what it directs and in what it forbids— Government of India Act (1935), S. 88.

When a right or power given by a constitutional instrument is challenged, the duty of the Court is to keep close to the words of the constitutional instrument, and see first whether the power is granted, and secondly, whether there is anything else which restricts the rights so granted. If the text is explicit, the text is conclusive, alike in

what it directs and in what it forbids : 1912 App. Cas. 571, Rel. on. **51 Cri LJ 256: ILR 28 Pat 775 : AIR 1950 Pat 19 (23) (Pt C) (Pr 6) (DB).**

——Art. 245 — Points to be enquired before deciding whether a tax has been lawfully imposed by a State.

In order to decide whether a tax has been lawfully imposed by a State, it is necessary to enquire—

(1) Whether it was enacted for the purposes of the State;

(2) whether the tax falls within the description of taxation set out in an entry of the State List;

(3) whether the person, property or business to be taxed is within or associated with the State, or in other words, whether there is a sufficient territorial connection between the object to be taxed and the taxing State; and

(4) whether there is anything in the Constitution or in any other law for the time being in force to indicate that the tax is not valid. **ILR (1955) Punj 58 : (1955) 6 STC (Sup) 1 : AIR 1954 Punj 264 (267) (Pt C) (Pr 10) (DB).**

14 (b). Presumption and burden of proof.

——Art. 245 and Preamble — Constitutionality of statutes — Onus — (Interpretation of Statutes—Constitutionality). See Ibid, Pre. **AIR 1959 Andh Pra 292.**

——Art. 245 and Preamble — Presumption is in favour of constitutionality of an enactment — Burden is upon him who attacks it. **55 Cal WN 433: AIR 1951 Cal 85 (89) (Pt D) (Pr 51).**

[**Reversed** on another point in AIR 1954 SC 92.].

——Arts. 245 and 246 and Pre. — Presumption in favour of Legislature — Presumption in favour of constitutionality of enactment — Interpretation in favour of validity of an Act to be preferred.

There is a presumption in favour of the constitutionality of a statute and the burden is on the person who challenges it as unconstitutional to establish his case. Further where two interpretations are equally possible, the one which is in favour of the validity of an Act must be preferred. **1960 Cri LJ 223: AIR 1960 J and K 15 (18) (Pt D) (Pr 10) (DB).**

——Art. 245 — Validity of J. and K. Act (42 of 1956) — Constitutionality — Burden of proof — Effect of S. 31 (3), J. and K. Constitution Act— S. 1 (2) of J. and K. Act (42 of 1956) not invalid. See J. and K. Criminal Procedure Code (Amendment) Act (62 of 1956), S. 1 (2). **1960 Cr LJ 62: AIR 1960 J and K 1(DB).**

——Art. 245 — Validity of legislation — Presumption in favour of — Burden of proof.

The presumption is always in favour of the constitutionality of an enactment. This presumption being there, a heavy onus lies on those who challenge the constitutionality of the legislation. AIR 1951 SC 41, Rel. on. **1960 Jab LJ 698 : 1960 MPC 549 : 1960 Cr LJ 1614 : 1960 MPLJ 972 : AIR 1960 Madh Pra 389 (391) (Pt B) (Pr 16).**

——Art. 245 — Constitutional validity of statute — Presumption of — Test of ultra vires character.

There is a presumption in favour of the legality of statute and the Court will not declare an Act unconstitutional or ultra vires unless the repugnancy to the Constitution is clear and beyond doubt. (1936) AC 578 (614) and AIR 1935 PC 158 (162), Rel. on. **ILR (1956) Mad 785 : AIR 1956 Mad 642 (648) (Pt C) (Pr 18) (DB).**

——Art. 245 — Unconstitutionality of legislation.

It is an accepted doctrine of constitutional law that every presumption must be made in favour of the constitutional validity of a statute and the onus would, therefore, be on the plaintiff to establish facts showing that the restrictions are unreasonable. **32 Pat 198 : AIR 1954 Pat 346 (345) (Pt G) (Pr 8) (DB).**

——Art. 245 —Presumption as to constitutionality of enactment.

The presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. **AIR 1953 Pat 65 (70) (Pt B) (Pr 8) (DB).**

——Art. 245 — Constitutionality of Statute — Presumption — Burden of proof.

It is well settled that there is always a presumption with respect to the validity and constitutionality of a law and it is for those who attack its vires to establish their contention. **ILR (1961) 1 Punj 283 : 62 Punj LR 916 : AIR 1961 Punj 24 (28) (Pt E) (Pr 14) (DB).**

——Art. 245 — There is always a presumption of constitutionality in favour of a Statute. **1960 CIS (IJ) 8 : 62 Pun LR 241 : AIR 1960 Punj 523. (526) (Pt E) (Pr 11).**

14 (c). Law void in part.

——Art. 245 — Doctrine of severability — Scope and extent — Rules for construction in applying doctrine summarised. R. M. D. Chamarbaugwala v. Union of India, **(1957) 2 MLJ (SC) 76 : 1957 SCJ 593 : (1957) MLJ (Cri) 547 : (1957) 2 An WR 76 : AIR 1957 SC 628 (633) (Pt F) (Pr 12).**

——Art. 245 — Ss. 4 and 6 of Prize Competition Act are severable — Assuming that S. 6 is arbitrary and unconstitutional, validity of S. 4 and the corresponding penal sections is not affected. See Ibid, Pre. **1964 (2) Cri LJ 632 : AIR 1964 All 572.**

——Arts. 245 and 246 — Unconstitutionality of legislation — Principle of severability — Interpretation of statutes. See Ibid, Pre. **AIR 1962 All 521 (DB).**

——Art. 245 — Constitutionality of statute — Doctrine of severability — Part of law void — Effect. See Ibid, Art. 13. **1955 Cri LJ 623 : AIR 1955 All 193 (DB).**

——Art. 245 — Ultra vires — Test of severability — Correct test of severability is to ascertain whether after the invalid portions of the statute in question are deleted a different law is created. Abdur Rahim v. Joseph A. Pinto, **52 Cri LJ 1333 : ILR (1951) Hyd 1 : AIR 1951 Hyd 11 (35, 36) (Pt H) (Pr 114) (FB).**

[**Overruled** on another point in AIR 1953 Hyd 33 (FB).].

——Art. 245 — Validity of legislation — Part of Act defective — Effect of.

Defective character of a part of the statute would not, by itself, affect the validity of the rest of it. **AIR 1955 Pepsu 129 (133) (Pt F) (Pr 24) (DB).**

——Art. 245 — Validity — Whole statute not an invalid piece of legislation — Vice of excessive delegation from which S. 5 suffered originally has been effectively removed by Amending Act, 19 of 1952. See Sales Tax — East Punjab General Sales tax Act (46 of 1948) (as amended by Act 19 of 1952), S. 5. **AIR 1963 Punj 549 (DB).**

——**Art. 245** — Punjab Passengers and Goods Taxation Act (16 of 1952) (as amended by Punjab Act (21 of 1952), Ss. 3, 4, 8, 9 and 10 — Act is not ultra vires — Sections 3, 4, 8 and 9 are valid — S. 10 is invalid. See Ibid, Art. 19 (1) (g). **AIR 1955 NUC (Punj) 1887 (DB).**

14 (d). Who can question the constitutionality of a statute.

——**Arts. 245, 246 and 254** — Unconstitutionality of legislation — State cannot plead unconstitutionality of its own statutes before Courts. See Ibid, Preamble. **1962 (2) Cr LJ 33: AIR 1962 Cal 338 (DB).**

——**Art. 245 — Statute — Constitutionality —Who can question — Nagpur Improvement Trust Act (36 of 1936).**

One who has claimed the benefit of a statute cannot afterwards assail its validity. Where certain persons allow the Collector to take possession of their property and feeling dissatisfied with the compensation awarded by him proceed under the provisions of the Nagpur Improvement Trust Act and appear before the Tribunal to have the compensation enhanced and succeed to a certain extent in having the compensation increased, they cannot afterwards question the validity of the Nagpur Improvement Trust Act: 124 US 581: 244 US 407, Rel. on. **1951 Nag LJ 463: ILR (1951) Nag 818: AIR 1951 Nag 90 (93, 94) (Pt F) (Pr 22) (DB).**

——**Art. 245** — Bihar Sales Tax Act (19 of 1959), S. 20-A — Validity — Dealer has no right to challenge its validity on ground of violation of Art. 19 (1) (f) of the Constitution — S. 20-A is valid and intra vires the State Legislature. See Ibid, Art. 19 (1) (f). **1965 BLJR 431: AIR 1966 Pat 54 (DB).**

ARTICLE 246

SYNOPSIS

(Constitution of India, Art. 246.)

1. Scope.
2. Retrospective effect.
3. Limitation on legislative powers.
4. "Exclusive power".
5. Interpretation of legislative entries — General principles.
6. Interpretation of legislative entries—Conflict of jurisdictions.
7. Doctrine of pith and substance.
8. Doctrine of occupied field.
9. Colourable legislation.
10. Scope and extent of legislative powers.
See also Ibid, Art. 245.
(a) Legislative entries denote fields of legislation and not powers of legislation.
(b) Power to legislate retrospectively.
(c) Legislative competence of Parliament.
(d) Legislative competence of State Legislature.
(e) Concurrent List.
11. Constitutional validity of statutes — Test of.
See also Ibid, Art. 245.
12. Constitutionality of Acts — Illustrative cases.
See also Ibid, Art. 245.
13. Presumption of constitutionality.
14. Delegation of legislative functions.
See also Ibid, Art. 245.
15. Territorial limits of legislative power.
16. Extra-territorial operations.

1. Scope.

●——**Art. 246 and Sch. 7, List I, Entry 94 and List III, Entry 45 — Scope —Inquiries for the purpose of any of the matters in Lists.**

Entry 45 in List III, which is the Concurrent List, speaks, inter alia of 'inquiries . . . for the purpose of any of the matters in List II or List III'. Under Art. 246 read with this entry, Parliament as well as the Legislature of a State may make a law with respect to 'inquiries for the purpose of any of the matters in List II.' The law to be made by the appropriate Legislature with respect to the two legislative entries viz., List I, Entry 94 and List III, Entry 45 may cover inquiries into any aspect of the matters enumerated in any of the lists mentioned therein and is not confined to those matters as mere heads of legislative topic. The words 'for the purposes of' indicate that the scope of the inquiry is not necessarily limited to the particular or specific matters enumerated in any of the entries in the list concerned but may extend to inquiries into collateral matters which may be necessary for the purpose, legislative or otherwise of those particular matters. Therefore, the inquiry which may be set up by a law made under these two entries, is in its scope or ambit not limited to future legislative purposes only. 59 Bom LR 769, **Reversed.** Ram Krishna Dalmia v. Justice S. R. Tendolkar, **1959 SCJ 147: 1958 SCA 754: (1959) 1 An WR (SC) 67: (1959) 1 MLJ (SC) 67: 61 Bom LR 192: 1959 SCR 279: AIR 1958 SC 538 (544, 545) (Pt B) (Pr 6).**

——**Art. 246** — Scope — Arts. 245 and 246 deal with competence of various legislatures to make laws in future — Laws already made are not covered by provisions of Arts. 245 and 246. See Constitution of India, Art. 372. **AIR 1958 All 126.**

——**Art. 246** —Scope of — Arts. 123, 246 and 248 — Effect of. See Administration of Evacuee Property (Chief Commissioners Provinces) Ordinance (12 of 1949). **AIR 1957 All 561 (DB).**

——**Art. 246** — Object and scope — Article defines respective spheres of States and Union in matter of legislation — Intention is not that State Legislation should not be inconsistent with Constitution. **AIR 1955 NUC (All) 2681.**

——**Arts. 246, 372** — Essential Supplies (Temporary Powers) Act (1946), Section 1—Validity of Act — Transfer of Central subject to State list — Effect — Art. 246 which distributes legislative powers between Parliament and State legislature, has nothing to do with laws already made and if those laws are not contrary to any provisions of the Constitution. **1951 All LJ 441: 1951 All WR (HC) 638: 1951 All Cri R 163: 52 Cri LJ 1474: AIR 1951 All 816 (817) (Pt A) (Pr 7) (DB).**

——**Art. 246**— Scope and effect — Validity of Police Act (1861). See Police Act (1861), S. 1. **AIR 1958 Cal 365.**

●——**Art. 246** — Scope — Ordinance promulgated by authority competent at the time — Subsequent distribution of power — Authority losing competency as a result — Validity of Ordinance — If affected — Art. 246 is irrelevant to validity of such laws. See Jammu and Kashmir Constitution Act, SM 1996 (1949), S. 5. **1958 Cr LJ 885: AIR 1958 J and K 29 (FB).**

——**Arts. 246, 245 and 277** — (Sales Tax — Travancore-Cochin General Sales Tax Act (1125),

Pre.) — "Continued to be levied" — Levy of sales tax in respect of works contract.

In view of specific provision of Art. 277 such a tax can continue to be levied after the commencement of Constitution irrespective of partition of legislative power effected by Art. 246 and entries in three lists of Seventh Schedule. **1957 Ker LJ 380: (1957) 8 STC 347: 1957 Ker LJ 349: ILR (1957) Ker 462: AIR 1957 Ker 146 (150) (Pt C) (Prs 13, 15) (DB).**

[**Overruled** in AIR 1958 SC 560.]

——Arts. 246 and 372 — Scope — Indore Stamp Act Adaptation Act — Validity — (Indore Stamp Act Adaptation Act (5 of 1950, S. 1).)

Per Dixit, J.:— Art. 246 deals with the power of Parliament and the State Legislature to enact laws after 26th January, 1950. It has nothing to do with the operation of laws already enacted. That is dealt with by Art. 372. Under that Article and the Explanation I to it, Act No. V of 1950 which received the assent of the Rajpramukh on 24th November, 1949, but became operative from 29th January, 1950, is a law continuing in force after the commencement of the Constitution. The Act in its applicability to bills of exchange is not, therefore, ultra vires, the State Legislature because of Art. 246. **ILR (1956) Madh Bha 339: Madh BLR 1956 (Civil) 597: 1956 Madh BLJ 740: AIR 1956 Madh B 177 (178) (Pt A) (Pr 2) (DB).**

2. Retrospective effect.

——Art. 246 — Retrospective effect — Hyderabad Jagir (Commutation) Regulation (25 of 1359-F), S. 4 (1) (c), (2)— Validity — (Hyderabad (Abolition of Jagirs) Regulation (69 of 1359-F), S. 6 (4) — Validity).

The Constitution cannot be interpreted retrospectively, and any enactment inconsistent with its provisions is not void in the sense that it never existed. Art. 246 of the Constitution should be similarly construed. The two Hyderabad Regulations 25 and 69 of 1359-F having been passed before the inauguration of the Constitution, any decision on the unconstitutionality of their provisions, which is given after 26th January, 1950, should guard against the Constitution of India being given retrospective effect. Case-law relied on. **ILR (1954) Hyd 783: AIR 1954 Hyd 227 (228, 229, 232, 233) (Pt B) (Prs 2, 18, 20) (DB).**

● **——Art. 246 — Scope whether retrospective.**

Arts. 245 and 246 restrict the State legislature's competence to legislate, but they are clearly prospective in their application and do not affect what was done before they came into force. They need not, therefore, be referred to while considering the validity of a State Legislation made before the passing of the Constitution. See Ibid, Art. 245. **52 Cri LJ 1140: AIR 1951 Nag 58 (FB).**

——Arts. 246, 245 and 372 — Retrospective effect. See Ibid, Art. 245. **1957 Cri LJ 540: AIR 1957 Punj 91.**

3. Limitation on legislative powers.

● **——Arts. 246, 14, 19 and 304 (b) — Legislative power of Legislature — Taxing statute — Limitation and restriction imposed on Legislature to enact limitation prescribed by Arts. 14 and 19 and reasonableness prescribed by Art. 304 (b) can be considered by Court.**

Taxing statutes are not beyond the pale of the constitutional limitations prescribed by Arts. 19 and 14 of the Constitution and the test of reasonableness prescribed by Art. 304 (b) is justiciable. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Art. 19 Court would naturally be circumspect and cautious. Where for instance it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax or, that it is confiscatory, Courts would be justified in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the Court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the Legislature for achieving its confiscatory purposes. Rai Ramkrishna v. State of Bihar. **(1964) 1 SCA 413: ILR 42 Pat 796: (1964) 1 SCR 897: (1964) 2 SCJ 749: (1963) 50 ITR 171: AIR 1963 SC 1667(1673) (Pt E) (Pr 12).**

● **——Art. 246—Scope—Sch. 7, List 1, Entry 54 and List II, Entry 23 — Legislative power of State —If subject to List I, Entry 54 — Declaration of Parliament — Effect of.**

The jurisdiction of the State Legislature under List II, Entry 23 is subject to the limitation imposed by the latter part of that Entry. If a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act the impugned Act would be ultra vires, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself. The relevant provisions of the Constitution are prospective and unless a declaration is made by Parliament after the Constitution came into force, it will not satisfy the requirements of Entry 54. Hingir-Rampur Coal Co., Ltd. v. State of Orissa, **(1961) 2 SCR 537: (1961) 1 SCA 210: AIR 1961 SC 459 (469, 470, 472) (Pt C) (Prs 23, 33).**

● **——Art. 246** — 'Void in Art. 13 (1)', meaning of — Effect of declaration of voidness of statute — Declaration of unconstitutionality brought about by lack of legislative power, effect of — Authority conferred by Arts. 245 & 246 to make laws subjectwise in different legislatures is qualified by declaration made in Art. 13 (2) — That power can only be exercised subject to prohibition contained in Art. 13 (2). See Ibid, Art. 13 (1). **1955 Cri LJ 215: AIR 1955 SC 123.**

● **——Art. 246 — Nizam's Powers — (President's Removal of Difficulties Order, 212-A (2)).**

After the Constitution came into force and prior to the setting up of a duly constituted legislature in the Hyderabad State, the legislative authority undoubtedly vested in Nizam — Nizam as Rajpramukh had under the Constitution, Art. 385 and President's Removal of Difficulties Order 212-A (2) power to legislate but in conformity with Art. 246 and the lists and fundamental rights. Ameerunnissa Begum v. Mahboob Begum. **ILR (1953) Hyd 98: 1953 SCR 404: 1953 SCA 565: 1953 SCJ 61: AIR 1953 SC 91 (93) (Pt A) (Pr 9).**

● **——Art. 246** — Legislative power of Parliament how far limited. See Ibid, Art. 245 (1). **51 Cri LJ 1383: AIR 1950 SC 27.**

● **——Arts. 246 and 265**—Constitutional limitations — Retrospective validation taxing laws — Cons-

titutionality — State Act imposing cess, under the U. P. Sugarcane Cess (Validation) Act (Central Act IV of 1961), declared void ab initio by Supreme Court on ground of incompetency of State Legislature — Power of Parliament to enact retrospective validation taxing laws — Parliament passing Act merely declaring action taken under State law as valid, without furnishing authority of law required for it— Act invalid on ground of incompetency. **AIR 1965 All 420 (423 to 425, 428, 429, 432) (Pt B) (Prs 9 to 14, 16 to 19, 32 to 38, 43, 45) (FB).**

● **——Arts. 246, 245** — Limitations on legislative powers — Competency to enact confiscatory or expropriatory legislation — (Punjab Consolidation of Land Proceedings (Validation) Act (6 of 1954), Ss. 3 and 4). See Ibid, Art. 245. **AIR 1959 Punj 8 (FB).**

[**Overruled** on another point in AIR 1959 SC 519.]

● **——Art. 246** — Scope of — Legislative power conferred on Parliament as well as the State legislature is subject to provisions of Constitution — To say that State legislature had power to pass a legislation under entry 56 of list II does not mean that it can pass any law under the entry ignoring other provisions of Constitution. Automobile Transport Rajasthan Ltd. v. State of Rajasthan, **ILR (1957) 7 Raj 794: 1957 Raj LW 456: AIR 1958 Raj 114 (119) (Pt C) (Pr 20) (FB).**

4. "Exclusive power".

——Art. 246 — 'With respect to' — Meaning.

The expression "with respect to" is of wide import and any legislation can be made so long as it is with respect to the subject-matter of a particular entry (provided of course it is not inconsistent with the other provisions of the Constitution). **1952 All LJ 52: AIR 1952 All 88 (89) (Pt B) (Pr 4) (DB).**

——Art. 246, Sch. 7 — "Fees' and 'Tax" — Legislative competence — Residuary power with regard to taxation is in Union — Levy of tax as ancillary or incidental to subjects specified in the lists in Sch. 7. See Ibid, Art. 265. **AIR 1959 Andh Pra 398 (DB).**

——Art. 246 — Legislative competency of Military Governor of Hyderabad to make Regulation. See Hyderabad Sales of Motor Spirit Taxation Regulation (24 of 1358-F), S. 1. **AIR 1959 Andh Pra 225 (DB).**

——Art. 246 — Adjustment of boundaries between Foreign States — Limitations to the exercise of executive power — Sanction of Parliament — Exclusive power of Parliament. See Ibid, Art. 226. **AIR 1959 Cal 506.**

——Art. 246 and Sch. 7, List 2 and Entry 18 — Power to legislate with respect to transfer of agricultural land — Does not include power to levy tax in respect of such transfer. AIR 1958 SC 468, Rel. on. **(1962) 45 ITR 66: 1961 Ker LT 859: ILR (1961) 2 Ker 528: 1961 Ker LJ 1324: AIR 1962 Ker 97 (102, 103) (Pt B) (Prs 27, 28, 29) (DB).**

——Arts. 246 (4) and 254 — Scope — Part C State Law — Repugnancy with Central law — Effect—State Act void. See Ibid, Art. 240. **AIR 1961 Madh Pra 216 (DB).**

——Arts. 246, 245 — Interpretation of legislative entries — Liberal construction — Doctrine of incidental and ancillary power — Scope of — When can be invoked. See Ibid, Art. 245. **AIR 1963 Mad 116.**

[**Overruled** on another point in AIR 1964 SC 922.]

——Art. 246 — State Legislature — Duties and powers of.

If the State Legislature has power to enact a certain piece of legislation, it need not move the Centre and the Parliament to pass it. **1959 Cri LJ 731: 1958 Mad WN 161: ILR (1958) Mad 452: 1958 Mad LJ (Cri) 591: (1958) 2 Mad LJ 123: AIR 1959 Mad 261 (267) (Pt D) (Pr 16) (DB).**

——Art. 246 — Doctrine of implied powers — Ancillary and subsidiary matters.

None of the items in Lists in Sch. VII is to be read in a narrow or restricted sense; each general word should be held to extend all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in it. AIR 1941 FC 16 Foll. **ILR (1956) Mad 785: AIR 1956 Mad 642 (649) (Pt D) (Pr 19) (DB).**

● **——Arts. 246 and 261 and Sch. 7, List 2, Entry 3, List 3, Entries 12 and 13 — Foreign judgments — (Civil Procedure Code (1908), S. 13).**

It is open to a State Legislature to define "foreign judgments" and how they are to be enforced within its State subject to any legislation by the Parliament. Article 261 (2) empowers only the Parliament to determine the manner in which judicial proceedings whether of the Union or of a State are to be proved and are to be made effective while entries 12 and 13 of the Concurrent List give similar power to the States. Gaurilal Gurdev Das v. Jugal Kishore Sharma, **ILR (1958)Punj 1211: 61 Punj LR 418: AIR 1959 Punj 265 (268, 269, 270) (Pt B) (Prs 11, 14) (FB).**

——Arts. 246 (3) and 304 (b) Proviso — Scope—Validity of S. 3, T. C. Public Safety Measures Act—(T. C. Public Safety Measures Act (5 of 1950), S. 3) — T. C. Paddy (Acquisition and Movement) Control Order, (1950).

Tested in the light of its pith and substance or its true nature and character the subjects dealt with under S. 3, Public Safety Measures Act do not come under item 42 of List 1 or under item 33 of List 3 of Schedule VII but they really come under items 26 and 27 of List II which is the State List. It follows therefore that under Cl. 3 of Art. 246 of the Constitution the Legislature of the State was competent to enact the impugned section.

But merely because the subjects dealt with are those within the exclusive jurisdiction of the State Legislature, it cannot be said that proviso to Cl. (b) of Art. 304 is inapplicable to any legislation relating to such subjects. Art. 246 cannot be taken to exhaustively deal with all the limitations on the powers of Parliament and the State Legislatures in matter of enacting laws in relation to the subjects enumerated in the Lists assigned to the respective Legislatures.

Apparently the provisions of cl. (b) of Art. 304 might appear to be in conflict with the exclusive power conferred on the State Legislature under Cl. (3) of Art. 246. But really there is no conflict or repugnancy between the provisions contained in Cl. (3) of Art. 246 and Cl. (b) of Art. 304. The exclusive power conferred by Cl. (3) of Art. 246 is not taken away by the Proviso to Cl. (b) of Art. 304.

Exclusive power is not the same as absolute power. The expression 'exclusive power' has been used in Cl. (3) of Art. 246 in contradistinction with similar exclusive powers conferred on Parliament in respect of matters enumerated in the Union List and also the power which the Parliament or the State Legislature may exercise in respect of matters enumerated in the Concurrent List. The Proviso to Cl. (b) of Art. 304 has only specified the manner in which the exclusive power of legislation conferred on the State Legislature under

Cl. (3) of Art. 246 should be exercised. Art. 304 merely supplements, qualifies and controls the power conferred by Cl. (3) of Art. 246. These two Articles have to be read and construed together for the purpose of determining the validity of the impugned section of Public Safety Measures Act, 1950 (5 of 1950).

Since at no stage of the enactment of the measure the sanction of the President as contemplated by the Proviso to Cl. (b) of Art. 304 had been obtained and since the Proviso to Cl. (b) of Art. 304, since it was only subsequent to the moving of a bill for the enactment of a measure like the one contained in S. 3 of the Public Measures Act, 1950 without the previous sanction of the President, Section 3 of the Public Safety Measures Act, 1950 (Act V of 1950) has to be declared illegal and void. The mere fact that the bill relating to the Act was originally introduced on a date prior to the date of the Constitution will not save the Act so far as S. 3 is concerned from the operation of the Proviso to Cl. (b) of Art. 304, since it was only subsequent to the coming into force of the Constitution that the bill in its final form as redrafted by the Select Committee was introduced and moved in the State Legislature.

Consequently the Paddy (Acquisition and Movement) Control Order, 1950, having been issued by the State in exercise of the powers derived from S. 3 of the Public Safety Measures Act, 1950, is also devoid of legal sanction behind it and is void. **1954 Cr LJ 63: 1953 Ker LT 735: ILR (1953) Trav.-Co. 1073: AIR 1954 Trav.-Co. 34 (37, 38) (Pt B) (Prs 4, 6) (DB).**

5. Interpretation of legislative entries —General principles.

● —— **Art. 246** — Interpretation of entries in legislative lists — Principles should be construed in widest amplitude. See Assam Local Self-Government Act (25 of 1953), S. 62. **AIR 1965 SC 1561.**

● ——**Art. 246** — Interpretation of legislative entries. See Wealth Tax Act (1957), S. 3. **AIR 1965 SC 1387.**

● ——**Arts. 246, 265, Sch. 7 (general) — Interpretation of Entries in Sch. 7 — Rules as to — Should be widely construed — Power to levy tax — Includes all subsidiary powers — Interpretation of Statute.**

Entries in the three Lists in the Seventh Schedule which confer legislative competence on the respective Legislatures to deal with the topics covered by them must receive the widest possible interpretation; and so it would be unreasonable to read in the Entry any limitation.

It is also well settled that when a power is conferred on the Legislature to levy a tax, that power itself must be widely construed; it must include the power to impose a tax and select the articles or commodities for the exercise of such power; it must likewise include the power to fix the rate and prescribe the machinery for the recovery of the tax. This power also gives jurisdiction to the legislature to make such provisions as in its opinion, would be necessary to prevent the evasion of the tax. In imposing taxes, the legislature can also appoint authorities for collecting taxes and may prescribe the procedure for determining the amount of taxes payable by any individual; all these provisions are subsidiary to the main power to levy a tax. However, all this is subject to the condition that even tax statutes have to satisfy the test of reasonableness prescribed by Cl. (6) of Art. 19 and the fundamental right of equality before law guaranteed by Art. 14 as well as the test prescribed by Art. 301. Khyerbari Tea Co. Ltd., v. State of Assam, **(1964) 5 SCR 975: (1964) 2 SCA 319: AIR 1964 SC 925 (935) (Pt M) (Pr 19).**

● ——**Arts. 246, 245 and Pre.** — Interpretation of Constitution — Legislative entry — General words of wide amplitude — Narrow construction out of place — Interpretation of statutes. See Ibid, Preamble. **AIR 1962 SC 1563.**

● ——**Art. 246 and Sch. VII — Interpretation of legislative entries.**

In the interpretation of the scope of items in the legislative lists in Sch. VII the widest possible amplitude must be given to the words used and each general word must be held to extend to ancillary or subsidiary matters which can fairly be said to be comprehended in it. Chaturbhai M. Patel v. Union of India, **1960 SCJ 224: 1960 All LJ 262: (1960) 1 SCA 425: (1960) 2 SCR 362: AIR 1960 SC 424 (428, 429) (Pt C) (Pr 11).**

● ——**Art. 246** — Legislative Lists — Interpretation of. See Interpretation of Statutes. **AIR 1959 SC 459.**

● ——**Art. 246** — Legislation by State to implement directive principles — Legislation cannot override fundamental rights — Principle of harmonious construction to be followed. See Ibid, Art. 13, Part III. **AIR 1958 SC 956.**

● ——**Art. 246** — Interpretation of legislative entries. See Government of India Act (1935), Sch. 5, List 2, Entry 48. **AIR 1958 SC 560.**

● ——**Art. 246 and Sch. VII — Entries in lists — Interpretation of.**

The entries in the lists of the Sch. VII to the Constitution are heads of legislation which are to be interpreted in a liberal manner comprising within their scope all matters incidental thereto. They are not mutually exclusive. Commissioner of I. T. West Bengal, Calcutta v. Benoy Kumar Sahas Roy, **(1957) 32 ITR 466: (1957) SCJ 740: (1957) 2 MLJ (SC) 145: (1957) 2 An. WR (SC) 145: 1958 SCR 101: AIR 1957 SC 767 (772) (Pt A) (Pr 9).**

● ——**Art. 246 — Entries in Lists of Sch. 7 do not impose implied restrictions on legislative powers.**

(Per Patanjali Sastri C. J.): — The entries in the lists of the Seventh Schedule are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures, and such context is hardly appropriate for the imposition of implied restriction on the exercise of legislative powers, which are ordinarily matters for positive enactment in the body of the Constitution.

The entries in the lists are merely legislative heads and are of an enabling character. Duty to exercise legislative power and in a particular manner cannot be read into a mere head of legislation. State of Bihar v. Kameshwar Singh, **ILR 31 Pat 565: 1953 SCA 53: 1952 SCR 889: 65 Mad LW 527: 1952 SCJ 354: 1952 SCJ 427: 1952 SCJ 442: AIR 1952 SC 252 (264, 272) (Pt O) (Prs 13, 43).**

● ——**Art. 246** — Government of India Act (1935), S. 100 — Principles governing interpretation of Legislative Lists — None of the items in each List is to be read in a narrow or restricted sense. If there is conflict between an entry in list 2

and an entry in list 1, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. State of Bombay v. F. N. Balsara, **1951 SCJ 478: (1951) 2 Mad LJ 141: 53 Bom LR 982: 1951 SCR 682: 52 Cri LJ 1361: AIR 1951 SC 318 (322) (Pt B) (Pr 7).**

——Art. 246 — Interpretation of legislative entries.

The perusal of the various entries in the several lists shows that they start with words of general conception followed by terms with meanings which are comprehended in the general terms. The additional words do not in any way restrict the scope of the general terms but clarify the range and the object of legislation contemplated as comprised in the opening words. Each word in an entry or each entry in list should not be so read as excluding or reducing the content of the other especially when they confer powers on the same Legislature. The words in an entry may overlap but that does not mean that they exclude the other.

In construing words in a constitutional enactment vesting legislative power, a very liberal construction would be put upon them so that they may have effect in their widest amplitude. A Constitution should not be construed in a narrow or a pedantic sense. **(1959) 1 Andh WR 347: 1959 Andh LT 419: ILR (1959) Andh Pra 34: AIR 1959 Andh Pra 461 (463, 464) (Pt B) (Prs 7, 13) (DB).**

——Art. 246 and Sch. VII Lists — Interpretation.

The Lists in Sch. VII enumerated broad categories and the entries in the list are to be given large and liberal interpretation. The items in the lists are not to be interpreted in a narrow and pedantic sense. They are to be given meaning of widest amplitude. every general word should be held to extend to all ancillary and subsidiary matters which fairly and reasonably can be said to be comprehended in it. **(1961) 41 ITR 80: AIR 1960 Assam 76 (83) (Pt C) (Pr 12) (DB).**

● ——Art. 246 and Sch. 7 — Interpretation of lists — Principles.

In interpreting the legislative lists a broad and comprehensive interpretation is to be given and the lists are not to be interpreted in pedantic and narrow sense. There are overlappings also in the lists.

None of the items in the lists is to be read in a narrow or restricted sense, and each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. AIR 1941 FC 16 and AIR 1959 SC 544, Rel. on. Ajoy Kumar Mukherjee v. Local Board of Barpeta. **AIR 1959 Assam 221 (224, 225) (Pt B) (Prs 5, 6) (SB).**

——Art. 246, and Sch. 7, List 1, Entries 43, 44, 85, List 2; Entry 32 and List 3, Entries 10, 28, 7 — Interpretation of — Bombay Public Trusts Act (29 of 1950), Ss. 2 (13) and 18 (1) — Act is intra vires of State Legislature — Society registered under Societies Registration Act (1860) — Not a corporation or quasi-corporation but an unincorporated society contemplated by List 2, Entry 32 — Can be registered under Section 18 (1), Bombay Public Trusts Act even if its objects are not confined to State of Maharashtra. See Bombay Public Trusts Act (29 of 1950), S. 2 (13). **AIR 1962 Bom 12.**

——Art. 246 and Sch. 7, List — Interpretation of — Principles governing.

The principles governing the interpretation of the entries in the three lists in the Seventh Schedule of the Constitution are as follows:

(1) In construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon them. This principle would equally apply to the construction of the items in the three lists. (2) Where under the Constitution there are two complementary powers each expressed in precise and definite terms, there is no justification for giving a broader interpretation to one power rather than to the other. (3) An attempt must always be made to reconcile two different legislative powers so as to avoid a conflict. (4) When the validity of a legislation is challenged on the ground that though purporting to deal with a subject in one list it touches also on a subject in another list, the impugned statute may be examined in the light of the rule evolved by the Judicial Committee of the Privy Council to ascertain its 'pith and substance' or its 'true nature and character' for the purpose of determining whether it is legislation with respect to matters in this list or in that list. **ILR (1961) Bom 281: 63 Bom LR 379: AIR 1962 Bom 12 (15, 16) (Pt A) (Pr 6).**

——Art. 246, Sch. 7, Lists — Construction of entries in — Principles of — (Constitution of India, Pre.) — (Interpretation of Statutes — Constitution).

It is a well settled principle of construction of various entries in the Seventh Schedule to the Constitution that as far as possible an attempt must be made to reconcile entries in the Union List, the State List and the Concurrent List and that the Court must avoid attributing to the Constituent Assembly an intention of bringing about a conflict between the powers of the State Legislatures and Parliament. **ILR (1954) Bom 544: 56 Bom LR 105: AIR 1954 Bom 254 (255) (Pt A) (Pr 6) (DB).**

——Arts. 246, 254, Sch. 7, List I, Entry 52; List 2; Entries 24, 25, List 3 Entry 42 — Oriental Gas Company Act (15 of 1960) — Validity — If conflicts with Union Act 65 of 1951.

The meaning of an entry in the legislative list is to be ascertained with reference to the context in which it has been used. Entry 25, 'Gas and Gas Works' in List 2 should not have any meaning which conflicts with 'Industries' in List 1, Entry 52 and List 2 Entry 24. The two entries should be harmonised to avoid any construction which will render any entry nugatory or ineffective. AIR 1947 FC 1, Rel. on. The taking over of Oriental Gas Co., under State Act 15 of 1960 is within the field of 'requisition' under Entry 42 in List 3. It is within the field of legislation under Entry 'Gas and Gas Works' in Entry 25, List 2, also because it is requisition of Oriental Gas Co., which is an undertaking of gas works for the supply of gas. The Parliament Act of 1951 and the State Act of 1960 do not come into any conflict. Even if it be assumed that the impugned legislation be one which incidentally trenches on any production aspect, it will be sufficiently justified and valid by reason of the pith and substance doctrine that the legislation is in true character and purpose with regard to gas and gas works and the trenching, if any, is merely ancillary. Even if there was any repugnancy between the two Acts under Art. 254 of the Constitution the enactment having received the assent of the President is a valid legislation. AIR 1956 SC 676 and (1883) 9 AC 117 and (1880) 7 AC 96 and 1930 AC 111 and (1949) 2 Mad LJ 80: AIR 1949 PC 190, Rel. on. **65 Cal WN 545: AIR 1961 Cal 267 (278, 279, 280) (Pt C) (Prs 27, 29, 32, 34).**

[**Reversed** on another point in AIR 1962 SC 1044.]

——Art. 246 and Pre — Interpretation of Constitution — Legislative lists — Entries in—Literal construction. See Ibid, Preamble. **AIR 1959 Cal 222.**

——Art. 246 — Interpretation of Statutes — Legislative list. See Interpretation of statutes. **AIR 1956 Hyd 79.**

——Art. 246 and Sch. 7 — Legislative Lists — Interpretation of — Principles.

One of the principles of interpretation of legislative lists in the Constitution is that none of the entries in the lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. The entries in the Lists in constitutional enactments should be given their fullest and widest effect and should not be interpreted in a narrow or pedantic sense. The power to legislate on gentral subjects extends to ancillary matters also. The resort to residuary power should be the very last refuge and it is only when all the categories in the three Lists are absolutely exhausted, that one can think of falling back upon a non-descript. **1961 Ker LT 859: (1962) 45 ITR 66: ILR (1961) 2 Ker 528: 1961 Ker LJ 1324: AIR 1962 Ker 97 (100) (Pt A) (Prs 14, 15) (DB).**

●——Art. 246 — Legislative entries — Interpretation of — General principles.

The items in a legislative list in a Constitution should be read and understood in the full sense of the terms used so as to give them the widest scope permissible by the context in which these terms have been used. Such general words should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The entries in the Seventh Schedule set up a machinery of Government and are not mere acts of a legislature subordinate to the Constitution. AIR 1941 FC 16 and AIR 1955 SC 367, Rel. on. Kochupennu Kochikka v. Kochikka Kunjipennu, **ILR (1960) Ker 734: 1961 Ker LT 275: AIR 1961 Ker 226 (228, 229, 230) (Pt C) (Pr 4) (FB).**

——Art. 246, Schedule 7 List 2, Entry 54 — Madras General Sales Tax Act (9 of 1939), Sections 2 (g) and 2 (n) (as amended by Act 1 of 1959) — Validity — Incorporated club providing refreshments to its members — Held, there is no sale — Assessment to sales tax on turnover relating to refreshments supplied by club to its members is invalid.

While interpreting the provisions of entries in our Constitution, reference can be made to the corresponding entry in the Government of India Act, 1935. AIR 1954 SC 459 and AIR 1933 PC 16, Rel. on.

Entry 54 in List 2 of the Seventh Schedule to the Constitution authorises a State Legislature to impose a tax either on the sale or on the purchase of goods. That would show that no tax can be imposed unless there has been a transaction of sale, namely, a transfer of property in the goods from one person to another for a price. There is no constitutional restriction as to the levy of sales tax even on casual sales but it is essential that the legislation should impose tax only on sales and not on other transactions.

In reality distribution by a club to its members of goods will not be a sale within the meaning of the Madras General Sales Tax Act, but it is deemed to be such by virtue of the operation of the word 'deemed' in the Explanations of Section 2 (g) and S. 2 (n) of the Act. If the effect of the deeming provision in the Explanations were to bring to tax, transactions which are not sales, the provision will be invalid as beyond the powers of the State Legislature.

So long as no outsider has an interest in an incorporated club which runs only for its members, there is an identity of interest between the club and the members. The club may be a juristic entity capable of holding property. But when it purchases articles for the consumption of its members and supplies the same to them against payment, no element of sale is involved in the transaction. The distinction between an unincorporated members' club and an incorporated one is that in the former case the distribution made by the club to one of its members is a release by all the members in favour of a joint owner who takes the goods. In the case of an incorporated club which exists only for the purpose of providing amenities to its members, the supply of articles by it to a member will tantamount to delivery by an agent or trustee to the principal or beneficiary. In such a case also there will be no transfer of ownership by a person absolutely entitled to the property to the one who acquires title to the property on such transfer.

The Cosmopolitan Club, Madras, is a social recreation club, started originally, as an unincorporated association. Long afterwards in the year 1934, it was registered under Section 26 of the Companies Act as a non-profit earning institution. Its object as disclosed in the Memorandum of Association is mainly to promote and facilitate social intercourse, discussions amongst its members, etc. The Club maintains an establishment for preparing and supplying to its members refreshments. The preparations are made within its precincts at the direction of a Committee, and they are supplied to the members at a price fixed by the Committee. When, therefore, the refreshments are distributed to individual members against payment, the club will be only discharging its duty to the members as their mandatory agent. In such a case there can be no element of transfer of ownership by one absolute owner to another person. There can be no sale of the goods so as to attract the provisions of the Sale of Goods Act. The circumstance that a small margin of profit results occasionally in such a transaction can only be regarded as incidental to the transaction, as it is not always possible to fix the price of refreshments with exactitude. That cannot obviously convert the transaction into one of sale. It follows that the club cannot be regarded as a dealer, nor can the supply of refreshments to its members be regarded as a sale within the meaning of the Madras General Sales Tax Act. The assessment to sales tax on the turnover relating to refreshments supplied by the Club to its members is therefore invalid. AIR 1958 SC 560; AIR 1954 Mad 1130; AIR 1953 SC 274; AIR 1953 Ori 23: AIR 1954 SC 459; (1882) 8 QBD 373; 1915 (1) KB 172; (1900) 82 LT 352; 1940 (1) KB 576 & AIR 1954 Mad 1144, Rel. on; 1948 AC 405, Disting. AIR 1952 Mad 814, Approved. **76 Mad LW 704: (1963) 14 STC 1030: 1964 Mad WN 56: AIR 1964 Mad 63 (67 to 70 and 72 to 76) (Pt D) (Prs 9, 10, 15, 16, 20, 39, 45, 51) (DB).**

——Art. 246 — Legislative lists, entries in — Construction — Liberal construction should be put upon words used. **AIR 1961 Mad 146.**

●——Art. 246 and Sch 7 — Legislative lists — Interpretation.

Words used in the Seventh Schedule should be construed in their widest sense as denoting only subject-matter of legislation. C. N. Subramania Iyer v. N. Dharmalingha Padayachi, **ILR (1958)**

Mad 932: 1959 Mad WN 1: (1959) 1 MLJ 1: AIR 1958 Mad 608 (615) (Pt B) (Pr 24) (FB).

——**Arts. 246. 245, Sch. 7, List 2, Entry 54** — Tax on sale of goods — Sales — Interpretation of — Principle of constitutional interpretation—(Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 2 (h), Expln. (1)). See Ibid, Sch. 7, List 2, Entry 54. **AIR 1958 Mad 561.**

[**Reversed** on another point in AIR 1965 SC 1082.]

——**Arts. 246, 245 and Pre** — Legislative lists — Entries in — Scope of — Rules of construction stated — Interpretation of statutes. See Ibid, Preamble. **AIR 1962 Mys 269 (DB).**

——**Arts. 246, 245 and Pre** — Entries in legislative lists relating to power of taxation — Some recognised rules of construction stated. See Ibid, Preamble. **AIR 1962 Mys 269 (DB).**

——**Art. 246 — Interpretation of legislative entries — General principles.**

In interpreting an entry in a list conferring legislative powers, that construction which has most beneficial amplitude must be adopted. AIR 1941 FC 16; AIR 1955 SC 58; AIR 1955 SC 367 and AIR 1957 SC 768, Rel. on. **36 Mys LJ 73: ILR (1957) Mys 423: AIR 1958 Mys 102 (107) (Pt C) (Pr 24) (DB).**

——**Art. 246, Sch. 7, List 2, Items 3 and 66 — Mysore Court-fees (Amendment) Act (IX of 1954) — Validity — (Interpretation of Statutes).**

The Mysore Legislature was fully competent under List 2, Item 3 of Sch. 7 to pass the Mysore Court-fees (Amendment) Act, 1954, by which it raised court-fees in respect of certain matters including a petition for a writ.

Item 66, List 2, Sch. 7 cannot be construed as taking away the right given in Item 3 of the same List. Such construction is obviously unreasonable as Item 66 would then have to be treated as destructive of Item 3 and such construction leading to "absurdity" is not permissible and is opposed to the well recognized principles of Interpretation of Statutes.

'Fees' in Item 66 could only mean fees other than court-fees as the latter has already been expressly provided for in Item 3. **34 Mys LJ 178: ILR (1954) Mys 255: AIR 1954 Mys 161 (162) (Pt C) (Pr 3) (DB).**

——**Arts. 246, 245 and Sch. 7, Lists** — Entries in Lists to be liberally interpreted so as to include ancillary matters. **(1964) 9 Fac LR 362: (1965) 1 Lab LJ 656: ILR (1964) 2 Punj 767: AIR 1964 Punj 513 (514) (Pt B) (Pr 6) (DB).**

●——**Art. 246 (1) and Sch. 7, Lists — Interpretation of Legislative lists — Principles.**

Entries in Legislative Lists are given a broad and comprehensive interpretation. In construing the words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude. AIR 1955 SC 58, Rel. on. Moreover, the various entries in the Lists are not powers of legislation but fields of legislation. AIR 1952 All 88, Rel. on.

The words "with respect to" occurring in Section 100 sub-section (1), of the Government of India Act, 1935, and also in Art. 246 (1) of the Constitution are of wide import as they simply mean "with reference to" or "with regard to." Thus, the legislative field is extensive and the items of legislation include not merely the main purposes but also all ancillary and subsidiary matters which can fairly, and reasonably be said to fall within the scope of a particular entry. AIR 1941 FC 16, Rel. on. Punjab Distilling Industries, Ltd., Khasa v. Commissioner of Income-tax, Simla, **(1963) 48 ITR 288 : ILR (1962) 2 Punj 170 : 64 Punj LR 504: AIR 1962 Punj 337 (342) (Pt C) (Pr 9) (FB).**

——**Arts. 246, 245, Pre** — Legislative list—Items in —Interpretation. See Ibid, Preamble. **AIR 1960 Punj 669.**

●——**Art. 246, Sch. 7 — Rule of construction.**

The wording of the various items in the seventh Schedule must not be construed too strictly. The items in the List are not to be read in a narrow or restricted sense. AIR 1941 FC 16, Rel. on. Bhagirath Ramchand v. State of Punjab, **56 Punj LR 1: AIR 1954 Punj 167 (171) (Pt F) (Pr 13) (FB).**

——**Art. 246 and Schedule 7 — Interpretation of Lists — (C. P. Code (1908), Pre.).**

Allocation of subjects in the three lists is not on basis of scientific definition but is by way of simple enumeration of broad categories and hence the entries in the lists should be given a large and liberal interpretation. In interpreting the Constitution wide meaning must be given to words which confer power on any Legislature, to legislate on certain topics and within the ambit of the words, so as to give the most sovereign power to the Legislature. AIR 1939 FC 1, Foll. **1953 Cri LJ 1786: 1953 Ker LT 482: AIR 1953 Trav-Co. 540 (540, 541) (Pt B) (Pr 4).**

6. Interpretation of legislative entries—Conflict of jurisdictions.

●——**Art. 246** — Words in legislative entries must receive wide interpretation. See Income-tax Act (1922), S. 2 (6-A) (e). **AIR 1965 SC 1375.**

●——**Art. 246** — Land cess — Nature of tax — It is tax on lands within entry 49 and not tax on mineral rights within entry 50 of State list in the Constitution — Sections 78 and 79, do not stand repealed after passing of Central Act (53 of 1948), or Central Act (67 of 1957)—There is no question of overlapping between the two. See Madras District Boards Act (14 of 1920), Section 78. **AIR 1965 SC 177.**

●——**Art. 246, Sch. 7, List 1, Entry 66 and List 2 Entry 11 — Admission to Medical and Engineering colleges — State Government has power to prescribe machinery and criteria for admission.**

Subba Rao, J. (Delivering the majority judgment)— An order issued by the State Government appointing selection committees for admissions to the Medicial and Engineering colleges in the State and directing the committees to add to the marks secured by the candidates at P. U. C. examination the marks awarded by them for the interviews and to prepare a fresh order of merit on the basis of the total marks so arrived at does neither encroach on the field covered by Entry 66 of List 1, nor contravene the provisions of the Mysore University Act and hence cannot be struck down as invalid.

The State Government has power to prescribe a machinery and also the criteria for admission of qualified students to Medical and Engineering colleges run by the Government and with the consent of the management of the Government aided colleges, to the said colleges also.

If the law made by the State by virtue of Entry 11 of List 2 of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry "co-ordination and determination of standards in institutions for higher education or

research and scientific and technical institutions" reserved to the Union, the State law may be bad. This cannot obviously be decided on speculative and hypothetical reasoning. If the impact of the State law providing for such standards on Entry 66 of List 1 is so heavy or devastating as to wipe out or appreciably abridge the Central field, it may be struck down. But that is a question of fact to be ascertained in each case. It is not disputed that the State Government would be within its rights to prescribe qualifications for admission to colleges so long as its action does not contravene any other law. AIR 1963 SC 703, Rel. on.

It is true that under Section 23 of the Mysore University Act, 1956, the Academic Council shall have the power to prescribe the conditions for admission of students to the University and, in exercise of its power, it has prescribed, percentage of marks which a student shall obtain for getting admission in medical or engineering colleges. But the orders of the Government do not contravene the minimum qualifications prescribed by the University. Once it is conceded, that the State Government can run medical and engineering Colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a College will have, and the Government which runs its own Colleges cannot be denied that power. Hence the order cannot be said to contravene the provisions of Section 23 of the Mysore University Act also.

Mudholkar, J. (Contra)— Where any law of the State legislature seeks to vary academic standards for admission to institutions of the kind referred to in Entry 66 of List 1 its action has a direct bearing upon that entry and the power in that regard is excluded from the purview of Entry 11 of List 2. It will be for the Court to consider in each case whether what is being sought to be done by a State legislature will have a direct impact upon Entry 66 of List 1. By requiring the selection committee to add to the marks secured by the candidates at the P. U. C. examination the marks awarded by the selection committee for the interviews and prepare a fresh order of merit on the basis of the total number of marks so arrived at, the State would be quite clearly interfering with the standards for admission laid down by the University. Where the question of co-ordination and determination of standards in certain institutions like a medical college is concerned the power is vested in Parliament and even though the Parliament may not have exercised that power the State Legislature cannot step in and provide for the determination and co-ordination of standards. It is not only where the State law makes it impossible or difficult for Parliament to exercise its legislative power under Entry 66 that the State law would be bad but the validity of the State law would depend upon whether it prejudicially affects the co-ordination and determination of standards and if it does so that is enough to invalidate the legislation.

Thus where a law in pith and substance is one which will directly affect Parliament's power to co-ordinate and determine standards in the institutions comprised in Entry 66 of List 1 it will be directly in conflict with it and the extent or force of such conflict will make no difference. Further as the competent legislature had conferred the power of prescribing the conditions for admission of students to the University on the academic Council by enacting Section 23 of the Mysore University Act the State was not entitled to encroach upon that power by its executive act. Though under Art. 162 the executive power was co-extensive with the power of the legislature to legislate that executive power cannot be exercised in derogation of a law made by the competent legislature. AIR 1951 All 257 (FB), Rel. on; (S) AIR 1955 SC 549, Expl. Chitralekha v. State of Mysore. **(1965) 1 SCA 132: (1964) 6 SCR 368: AIR 1964 SC 1823 (1830, 1832, 1839, 1841, 1842) (Pt B) (Prs 7, 8, 14, 34, 36, 39).**

● ——**Arts. 246, 254, Sch. 7, List 2, Entry 11 and List I, entries 63, 64, 65 and 66 and List III, entry 25 — Scope and interpretation of — Use of expression "Subject to" in List 2, entry 11 — Implication of — Power to legislate with respect to medium of instruction — Extent of powers of State Legislature and Union — Gujarat University Act (50 of 1949), S. 4 (27) Proviso (as amended by Act 4 of 1961) and S. 38-A — Provisions are not ultra vires of State Legislature. AIR 1962 Guj 88 (FB), Reversed.**

Per Majority :— The proviso to cl. 27 of S. 4 of the Gujarat University Act as amended by Act 4 of 1961 and S. 38-A are not invalid and ultra vires the State Legislature. AIR 1962 Guj. 88 (FB), **Reversed.**

The extensive power vested in the Provincial Legislatures to legislate with respect to higher, scientific and technical education and vocational and technical training of labour, under the Government of India Act is under the Constitution controlled by the five items in List I (Entries 63 to 66) entry 25 of List III mentioned in item 11 of List II, Items 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in the Parliament. Use of the expression 'subject to' in item 11 of List II of the Seventh Schedule clearly indicates that Legislation in respect of excluded matters cannot be undertaken by the State Legislatures. AIR 1961 SC 459, Rel. on.

Power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union Parliament, be deemed to be restricted. If a subject of legislation is covered by items 63 to 66 even if it otherwise falls within the larger field of 'education including Universities', power to legislate on that subject must lie with the Parliament. Item 11 of List II and item 66 of List I must be harmoniously construed. The two entries undoubtedly overlap; but to the extent of overlapping, the power conferred by item 66, List I must prevail over the power of the State under Item 11 of List II. The power to legislate in respect of primary or secondary education is exclusively vested in the States by item No. 11 of List II, and power to legislate on medium of instruction in institutions of primary or secondary education must therefore, rest with the State Legislatures. Power to legislate in respect of medium of instruction, in so far as it has a direct bearing and impact upon the legislative head of co-ordination and determination of standards in institutions of higher education or research and scientific and technical institutions, must also be deemed by item 66, List I to be vested in the Union.

The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards

of education or render the co-ordination of such standards impossible or even difficult. The validity of the State Legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Art. 254 (1); even if that power be not exercised by the Union Parliament a State law trenching upon the Union field would still be invalid.

By the amendment of the proviso to S. 4 (27) the Legislature purported to continue the use of English as the medium of instruction in subjects selected by the Senate beyond a period of ten years prescribed by the Gujarat University Act, 1949. Before the date on which the parent Act was enacted, English was the traditional medium of instruction in respect of all subjects at the university level. By enacting the proviso as it originally stood, the University was authorised to continue the use of English as an exclusive medium of instruction in respect of certain subjects to be selected by the Senate. By the amendment no power to provide an exclusive medium other than the pre-existing medium is granted. If the University have no power to prescribe an exclusive medium, the enactment of S. 38-A which prescribes penalties for failing to carry out directions relating to the media of instruction will doubtless be not invalid.

Per Subba Rao, J.:—Entry 66 of List I must be construed on the assumption that the regional languages would be the media of instruction in all the universities and if so construed the law fixing the standards for co-ordination cannot displace the medium of instruction. Entry 11 of List II takes in the medium of instruction and it is not comprehended by the phraseology of entry 66 of List I of the Seventh Schedule to the Constitution. It follows that the State Legislature can make a law empowering the University to prescribe a regional language as the exclusive medium of instruction. Gujarat University v. Shri Krishna Ranganath Mudholkar, **(1964) 1 SCJ 504 : 1963 Supp (1) SCR 112 : (1963) 4 Guj LR 450 : (1963) 2 SCA 26 : AIR 1963 SC 703 (714 to 718, 720 to 724) (Pt C) (Prs 23 to 26, 27, 30, 32, 43, 44, 48, 49).**

●——**Art. 246 — Interpretation of legislative entries — Conflict of jurisdictions —Rules of interpretation in such case — Attempt should be made to harmonize apparently conflicting entries.**

In the matter of construing entries in the Lists given in Sch. VII of the Constitution the following rules of interpretation are now well settled. The power to legislate is given to the appropriate Legislatures by Art. 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation. It is also settled that widest amplitude should be given to the language of the entries. But some of the entries in the different lists may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of the Court to reconcile the entries and every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory. AIR 1939 FC 1 and AIR 1951 SC 69, Rel. on. Calcutta Gas Company (Proprietary), Ltd. v. State of West Bengal, **(1963) 1 SCJ 106 : 1962 Supp (3) SCR 1 : (1962) 2 SCA 147 : AIR 1962 SC 1044 (1049, 1050) (Pt C) (Pr 8).**

●——**Arts. 246, 245, Part III (Gen.), Part IV (Gen.)**— Legislation by State to implement directive principles — Legislation cannot override fundamental rights — Principle of harmonious construction to be followed. See Ibid, Art. 13, Part III (Gen.). **AIR 1958 SC 956.**

●——**Art. 246 (2) — Matter falling within one or other list of Sch. VII.**

The decision of the problem whether a legislation comes within an entry of one list or an entry of another list always involves two questions one of the interpretation of the entries of the two lists and the other of what the legislation purports to do. As regards the construction to be placed upon the entries in the rival lists it is to be assumed that the Union and the State Lists do not conflict and every attempt should be made to avoid a conflict. If necessary, the meaning given to one entry should be restricted in order to avoid overlapping. The meaning given to a general power in one entry may be restricted to give sense and efficacy to a power given by way of exception under an entry of an other list. At the same time general language ought not to be cut down by far-fetched and impertinent limitations. The words "with respect to" mean the whole field of legislation. Case-law, Ref. **1954 All LJ 477 : ILR (1954) 2 All 191 : 1954 All WR (HC) 529 : 1954 Cr LJ 1485 : AIR 1954 All 728 (731) (Pt B) (Pr 10) (DB).**

[**Overruled** on another point in AIR 1955 All 269.]

●——**Art. 246 and Sch. VII, Lists — Interpretation — Conflicts in Lists — Which to prevail.**

Where the three lists in Sch. VII of the Constitution come in conflict, the general principle is List I has priority over Lists 3 and 2 and List 3 has priority over List 2. **62 Cal WN 405 : (1958-59) 14 FJR 330 : (1958) 2 Lab LJ 61 : AIR 1958 Cal 373 (376, 377) (Pt B) (Pr 15).**

●——**Arts. 246, 327 and 328, List I, Entry No. 72 and List II, Entry No. 37 — Scope of— (Representation of the People Act (1951)—Competency to question election to State Legislature).**

The power of the State Legislature to make a law on the subject of Elections to Legislatures of States is subordinate to the Parliament's power. The expression "in so far as provisions in that behalf is not made by Parliament' used under Art. 328 and the words 'subject to the provision of any law made by Parliament' occurring in Entry 37 of List II in Seventh Schedule only mean that the Parliamentary Statute would have preference over a State law in case of repugnancy and that whenever a law is made by the State Legislature in exercise of its legislative power under Entry 37 of State List, that law will be subject to the provision of a Parliamentary Statute made in exercise of its legislative power under Entry No. 72 of the Union List. It is therefore not correct to say that the Tribunal appointed under the Representation of the People Act, 1951, is not competent to try a petition calling in question an election to the State Legislature. **ILR (1954) Madh Bha 440 : Madh BLR 1954 Civ 140; Madh BLJ (1954) HCR 578 : AIR 1954 Madh B 111 (112) (Pt B) (Pr 3) (DB).**

●——**Arts. 246, 225, 200, Sch. 7, List I, Entry 78, List 2, Entry 2, List 3, Entries 1, 2, 46 — Code of Criminal Procedure (Madras Amendment) Act —**

— Validity — If ultra vires the State Legislature —Power to transfer cases pending before Presidency Magistrate given to Sessions Judge, Madras is not invalid — (Criminal P. C. (1898), S. 528 (1) (c)).

Item 3 of List 2 gave the State Legislature power to legislate regarding the Constitution and organisation of all Courts except the Supreme Court and the High Court. That Parliament has got powers to enact legislation for the Constitution and organisation of the High Courts, under item 78 of List 1, will not take away the powers of the State Legislature given under item 3 of list 2 and items 1, 2 and 46 of List 3, to constitute a Sessions Court for Madras. See Code of Criminal Procedure (Madras Amendment) Act (Madras Act 34 of 1955). **AIR 1959 Mad 261.**

——Art. 246 (3), Sch. VII, List II, No. 36 and List I, Nos. 1 and 2 — Validity of Bihar Land Reforms Act (30 of 1950).

Merely because the Bihar Act 30 of 1950 affects the land comprised in Ghatwali tenures, or merely because the Act has the indirect effect of abolishing semi military tenure, it is not correct to argue that the Act is legislation "with respect to" items 1 and 2 of the Union List. The Act deals in pith and substance with item 36 of the State List and the Act would be constitutionally valid though it incidentally trenches on matters reserved for Union Legislature. It is not a material consideration in such a case to what extent the Union field is invaded by the impugned statute. 8 Comn. LR 410; AIR 1951 Pat 91 (SB); AIR 1947 PC 72 & AIR 1952 SC 252, Rel. on. **1957 BLJR 165 : 1956 Pat LR 562 : ILR 36 Pat 15 : AIR 1957 Pat 270 (274, 275) (Pt E) (Prs 5, 7) (DB).**

7. Doctrine of pith and substance.

●——Art. 246 — Pith and substance, doctrine of — When applicable. See Interpretation of statutes — Pith and substance, doctrine of. **AIR 1961 SC 232.**

●——**Art. 246 — Legislative competence — Doctrine of pith and substance — Doctrine of incidental powers — Principles.**

In every case where the legislative competence in regard to a particular enactment is challenged with reference to the entries in the various lists it is necessary to examine the pith and substance of the Act and if the matter comes substantially within an item in the Central List it is not deemed to come within an entry in the Provincial list even though the classes of subjects overlap in many respects. It is within the competence of the Central Legislature to provide for such matters. 1930 AC 111 and 1947 AC 33 and 1937 AC 863 and (S) AIR 1955 SC 25, Rel. on. Chaturbhai M. Patel v. Union of India, **1960 SCJ 224 : 1960 All LJ 262 : (1960) 1 SCA 425 : (1960) 2 SCR 362 : AIR 1960 SC 424 (428) (Pt A) (Pr 10).**

●——**Art. 246** — Constitutional document — Construction of — Pith and substance of Ordinance — Ordinance does not fall under 'Defence' mentioned in Schedule to Instrument of Accession. See Jammu and Kashmir Enemy Agents Ordinance (No. 8 of S. 2005), S. 3. **1960 Cr LJ 126 : AIR 1960 SC 1.**

●——**Art. 246** — Indian Legislatures — Plenary powers of legislation — Entries in legislative lists — Interpretation — Rule of pith and substance. See Ibid, Art. 245. **1959 Cr LJ 660 : AIR 1959 SC 544.**

●——**Art. 246, Sch. VII, List II, Items 18, 36 — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952) — Validity.**

Resumption and acquisition connote two different legal concepts. While resumption implies that the person or authority which resumes the property has pre-existing rights over it, acquisition carries no such implication and in general while the effect of resumption is to extinguish the interests of the persons whose property is resumed, that of acquisition is to vest that interest in the acquirer. To determine whether the impugned Act is one for acquisition of jagirs or for their resumption, we must see what the pith and substance of the legislation is, the name given to it by the Legislature not being decisive of the matter.

The right to resume jagirs was founded on grant and regulated by general law. To exercise that right, there was no need to enact any legislation. But the resumption for which the Act provides is in substance, acquisition nothwithstanding that it is labelled as resumption.

The award of compensation was consistent only with the taking being an acquisition and not with its being a resumption in accordance with the terms of the grant or the law applicable to it, for in such cases, there is no question of any liability to pay compensation. The rehabilitation grant was in addition to the compensation amount. Reading the provisions of the Act as a whole it is abundantly plain that what was meant by resumption was only acquisition. Indeed, if the Act purported to be one for acquisition of jagirs, its provisions could not have been different from what they are. The legislation falls also under Entry No. 18. But there being an Entry No. 36 specifically dealing with acquisition, and in view of the nature of the legislation it falls under that Entry. AIR 1941 FC 16, Ref. Amarsinghji v. State of Rajasthan, **(1955) 2 SCR 303 : 1955 SCA 766 : (1955) SCJ 523 : AIR 1955 SC 504 (518, 519, 520) (Pt D)) (Prs 23, 26, 27, 28, 30).**

●——**Art. 246 — Constitutional Law — Doctrine of pith and substance.**

The doctrine of pith and substance postulates, for its application, that the impugned law is substantially within the legislative competence of the particular Legislature that made it, but only incidentally encroached upon the legislative field of another Legislature. The doctrine saves this incidental encroachment if only the law is in pith and substance within the legislative field of the particular Legislature which made it. State of Bombay v. Narottamdas Jethabhai, **1951 SCJ 103 : 53 Bom LR 402 : 1951 SCR 51 : AIR 1951 SC 69 (96) (Pt D) (Pr 93).**

——**Art. 246 — Interpretation of entries in Sch. VII—Doctrine of pith and substance.**

Where it is found that the action of a Legislature in making a law specifically falls under any particular entry of a list in Sch. VII then it is not necessary to speculate and find whether or not the action of the Legislature can fall under some other entry as well. Entries are not like water-tight compartments: so that there is often discernible a little overlapping. Further where there is a specific entry which covers a particular piece of legislation it is not possible to bring into play the doctrine of pith and substance to bring a piece of legislation within the ambit of an entry other than the one that specifically applies to the legislation. **ILR (1961) 1 All 287 : 1961 All LJ 4 : 1961 All WR (HC) 77 : AIR 1961 All 320 (320, 321) (Pt B) (Pr 5).**

[**Overruled** on another point in AIR 1962 All 299.]

——**Art. 246** — Doctrine of pith and substance. See Evacuee Interest (Separation) Act (64 of 1951), S. 10 (a) (iii). **AIR 1957 All 561 (DB).**

——**Art. 246 (2) — Pith and substance of enactment.**

The pith and substance or the true nature and character of an Act is to be ascertained for the purpose of determining whether it is with respect to matters in this list or that list. **ILR (1954) 2 All 191 : 1954 All LJ 477 : 1954 All WR (HC) 529 : 1954 Cr LJ 1485 : AIR 1954 All 728 (732) (Pt C) (Pr 15) (DB).**

[**Overruled** on another point in AIR 1955 All 269.]

——**Art. 246** — Hyderabad Regulation 24 of 1358-F is not repealed by provisions contained in the two Central Acts — Determination of character of legislation — Pith and substance. See Essential Supplies (Temporary Powers) Act (1946) (as amended by Act 52 of 1950), S. 17 (4). **AIR 1959 Andh Pra 225 (DB).**

——**Art. 246** — Rule of 'pith and substance' — Scope of. See Bar Councils Act (1926), S. 8 (2) (b). **AIR 1958 Andh Pra 63 (DB).**

——**Arts. 246, 245 — Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946) — Validity.**

The whole Act deals with the subject of marriage and the words "either or both the contracting parties to such marriage are domiciled in this province" merely describe the class of persons, to whom the provisions of the Act are made applicable. The Act cannot be regarded as a legislation on the subject of domicile. **ILR (1955) Bom 1039 : 57 Bom LR 827 : 1955 Cr LJ 1564: AIR 1955 Bom 439 (442) (Pt C) (Pr 19) (DB).**

[**Overruled** on another point in AIR 1958 Bom 68 (FB) and AIR 1960 SC 1329.].

——**Art. 246** — Scope — Validity of Act — Test of pith and substance. See Forward Contracts (Regulation) Act (1952), S. 1. **AIR 1939 Cal 89 (DB).**

——**Art. 246, Sch. 7, List 2, Items 1, 36** — Defence of Hyderabad Regulation (1352-F) —Rules under — R. 66-A — Validity — (Interpretation of Statutes — Pith and substance rule) —(Civil P. C. (1908), Pre.) See Defence of Hyderabad Regulation (1352-F). **AIR 1954 Hyd 121.**

●——**Art. 246 — Doctrine of pith and substance — Validity of J. and K. Enemy Agents Ordinance — (Jammu and Kashmir Constitution Act, Sm. 1966 (1949), S. 5).**

In order to examine the question whether the J. and K. Enemy Agents Ordinance legislated on the subject of defence and, therefore, was beyond the power of His Highness, its pith and substance have to be looked into in order to ascertain its true nature and character. The nature and character of the Ordinance shows that two matters have been dealt with namely, (1) keeping in view the heinous character of the offence a special criminal law has been enacted, and (2) special Courts have been created to try those offences. The mere fact that the civil authority may take the aid of the Army does not affect the quality of the legislation. There is no connection between the Ordinance and the ordinary concept of defence.

It must be held that the Ordinance was validly enacted by the Rules under S. 5 of the Constitution of Jammu and Kashmir obtaining at the time of its promulgation. Rehman Shagoo v. The State of Jammu and Kashmir, **1958 Cr LJ 885 : AIR 1958 J and K 29 (33, 34) (Pt B) (Prs 14, 16, 17, 19 to 21) (FB).**

——**Art. 246 — Pith and substance — Doctrine of.**

Where the legislative competence of a legislature in regard to a particular enactment is challenged with reference to the entries in the various lists, it is necessary to examine the pith and substance of the Act and if the matter comes substantially within an item in one List, it is not deemed to come within an entry in any other List even though the classes of subjects looked at singly overlap in many respects. AIR 1960 SC 424, Foll. **1960 Ker LJ 869: 1960 Ker LT 820: (1960) 2 Ker LR 219 : AIR 1961 Ker 111 (112) (Pt B) (Pr 3) (DB).**

——**Art. 246 and Sch. VII, List I, Entry 54 and List 2, Entry 18 — Competence of Parliament to enact law questioned — Rule of construction — Pith and substance — Doctrine of —Mineral Concession Rules, 1960 — Rules are covered by List I, Entry 45 and not by List 2, Entry 18.**

Where the legislative competence of Parliament to enact a law, which empowers the making of R. 41 (1) (iv) of the Mineral Concession Rules 1949 (now R. 27 (1) (d) of the Rules of 1960), is challenged on the ground that it encroaches on a field covered by the State List, the doctrine of pith and substance is the usual test applied. The rule, in substance and effect provides for compensation for mining operations carried on over the surface area of land. That being so, it is within the expression "regulation of mines and mineral development" occurring in Entry 54 of List 1 of Sch. 7 to the Constitution of India. No doubt, to some extent it trenches upon the field covered by "land" in Entry 18 of List 2, but this is merely incidental and ancillary to the purpose or the object of the Mines and Minerals (Regulation and Development) Act, 1957, which is the regulation of mine and the development of minerals. If the rule, while subserving the purpose of the Act, incidentally affects a matter outside its authorised sphere, it cannot be regarded as bad. AIR 1961 SC 232 and AIR 1955 SC 25, Rel. on. **ILR (1964) Madh Pra 516 : 1963 MPLJ 274 : 1963 Jab LJ 294 : AIR 1963 Madh Pra 213 (215) (Pt B) (Pr 6).**

——**Art. 246** — Notice under S. 20 of Madras Estates (Abolition and Conversion into Ryotwari) Act on 13-3-1951 — Effect of coming into force of Constitution — Act does not deal with inter-State Commerce — Act is not ultra vires — Pith and substance. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 20. **AIR 1954 Mad 291 (DB).**

——**Art. 246— Doctrine of pith and substance.**

The topic underlying the provisions of the Act may in one view of the matter fall within the powers of the Centre and on another within the powers of the Federal units. When this happens, it is usual to examine the pith and substance of the impugned legislation and to see whether the pith and substance appropriately falls within this entry or that in the legislative lists. AIR 1941 FC 47; AIR 1947 PC 60; AIR 1947 FC 34 and AIR 1939 FC 1, Rel. on. **1956 Nag LJ 716 : 1956 MPLJ 156 : ILR (1956) Nag 618 : AIR 1956 Nag 268 (270) (Pt A) (Pr 9) (DB).**

——**Art. 246 — Rule of pith and substance — (Government of India Act (1935), S. 100).**

A Court must look to the pith and substance of the legislation in order to determine under

which List of the Government of India Act, 1935 and in rspect to which item it comes. **AIR 1953 Pat 65 (70) (Pt C) (Pr 8) (DB).**

——Art. 246, Sch. 7 List 3, Items 1 and 3 — Rule of pith and substance —Applicability.

Per Sarjoo Prasad J.:— The term "pith and substance" is not a term of art but a term of convenience, and there is no reason why the rule cannot be applied to a case where the two fields of legislations such as criminal law and preventive detention though distinct and separate, yet come under the same list (viz., the concurrent list), though in regard to certain incidental matters a legislation which in pith and substance deals with a particular field may casually encroach upon a different subject-matter. **51 Cri LJ 1251: ILR 29 Pat 410: AIR 1950 Pat 332 (346) (Pt H) (Pr 54) (DB).**

●——**Art. 246** — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), S. 1 (as amended by Rajasthan Act 13 of 1954) — Object of Act—How determined — Courts have to see pith and substance of the Act to find out whether it is an Act for purposes of acquisition or merely for resumption of jagir lands — Act intended for acquisition of jagirs. See Tenancy Laws — Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), (as amended by Rajasthan Act 13 of 1954), S. 1. **AIR 1954 Raj 291 (FB).**

8. Doctrine of occupied field.

——**Arts. 246 and 254** — The question of occupied field is absolutely irrelevant when the Court is concerned with Lists I and II and not with the Concurrent List. **ILR (1959) Andh Pra 1340: 1960 An LT 22: (1960) 38 ITR 93: (1960) 1 Andh WR 153: AIR 1960 Andhra Pra 115 (119) (Pt B) (Pr 23) (DB).**

——**Art. 246** — Doctrine of occupied field — Test of repugnancy. See Ibid, Art. 254 (2). **1953 Cri LJ 1602: AIR 1953 Bom 371 (DB).**

●——**Art. 246** —Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 30—Validity — Conflict between 'existing Indian law' (namely, Land Improvement Loans Act, 1883 and Agriculturists' Loans Act, 1884) and Central Act (namely, 1954 Act) — Central Act prevails — Doctrine of occupied field, applicability. See Displaced Persons (Compensation and Rehabilitation) Act, (1954), S. 30. **AIR 1961 Punj 341 (FB).**

9. Colourable legislation.

●——**Art. 246 — Colourable legislation — Doctrine of fraud on power.**

When a Court says that a particular legislation is a colourable one, it means that the Legislature has transgressed its legislative powers in a covert or indirect manner, it adopts a device to outstep the limits of its powers. AIR 1953 SC 375 and AIR 1959 SC 308, Rel. on. P. Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition W. Madras. **(1965) 2 SCA 356: (1964) 2 SCJ 703: (1964) 2 Mad LJ (SC) 173: (1964) 2 Andh WR (SC) 173: AIR 1965 SC 1017 (1025) (Pt D) (Pr 16).**

●——**Art. 246** — Defence of India Act, 1962, S. 3 (2) (15) (i) — Not colourable legislation because of existence of Preventive Detention Act (3 of 1960). Makhan Singh v. State of Punjab, **1964 (1) Cri LJ 269: (1964) 2 SCA 663: AIR 1964 SC 381 (401, 402) (Pt E) (Pr 40, 43).**

●——**Arts. 246 and 265** —U. P. Large Land Holding Tax Act (31 of 1957) — Constitutional validity — Act is not a colourable piece of legislation. See U. P. Large Land Holding Tax Act (31 of 1957). **AIR 1962 SC 1563.**

●——**Arts. 246, 245 and 265 — Taxing statute can be challenged as colourable legislation — Circumstances to be proved before such challenge can succeed.**

Though the validity of a taxing statute cannot be challenged merely on the ground that it imposes an unreasonably high burden, it does not follow that a taxing statute cannot be challenged on the ground that it is a colourable piece of legislation and as such, is a fraud on the legislative power conferred on the legislature in question. If it is shown that the Act which purports to be a taxing Act is a colourable exercise of the legislative power of the Legislature, then that would be an independent ground on which the Act can be struck down.

The conclusion that a taxing statute is colourable would not and cannot normally be raised merely on the finding that the tax imposed by it is unreasonably high or heavy, because the reasonableness of the extent of the levy is always a matter within the competence of the Legislature. Where the Legislature has merely adopted a device and a cloak to confiscate the property of the citizen taxed, that is a separate and independent ground for striking down the Act. Raja Jagannath Baksh Singh v. State of Uttar Pradesh, **(1963) 1 SCR 220: 1962 All WR (HC) 649: (1962) 2 SCA 679: (1962) 46 ITR 169: 1962 All LJ 799: AIR 1962 SC 1563 (1572, 1573) (Pt I) (Prs 21, 22).**

●——**Arts. 246, 245, 31 (2), Sch. 7, List 2 Item 18; List 3, Item 42 — Kerala Agrarian Relations Act (4 of 1961) — Validity — Act is not a colourable piece of legislation on the ground of being a device to take money from landowners.**

The Kerala Agrarian Relations Act has been passed under legislative powers vested in the State Legislature under item 18 of List II and Item 42 of List III of the Seventh Schedule. It is clear from the provisions contained in Chapters II and III of the Act that the main purpose of the Act is to do away with intermediaries and to fix a ceiling and give the excess land, if any, to the landless or those who hold land much below the ceiling. The main provisions of the Act therefore, are clearly within the legislative competence of the State Legislature. The compensation due to the landowner or the person from whom excess land is acquired is what is provided in S. 52 and S. 64. The adequacy of that compensation cannot be challenged in view of Art. 31 (2).

Rule 161 (a) (i) and (ii) and R. 161 (b) (i) and (ii) of the Rules framed under S. 80 in so far as they take in persons not affected by the Act are ultra vires of the provisions of S. 80 and must be struck down on that ground. But the rules which have been actually framed will not affect the provisions of S. 80. Therefore, even the apparent result of the difference between Ss. 45 and 52 and Ss. 64 and 72 is taken away by the constitution of the fund under S. 80. The Act cannot be struck down as a colourable piece of legislation which is beyond the competence of the State Legislature. 1953 SCJ 592: AIR 1953 SC 375, Rel. on. Karimbil Kunhikonan v. State of Kerala, **1962 Supp (1) SCR 829: 40 Mys LJ 17: (1962) 2 SCA 1: (1962) 1 SCJ 510: (1962) 1 Mad LJ (SC) 213: (1962) 1 Andh WR (SC) 213: 1962 Ker LT (SC) 42: (1962) 1 Ker LR 67: 1962 Ker LJ 59: AIR 1962 SC 723 (727, 728, 729) (Pt B) (Prs 5, 7, 8).**

●——**Art. 246** — Assam Fixation of Ceiling on Land Holdings Act (1 of 1957) — Act falls within the protection of Art. 31-A of the Constitution — It is also not a colourable piece of legislation — Hence it is constitutionally valid. See Tenancy Laws—Assam Fixation of Ceiling on Land Holdings Act (1 of 1957). **AIR 1962 SC 137.**

●——**Art. 246** — S. 22, Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952) — Validity — Act is not a colourable piece of legislation. See Tenancy Laws — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 22. **AIR 1960 SC 796.**

●——**Art. 246, Sch. 7, List 2, Entry 18 —Bombay Tenancy and Agricultural Lands (Amendment) Act (13 of 1956) — Validity.**

Bombay Act XIII of 1956 affected the relation between landlord and tenant, provided for the transfer and alienation of agricultural lands, aimed at land improvement and was broadly stated a legislation in regard to the rights in or over land or categories specifically referred to in Entry 18 in List II of the Seventh Schedule to the Constitution. The impugned Act being within the legislative competence of the State Legislature no question as to its being a piece of colourable legislation can arise. Sri Ram Ram Narain Medhi v. State of Bombay, **1959 SCJ 679 : (1959) 2 Andh WR (SC) 1 : (1959) 2 MLJ (SC) 1 : 1959 SCA 491 : 61 Bom LR 811 : (1959) 1 SCR (Supp) 489 : AIR 1959 SC 459 (463, 472, 473) (Pt A) (Prs 11. 14, 43).**

●——**Art. 246 — Colourable legislation — Motives of legislature — How far relevant.**

The legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the Constitution. The legislature cannot over-step the field of its competency, directly or indirectly. The Court will scutinize the law to ascertain whether the legislature purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If, in fact, it has power to make the law, its motives are irrelevant. AIR 1953 SC 375 : 1953 SCJ 592, Rel. on. Gullapalli Nageswara Rao v. Andhra Pradesh Road Transport Corporation, **1958 Andh LT 1014 : (1959) 2 Andh WR (SC) 156: 1959 SCJ 967 : (1959) 2 MLJ (SC) 156 : (1959) 1 SCR (Suppl) 319 : AIR 1959 SC 308 (315, 316) (Pt A) (Pr 7).**

●——**Art. 246 — Colourable legislation.**

The doctrine of colourable legislation is relevant only in connection with the question of legislative competency. AIR 1953 SC 375, Foll. Raja Bhairebendra Bhup v. State of Assam, **1956 SCA 736 : 1956 SCJ 543 : 1956 SCR 303 : AIR 1956 SC 503 (512) (Pt G) (Pr 21).**

●——**Art. 246 and Sch. 7, List 3, Entry 42** — Orissa Estates Abolition Act (1952), S. 37 — Validity cannot be challenged on ground that it is a piece of colourable legislation. See Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), S. 37. **AIR 1953 SC 375.**

●——**Art. 246** — Madras Estates Land Act (1908), S. 168-A (as amended by Orissa Act 19 of 1947) — Validity — No question of any colourable exercise of legislative powers. See Tenancy Laws — Madras Estates Land Act (1 of 1908), S. 168-A (as amended by Orissa Act, 19 of 1947). **AIR 1953 SC 375.**

●——**Arts. 246, 245** — Colourable legislation — (Civil P. C. (1908), Pre.). See Interpretation of Statutes. **AIR 1953 SC 375.**

●——**Art. 246 — Colourable piece of legislation — Validity.**

(Per Mahajan, J. :) Legislation ostensibly under one or other of the powers conferred by the Constitution but in truth and fact not falling within the content of that power is merely colourably constitutional but is really not so. (1878) 3 AC 1090, (1862) 7 AC 829, Rel. on; (1899) AC 626, Ref.

(Per Mukherjea J.) :— When a legislature has a limited or qualified power and has got to act within a sphere circumscribed by legislative entries, the question, whether in purporting to act under these entries, it has, in substance, gone beyond them and has done certain things which cannot be accomplished within the scope of these entries, is really a question affecting the competency of the legislature. In such cases, although the legislation purports to have been enacted under a particular entry, if it is really outside it, it would be void.

(Per Das J.) :— The failure to comply with the constitutional condition for the exercise of legislative power may be overt or it may be covert. When it is overt, we say the law is obviously bad for non-compliance with the requirements of the Constitution, that is to say, the law is 'ultra vires'. When, however, the non-compliance is covert, we say that it is a fraud on the Constitution, the fraud complained of being that the Legislature pretends to act within its power while in fact it is not so doing. State of Bihar v. Kameshwar Singh, **ILR 31 Pat 565 : 1952 SCR 889 : 1953 SCA 53 : 65 Mad LW 527 : 1952 SCJ 354 : 1952 SCJ 427 : 1952 SCJ 446 : AIR 1952 SC 252 (277, 280, 292) (Pt H) (Prs 61, 84, 108).**

——**Art. 246** — Andhra Pradesh General Sales Tax (Second Amendment) Act (2 of 1959) — Not a colourable legislation. See Sales Tax — Andhra Pradesh General Sales Tax (Second Amendment) Act (2 of 1959). **AIR 1964 Andh Pra 266 (DB).**

——**Art. 246** — Andhra Inams Assessment Act, 1955 — Validity — Act is not colourable legislation. See Andhra Inams (Assessment) Act (17 of 1955), S. 3. **AIR 1960 Andh Pra 461 (DB).**

——**Arts. 246, 31, 19 (1) (g), 19 (6) (as amended by 4th Amendment 1955)** — Acquisition — Transfer of ownership or right to possession is essential — Mere deprivation of property is not acquisition — Colourable legislation what is —Fraud on Constitution — Motor Vehicles Act (1939 as amended by Act 100 of 1956) Chap. IV-A, S. 68G — If colourable legislation — Right to carry on occupation extinguished — Whether unconstitutional — Whether Parliament has circumvented limitations on its powers by indirect method — (Motor Vehicles Act (1939 as amended by Act 100 of 1956), Chap. IV-A, S. 68-G. See Ibid, Art. 31. **AIR 1959 Andh Pra 292.**

——**Art. 246 — Doctrine of colourable legislation — Scope.**

The doctrine of colourable legislation has no application where there is ample legislative competence and the Legislature has proceeded to legislate on a field assigned to it under the Constitution. If the legislature concerned has constitutional authority to pass a law in regard to a particular subject, it is not for the Courts to divine and scrutinise the policy, which led to the enactment; but where in purporting to legislate on a particular field of legislation, the Legislature has done something which lies beyond the ambit of its authority, the doctrine of colourable legislation or legislative incompetence can be invoked to declare the provision ultra vires. 1953 SCJ

592 : AIR 1953 SC 375 and AIR 1956 SC 503 : 1956 SCJ 543, Rel. on.

A colourable legislation simply means a legislation which while transgressing constitutional limitations is made to appear as if it were quite constitutional. The doctrine of colourable legislation also does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. **AIR 1959 Assam 147 (152, 153, 157) (Pt E) (Prs 7, 16) (DB).**

● ——**Art. 246** — Scope—Assam State Acquisition of Zamindaries Act (1951) — Validity — Not a colourable legislation. See Tenancy Laws — Assam State Acquisition of Zamindaries Act (18 of 1951), S. 4 (2). **ILR (1956) 8 Assam 379 (FB).**

——**Art. 246** — West Bengal Estates Acquisition Act (1 of 1954), S. 5-A — Sub-s. (3) is not a colourable piece of legislation. See Tenancy Laws — West Bengal Estates Acquisition Act (1 of 1954), S. 5-A. **('62) 66 Cal WN 405.**

——**Art. 246** — Sales Tax —Hyderabad General Sales Tax (Third Amendment) Act (27 of 1952), S. 1 — Third Amendment Act is not colourable. See Sales Tax — Hyderabad General Sales-tax (Third Amendment) Act (27 of 1952), S. 1. **AIR 1954 Hyd 50.**

——**Art. 246** — Kerala Luxury Tax on Tobacco (Validation) Act 1964 is not colourable exercise of power. See Kerala Luxury Tax on Tobacco (Validation) Act (9 of 1964), Preamble. **1965 Ker LJ 337 : 1965 Ker LT 418 : AIR 1966 Ker 46.**

——**Art. 246 — Madhya Pradesh Abolition of Cash Grants Act (16 of 1963) — Not colourable legislation — Motive of legislature is irrelevant.**

The Madhya Pradesh Abolition of Cash Grants Act is not a colourable piece of legislation. The fact that in enacting the legislation, the State legislature desired to discontinue the cash grants paid to certain class or classes of persons, while preserving the grants of others, can at the most be the motive which impelled the legislature to place the Act on the statute book. The motives which impelled the legislature to pass the legislation are irrelevant and have no bearing on the question whether the Act is or is not a piece of colourable legislation, provided the legislature is competent to pass the Act : AIR 1953 SC 375 and AIR 1959 SC 308 and AIR 1962 SC 458. Foll. **1964 Jab LJ 527 : 1964 MPLJ 874 : AIR 1965 Madh Pra 77 (82) (Pt B) (Pr 8) (DB).**

——**Art. 246** — M. P. Minimum Wages Fixation Act (1962) — Validity of the Act — It is not a piece of colourable legislation on ground that it adopts definitions given in Central Act — Legislature was competent to enact the Act — Motive is irrelevant. See M. P. Minimum Wages Fixation Act (1962), Pre. **AIR 1964 Madh Pra 45.**

——**Art. 246 (3) and Sch. 7, List 2, Entry 54 — Colourable Legislation — Section 11 (1) of Madras Commercial Crops Markets Act as amended in 1955, S. 11 (1) — Validity.**

Article 246 (3) read with Entry 54 of List 2 in the 7th Schedule to the Constitution confers plenary powers on the State Legislature to impose a tax on the sale of goods. Section 11 (1) of the Madras Commercial Crops Markets Act, 1933, as amended in 1955, has the effect of levying an additional sales tax in regard to commercial crop or crops. The Legislature having the power and there being no question of its trespassing on the legislative power of another State or the Union of India, no question of colourable legislation can at all arise. 1953 SCJ 592 : AIR 1953 SC 375, Foll. **1960 Mad WN 734 : (1960) 1 Mad LJ 298 : 72 Mad LW 752 : ILR (1960) Mad 171 : AIR 1960 Mad 160 (163) (Pt A) (Pr 9).**

——**Art. 246** — Colourable legislation — Act within competence of legislature — Motive cannot be questioned. See Ibid, Art. 245. **AIR 1964 Mys 240 (DB).**

——**Art. 246 — Bona fides of Legislature.**

Where the bona fides of a Legislature as such and not of any individual is involved, the absence of bona fides and the presence of a positive intention which is said to have a relevance on the validity of the legislative enactments is not a matter that can be decided on mere balance of probabilities. The mala fides so alleged must be strictly proved to the hilt and beyond any reasonable doubt. Like an accused in a criminal case the State should get the benefit of doubt. **ILR 1953 Cut 71 : AIR 1953 Orissa 185 (211, 226, 227) (Pt Q) (Prs 60, 98) (DB).**

——**Art. 246 — Collateral purposes or motives of Legislature.**

If the primary purpose of the statute is to raise revenue for the purpose of the State, collateral purposes or motives of a Legislature in levying a tax of a kind within the reach of its lawful power are matters beyond the scope of judicial enquiry. But if the taxing statute is so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect the direct exertion of a different and forbidden power as for example, the confiscation of property it may be held to be invalid. 195 U. S. 56; 172 U. S. 443, Foll. **ILR 1953 Cut 71 : AIR 1953 Orissa 185 (221) (Pt S) (Pr 82) (DB).**

——**Art. 246** — Licence renewal fees under Factories Act (1948) — Whether colourable disguise for imposition of tax. See Delhi Factories Rules (1950), R. 7. **('65) 67 Pun LR 819 (DB).**

——**Art. 246 — Doctrine of colourable legislation —Whether the Delhi Land Reforms Act (1954) (as amended by Amendment Act 4 of 1959) is a colourable piece of legislation.**

The whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly. AIR 1953 SC 375 and AIR 1962 SC 723, Foll.

Where it was not disputed that the legislature could directly pass a law, such as the Amendment Act of 1959 by which the Delhi Land Reforms Act of 1954 became applicable to the Town Extension Scheme Area in question, entitling the tenants to be declared Bhumidars which may ultimately result even in the compensation, payable under the Land Acquisition Act being diverted to them, it could not be said that the Amendment Act was any colourable exercise of legislative powers. In such a case it could not be said that the legislature was trying to achieve indirectly what it could not do directly. **ILR (1965) 2 Punj 419.**

——**Arts. 246, 245 — Doctrine of colourable legislation — Scope and extent of — Payment of Wages (Punjab Amendment) Act (15 of 1962) — Not a colourable piece of legislation.**

The doctrine of colourable legislation implies that the legislature cannot over-step the field of its competence, directly or indirectly, and that the Court would scrutinize the law to ascertain whether the legislature by device purports to make a law which though in form appears to

be within its sphere, in effect and substance, reaches beyond it. The Payment of Wages (Punjab Amendment) Act (15 of 1962), cannot be deemed to be a piece of colourable legislation because considering its effect and substance the State legislature was well within its power to enact the impugned Act. **(1964) 9 Fac LR 362 : (1965) 1 Lab LJ 656 : ILR (1964) 2 Punj 767 : AIR 1964 Punj 513 (515) (Pt D) (Pr 8) (DB).**

——Arts. 246, 245 —Doctrine of colourable legislation — Test of colourable legislation — S. 19-E of Punjab Act (10 of 1953) and S. 32-KK of Pepsu Act (13 of 1955) —Not a colourable legislation.

The doctrine of colourable legislation really postulates that legislation attempts to do indirectly what it cannot directly do. The test of colourable legislaion is an attempt on the part of the legislature to legislate on a matter beyond its competency while putting it forward as if it is a legislation within its competency. The doctrine of colourable legislation has relation to legislative competence and where the legislation is within the constitutional competence of the legislature, it cannot be assailed as being colourable, whatever the reasons behind it. AIR 1962 SC 137 and AIR 1962 SC 458, Rel. on.

Since S. 19-E of Punjab Act (X of 1953) and S. 32-KK of Pepsu Act (XIII of 1955) are not beyond the competence of the State Legislature and the Legislature has not held back the reason for their enactment, they cannot be said to be colourable pieces of legislation. **65 Pun LR 105: ILR (1963) 1 Punj 500 : 1963 Cur LJ 22 : AIR 1963 Punj 319 (327) (Pt F) (Pr 16) (DB).**

●**——Art. 246, Seventh Schedule, List II, Item 56 — Colourable legislation — Tax on goods carried over certain roads — Tax is valid under Seventh Schedule List II, item 56—Fact that part of tax is expended on improvement of roads does not make tax illegal.**

Where the tax is imposed under S. 30 of the Punjab District Boards Act on goods carried over certain roads, item 56 of List II, clearly authorises the imposition of such a tax. It is in no sense a tax on roads although it has to be paid by those persons who transport goods along these roads. The mere fact that some of the revenue accruing as a result of this particular tax will be spent for the maintenance of the roads in question cannot make the tax illegal or dishonest or colourable. After the proceeds of the tax go into the general revenue of the District Board the proceeds thereafter have no necessary link with the maintenance of the roads. Mangal Ram Roshanlal v. Punjab State. **ILR (1962) 2 Punj 118 : 64 Punj LR 342 : AIR 1962 Punj 350(353) (Pt B) (Pr 5) (FB).**

10. Scope and extent of legislative powers.

(a) Legislative entries denote fields of legislation and not powers of legislation.

(b) Power to legislate retrospectively.

(c) Legislative competence of Parliament.

(d) Legislative competence of State Legislature.

(e) Concurrent List.

10. Scope and extent of legislative powers.

●**——Art. 246, Seventh Schedule, List 1, Entry 54 —List 2, Entry 23 — Orissa Mining Areas Development Fund Act (27 of 1952) — Validity — Orissa Mining Areas Development Fund Act (27 of 1952) is superseded by Mines and Minerals (Regulation and Development) Act (1957) — Notice of demand made on 1st August, 1960 under Orissa Act, 27 of 1952, for fees accruing prior to 1st June, 1958, is however, valid and amount can be recovered notwithstanding disappearance of Orissa Act. AIR 1962 Orissa 24, Reversed.**

'Subject' to the provisions of List I the power of the State to enact legislation on the topic of 'mines and mineral development' is plenary. To the extent to which the Union Government had taken under 'its control' 'the regulation and development of minerals' under Entry 54 of List I, so much was withdrawn from the ambit of the power of the State Legislature under Entry 23 of List II and legislation of the State which had rested on the existence of power under that entry would, to the extent of that 'control', be superseded or be rendered ineffective. The Central Act, 67 of 1957, covered the entire field of mineral development, that being the 'extent' to which Parliament had declared by law that it was expedient that the Union should assume control. The terms of S. 18 (1) of that Act laid a duty upon the Central Government 'to take all such steps as may be necessary for the conservation and development of minerals in India' and 'for that purpose the Central Government may, by notification, make such rules as it deems fit'. There is express provision for the power to levy a fee under S. 13 of the Central Act of 1957, apart from the implication arising from S. 25. AIR 1961 SC 459, Foll.

Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. Having regard to the terms of S. 18 (1) of the Central Act, 67 of 1957, it appears clear that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession of the State Act 27 of 1952. Therefore, it would not be correct to say that until rules were framed under S. 18 of the Central Act 67 of 1957, the Central Act would not cover the field and the Orissa Act, 27 of 1952, would continue to operate in full force. AIR 1956 SC 676, Disting.

In order that a fee may validly be imposed the subject-matter or the main head of legislation in connection with which the fee is imposed must be within legislative power. It is a prerequisite for the valid imposition of a fee that it is in respect of a 'matter in the list'. If by reason of the declaration by Parliament the entire subject-matter of 'conservation and development of minerals' has been taken over for being dealt with by Parliament, thus depriving the State of the power which it theretofore possessed it would follow that the 'matter' in the State List is, to the extent of the declaration, subtracted from the scope and ambit of Entry 23 of the State List. There would, therefore, after the Central Act, 67 of 1957, be 'no matter in the List' to which the fee could be related in order to render it valid. Hence it could not be said that even if the Union could levy any fee under the Central Act, 67 of 1957, it would not affect or invalidate the Orissa Act, 27 of 1952, imposing a fee for a similar purpose. AIR 1962 Orissa 24, Affirmed.

The principle on which the saving clause in S. 6 of the General Clauses Act, is based is that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is

presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications —express or implied —in the later enactment designed to completely obliterate the earlier state of the law. The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in later statute. As the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded there can be no incongruity in attributing to the later legislation, the same intent which S. 6 presumes where the word 'repeal' is expressly used. As the liabillity to pay the fee which was the subject of the notices of the demand made on 1st August, 1960, under the Orissa Act, 27 of 1952, had accrued prior to 1st June 1958, when the Central Act, 67 of 1957, came into force these notices were valid and the amounts due thereunder could be recovered notwithstanding the disappearance of the Orissa Act 27 of 1952, by virtue of the superior legislation of Act, 67 of 1957, by the Union Parliament. AIR 1962 Orissa 24, **Reversed.** AIR 1951 SC 128, Disting.; (1830) 6 Bing 576 and (1829) 9 B. and C. 750, Rel. on. State of Orissa v. M. A. Tulloch and Co. **30 Cut LT 80: 1964 SCD 111 : AIR 1964 SC 1284 (1286, 1287, 1289, 1290, 1291, 1292, 1293, 1294, 1295) (Prs 5, 11, 12, 15, 16, 20, 21).**

●——**Art. 246** — Scope and extent of legislative power — Law passed making its provision retrospective — Effect of retrospective operation changing character of legislative compelence. See Ibid, Art. 19 (1) (f). **AIR 1963 SC 1667.**

●—— **Art 246 and Sch 7, List 2 — Power to validate laws declared by Courts to be invalid.**

The legislative power conferred on the Legislature includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a Legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed. AIR 1941 FC 16 Foll. Rai Ramkrishna v. State of Bihar. **(1963) 50 ITR 171 : (1964) 1 SCA 413 : ILR 42 Pat 796 : (1964) 1 SCR 897: (1964) 2 SCJ 749: AIR 1963 SC 1667 (1673) (Pt C) (Pr 10).**

●——**Art. 246** — Minimum Wages Act (1948), Ss. 5, 2 (h), 20 and 21 — Notification under S. 5— Bombay Government Notification No. MWA 1557 J dated 11th June, 1958 — Bidi industry — Notification fixing revised minimum rates of wages of workers and also laying down manner in which employer should pay for discarded bidis — Validity — Powers of Industrial Tribunal under Industrial Disputes Act and powers of State Government under Minimum Wages Act — Distinction — Power of State Government to prescribe minimum rates of wages or to revise them does not include power to vary other terms of contract — Doctrine of implied power cannot be invoked. See Minimum Wages Act (1948), S. 5. **AIR 1962 SC 486.**

●——**Art. 246, Sch. 7, List 2 Entries 18, 19 and 49** — Relative scope—'Forests' —State Legislature cannot impose tax on forests in absence of express power — Land in entry 49 includes land on which forest stands — Taxation on land on which forest stands is permissible and legal under entry 49 — Entry 49 and entry 18 deal with entirely different subjects — Per A. K. Sarkar, J. Kunnathat Thathuni Moopil Nair v. State of Kerala. **(1961) 2 SCJ 269 : (1961) 2 SCA 125 : 1961 Ker LT (SC) 11 : 1961 Ker LJ 143 : (1961) 3 SCR 77 : AIR 1961 SC 552 (564) (Pt C) (Pr 35).**

●——**Art. 246** — Powers of State Legislature to legislate — Extent of, See Ibid, Art. 31-A **AIR 1955 SC 540.**

●——**Art. 246** — Preventive detention — Power of Parliament to enact law, See Ibid, Art. 22. **51 Cri LJ 1383 : AIR 1950 SC 27.**

●——**Art. 246** — Scope of the power of legislation. See Tenancy Laws — U. P. Zamindari and Land Reforms Act (1 of 1951). **AIR 1951 All 674 (FB).**

——**Arts. 246, 265, 245, 248 Schedule 7** — 'Fees' and 'Tax' — Legislative competence — Residuary power with regard to taxation is in Union — Levy of tax as ancillary or incidental to subjects specified in the Lists in Sch. 7. See Ibid, Art. 265. **AIR 1959 Andh Pra 398 (DB).**

——**Arts. 246, 245** — Legislation — Meaning of— Power of Legislature to adopt and extend measures enacted by another Legislature — (Andhra State Act (30 of 1953), Ss. 53, 54) — (States Reorganisation Act (1956), Ss. 119, 120). See Sales Tax — Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment Act) (5 of 1958). **AIR 1959 Andh Pra 237.**

●——**Art. 246 (3) and Sch. 7, List 2, Entry 45— Legislature functioning within its sphere — No fetters on its legislative powers.**

Per Sarjoo Prosad, C. J.: The Legislature of the State if otherwise competent to do so, has power to impose land revenue on the estates. This imposition does not amount to any derogation from the grants, because the executive Government of the country cannot by its administrative acts impose any fetters on the legislative powers of the State.

Per Ram Labhaya, J.: No grant whether with or without consideration can affect the legislative power of the State, nor can any legislative Act bind the same or the succeeding Legislatures. (1931) 1 Ch 169 (187). Rel. on. Girijananda v. State of Assam. **AIR 1956 Assam 33 (38, 47) (Pt E) (Prs. 10, 46) (SB).**

——**Art. 246** — Regulation of mines and mineral development — Powers of Union and State — Scope of — Power of taxation. See Ibid, Sch. 7, List 1, Entry 54. **AIR 1959 Cal 222 (DB).**

●——**Art. 246** — Law in respect of prerogative — Duly constituted Legislative authority can make laws affecting prerogative — Per Ansari J. Ahmad-U-Nisa Begum v. State. **('52) ILR (1952) Hyd 595: AIR 1952 Hyd 163 (167) (Pt B) (Pr 10) (FB).**

●——**Arts. 246, 154, 238** — Under Art. 154, the executive powers of the States are vested in the Governors and Art. 162 extends them to all matters with respect to which the legislatures of the States have powers to make laws. These according to Cls. (2) and (3) of Art. 246 are those which are enumerated in Lists 2 and 3 of Sch. 7.

Per Ansari and Reddy JJ.: Where a Statute empowers doing of certain things, which might before have been done by virtue of prerogative,

the latter is abrogated so long as the statute is operative. Ahmad-Un-Nissa v. State, **ILR (1952) Hyd 595: AIR 1952 Hyd 163 (168, 184) (Pt C) (Prs 14, 74) (FB).**

●——**Art. 246** — Scope — Membership of Legislative Assembly — Reservation of seats for scheduled castes — Restriction on membership by addition of Proviso to S. 22, Jammu and Kashmir Representation of the People Act, 1957 — Right to stand as a candidate for election to Legislative Assembly from a constituency other than that of voter is creation of Statute and it is open to Legislature to impose reasonable restriction on those rights—No violation of fundamental right. See Constitution of Jammu and Kashmir, S. 51. **AIR 1957 J and K 40 (FB).**

●——**Art. 246** — Taxing law — Extent of operation of State Legislature. See Ibid, Art. 245. **AIR 1959 Ker 182 (FB).**

——**Arts. 246 (4), 286** — Article does not mean that the powers of Part C States legislatures are left unobstructed. Merely from the fact that Parliament possessed legislative power over Part C. States and that Art. 286 did not impose any limitation on the legislative power of Parliament it does not follow that the power of a Part C State's Legislature should be held to be untrammelled. **1964 MPLJ 836: (1964) 15 STC 841: 1965 Jab LJ 85: AIR 1965 Madh Pra 11 (15) (Pt C) (Pr 11) (DB).**

——**Art. 246 (2) and (3)** — Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962), S. 3—Madhya Pradesh Agricultural Produce Markets (Validation) Ordinance (2 of 1962) — Both enactments purporting to validate executive action taken under statutes are not incompetent — Legislature has plenary powers to make laws regarding matters covered by entry in legislative list of Constitution — Such validation is ancillary to legislative power. See Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962), S. 3. **AIR 1965 Madh Pra 6 (DB).**

——**Art. 246 (2) and (3)** — Madhya Pradesh Agricultural Produce Markets (Validation) Act (12 of 1962), S. 3—Madhya Pradesh Agricultural Produce Markets (Validation) Ordinance, 1962 (2 of 1962) — Section 3 is sufficient to validate past acts or things done — Not essential to amend impugned statute — Legislature has plenary powers to make laws regarding matters covered by entry in legislation of Constitution — Both enactments purporting to validate execution action taken under statute are not incompetent. See Madhya Pradesh Agricultural Produce Markets (Validation) Act (12 of 1962), S. 3. **AIR 1965 Madh Pra 6 (DB).**

——**Art. 246** — Taxing Law — Power of Legislature to pass validating Act. See Madhya Bharat Taxes on Income (Validation) Act (1954). **AIR 1959 Madh Pra 195 (DB).**

——**Art. 246 and Sch. 7, List 3, Entries 10 and 28 — Power of State Legislature to legislate with regard to religious institutions treating them as public trust.**

No doubt, two or more entries can provide the power to make laws on a topic not included in any single entry, but the limit of each entry is fixed by the words used. Even if the widest meaning be put upon entry No. 10, it cannot be gainsaid that the existence of a trust alone gives the power to legislate upon trusts. Religious institutions may be controlled in ways other than by making them into trusts when they are not. If the argument be carried to its logical extreme, then incompatible entries like trade unions or electrical undertakings could be used with entry No. 10 to designate and include in the definitions of 'trust' trade unions and electrical undertakings. **ILR (1957) Madh Pra 599: 1958 MPLJ 611: 1958 MPC 586: 1958 Jab LJ 713: AIR 1958 Madh Pra 362 (365) (Pt C) (Pr 16) (DB).**

——**Arts. 246 (3), 277 and 266—Power of State Legislature — (Madras Commercial Crops Markets Act (20 of 1933) (as amended by Madras Act 33 of 1955), Ss. 11 (1) and S. 13).**

Even before the commencement of the Constitution of India, the Provincial Legislature had under the provisions of the Government of India Act and after the commencement of the Constitution under Arts. 246 (3) read with Art. 277, has power to enact measures to enable a local authority to raise funds by taxation. The levy of taxes under S. 11 (1) for the purpose mentioned in S. 13 of the Madras Commercial Crops Markets Act is a local tax within the competence of the State Legislature. Being a local tax it will not form part of the Consolidated Fund of the State envisaged in Art. 266 of the Constitution, the reason being that under the Statute itself the funds collected have been allocated to the local authority. **(1960) 1 Mad LJ 298: 72 Mad LW 752: 1960 Mad WN 734: ILR (1960) Mad 171: AIR 1960 Mad 160 (164, 165) (Pt D) (Prs 12, 13).**

——**Art. 246** — Banking Companies Act, 1949, S. 45-B — Validity — Extension of territorial limits of original civil jurisdiction of High Court — It is within plenary powers of Parliament under Art. 246 read with items 43 and 95 of list 1 of Sch. 7. See Banking Companies Act (1949), S. 45-B. **AIR 1958 Mad 279.**

——**Art. 246** — Scope — Sale in course of inter-State trade — Power of Parliament to directly enact legislation. See Art. 286 (2). **AIR 1957 Mad 368 (DB).**

——**Art. 246** — Powers of Legislatures are not unrestricted. See Government of India Act, (1935), Ss. 99 and 100. **AIR 1956 Mad 642 (DB).**

——**Art. 246** — Powers of State Legislature to enact laws — Extent of. See Ibid, Art. 245. **AIR 1952 Mad 613 (DB).**

——**Arts. 246, 245 and 14** — Extent of legislative powers — Right to except from operation of law particular class of persons — Classification must be reasonable — Equality between persons—Interpretation of — Mysore House Rent and Accommodation Control Act (30 of 1951), S. 20 is not unconstitutional. See Ibid, Art. 14. **(1963) 1 Mys LJ 444.**

——**Art. 246 — Scope of power to legislate.**

The power to legislate on any topic includes all necessary and incidental powers to make the legislation effective and prevent its frustration. **ILR (1956) Nag 157: AIR 1956 Nag 1 (5) (Pt B) (Pr 28) (DB).**

——**Art. 246** — Power of State Legislature to impose limitation on right of appeal. See Ibid, Art. 245. **AIR 1955 Nag 99 (DB).**

●——**Art. 246 — State Legislature — Whether acts as agent of Parliament — Delegatus non potest delegare — Applicability of.**

Per Special Bench — The maxim delegatus non potest delegare has no application to sovereign legislative bodies under the written Constitution. Within the limits of their jurisdiction the State Legislatures have plenary powers. The conferment of the power on the State Legislatures to make laws for the State and for State purposes in relation to matters enumerated in the lists of

the seventh schedule is not in any sense to be exercised by delegation from or as agents of the Parliament. Within these limits of subjects and area the State Legislatures are supreme and have the same authority as the Parliament: 9 App Cas 117; 5 Ind App 178, Rel. on.

The Bihar Land Reforms Act (30 of 1950), though it leaves by its provisions contained in S. 32 (2) read with S. 43 (1) (p) a fairly wide discretionary power to the State Govt. in the matter of form and manner of compensation, settles the legislative policy, lays down the limits of the discretion but confides to the State Govt. certain powers to carry out the details of the objects of the enactment. The Act is not, therefore, invalid on the ground of delegated legislation. Maharajadhiraj Sir Kameshwar Singh v. State of Bihar, **ILR 30 Pat 454: AIR 1951 Pat 91 (100, 113, 128, 129) (Pt P) (Prs 13, 59, 112, 113) (SB).**

●——**Art. 246—Affirmative or negative power of Legislature to legislate.**

Per Das J.— The power of the Legislature to legislate on a subject, particularly in a written, federal Constitution where there must be a nice balance of jurisdiction, can be looked at from two points of view — affirmative and negative. The conferment of the power is the affirmative aspect; a restraint or restriction on the exercise of the power is the negative aspect. The limitation on the power of legislation may arise by reason of restrictions imposed within the entry which confer the powers; and when the question of exceeding such a restriction arises, it is relevant to consider the true nature and character of the legislation. Maharajadhiraj Sir Kameshwar Singh v. State of Bihar, **ILR 30 Pat 454: AIR 1951 Pat 91 (117, 118) (Pt Q) (Pr 74) (SB).**

——**Arts. 246, 245 — Legislative competence of Parliament — There cannot be any question of conflict between several entries — Rajasthan Gram and Barley (Regulations of Distribution) Order 1964 is issued by State Government as delegate of Central Government — Order falls under Section 3 (2) (d) of Essential Commodities Act — Order is within ambit of authority delegated to State Government.**

When there is a conflict between two provisions in two Legislative Lists, the problem of interpretation really arises as the Courts have to define the boundaries of different legislatures and for dealing with such a problem doctrine of pith and substance has been evolved. But these considerations do not arise where one has to deal with the question of legislative competence of the Parliament. The various entries which empower the Parliament to legislate are in that situation taken to be supplementary to each other. In such a case there is really no conflict between the several entries. Therefore, even if it were held that the Essential Commodities Act was primarily an Act passed under Entry 33 of the concurrent list it cannot be argued that its provisions cannot affect inter-State trade, if in reality they do affect it. It is not necessary for a competent legislature to indicate as to under what legislative entry it is making the law but it is for the Courts to look at the subject-matter and then reach the conclusion whether it is in the legislative field assigned to that legislature.

Powers under Cls. (a), (b), (d), (e), (f), (h) and (j) of sub-section (2) of S. 3 of the Essential Commodities Act have been delegated to the State Government but the powers under Cls. (c) and (g) thereof have not been delegated. Section 3 (1) of the Essential Commodities Act confers the powers on the Central Government. By virtue of S. 5 of the Act the Central Government is authorised to delegate its powers to State Govt. When the State Government is thus acting as a delegate of the Central Government, specially when such delegation has been permitted by the law made by Parliament itself, the Court cannot predicate that the State Government has, in any manner, acted in its own legislative field or executive sphere of its own as State Government in issuing the Rajasthan Gram and Barley (Regulation of Distribution) Order 1964. Therefore, the Order cannot be judged as a State made law or as an executive act of itself. Moreover the preamble of the Order clearly shows that it was issued with the concurrence of the Central Government. In that situation the action of the State Government in issuing the Order with the concurrence of the Central Government was to all intents and purposes the action of the Central Government. The Order has been made for the purpose of maintaining available supplies of gram and barley. It could thus appropriately fall under Cl. (d) of Section 3 (2) of the Essential Commodities Act as it was obviously made with the purpose of conserving supplies of the essential commodities within Rajasthan so that they could be available for distribution in Rajasthan. It was just incidental that some kind of restrictions resulted on the export of commodities outside Rajasthan. In making the Order with the concurrence of the Central Government, the State Government has acted within the ambit of authority delegated to it. AIR 1951 SC 318, Disting. AIR 1939 FC 1, Rel. on. **1965 Raj LW 498: ILR (1965) 15 Raj 684: AIR 1966 Raj 105 (108, 109, 110) (Pt A) (Prs 11, 12, 13, 15) (DB).**

——**Art. 246** — Enforcement of Police Act in Rajasthan after coming in force of the Constitution — Validity — Police Act held validly enforced in Rajasthan. See Ibid, Art. 372 (1). **AIR 1957 Raj 28 (DB).**

10 (a). Legislative entries denote fields of legislation and not powers of legislation.

——**Art. 246 — Entries in Lists in Seventh Schedule — Scope of.**

The various entries in the Lists I to III are not powers of legislation but fields of legislation. Where one entry is made subject to another entry, all that it means is that out of the scope of the former entry a field of legislation covered by the latter entry has been reserved to be specially dealt with by the appropriate legislature. **1952 All LJ 52: AIR 1952 All 88 (89) (Pt C) (Pr 4) (DB).**

●——**Art. 246, Sch. 7 — Entries in lists do not lay down conditions subject to which power is to be exercised.**

The entries in the three lists define the fields for legislative action, or in other words the subjects in respect to which the appropriate legislature can legislate. They do not prescribe the conditions subject to which the power is to be exercised.

Although the subjects dealt with in three legislative lists are not always set out with scientific precision, and instances will be found of overlapping, it is clear that a legislature empowered to legislate, on a subject included within particular list, will sustain its power whether it is derived from one entry or from more than one entry. Raja Surya Palsingh v. U. P. Government, **ILR (1952) 2 All 46: 1951 All LJ 365: 1951 RD (HC) 122: 1951 AWR (HC) 317: AIR 1951 All 674 (678, 679) (Pt B) (Prs 9, 16) (FB).**

10 (b). Power to legislate retrospectively.

●——**Art. 246 and Sch. VII, List 2—Power conferred on Legislature can be exercised both prospectively and retrospectively.**

The legislative power conferred on the appropriate Legislatures to enact law in respect of topics covered by the several entries in the three Lists can be exercised both prospectively and retrospectively. Where the Legislature can make a valid law, it may provide not only for prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions. Rai Ramkrishna v. State of Bihar. **(1964) 1 SCA 413: ILR 42 Pat 796: (1964) 1 SCR 897: (1964) 2 SCJ 749: (1963) 50 ITR 171: AIR 1963 SC 1667 (1673) (Pt B) (Pr 10).**

■——**Art. 246** — Competency of Legislature — Retrospective Laws — Action taken under law which is void because of its contravention of fundamental rights — Legislature can pass law retrospectively validating such action. See Ibid, Art. 245. **AIR 1962 SC 1753.**

——**Art. 246** — Retrospective levy of tax. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 3 (as amended in 1955). **AIR 1958 Andh Pra 538 (DB).**

——**Art. 246 — Power to legislate retrospectively.**

Within the frame-work of Art. 246 of the Constitution, the Central and State Legislatures have respectively exclusive powers to make laws with respect to any matters enumerated in Lists I, II and III in the Seventh Schedule. In the plenitude of that power, subject of course to certain constitutional limitations, the Parliament or State Legislature would be within the ambit of their competence if they deem fit to legislate retrospectively. **ILR (1956) Hyd 58: AIR 1956 Hyd 35 (38) (Pt D) (Pr 16) (DB).**

——**Art. 246** — Power of Parliament to pass retrospective legislation for Madhya Bharat — General Clauses Act (1897), S. 6. See Ibid, Art. 20. **AIR 1952 Madh Bha 181 (DB).**

——Art. 246 — Power of Parliament to legislate retrospectively. See Ibid, Art. 245. **AIR 1957 Mad 368 (DB).**

10 (c). Legislative competence of Parliament.

●——**Art. 246** — Validity of Ss. 2 (6-A) (e) and 12 (1-B) of Income-tax Act (1922) — Provision is within legislative competence of Parliament. See Income-tax Act (1922), S. 2 (6-A) (e). **AIR 1965 SC 1375.**

●——**Art. 246 — Scope — Sch. 7, List 3; Entries 21 and 35 — Motor Vehicles Act (1939), (as amended by Act C of 1956), Chap. IV-A — If ultra vires.**

Chapter IV-A, Motor Vehicles Act, could competently be enacted by the Parliament under Entry 21 read with Entry 35 of the Concurrent List of the Constitution. Its provisions, therefore, are not ultra vires the powers of Parliament. AIR 1960 SC 1073, Foll. J. Y. Kondala Rao v. Andhra Pradesh State Road Transport Corporation. **(1963) 1 Mad LJ (SC) 111: 1963 1 Andh WR (HC) 111: 1963 Mad LJ (Cri) 226: (1963) 1 SCJ 539: (1961) 1 SCR 642: AIR 1961 SC 82 (86) (Pt A) (Prs 6, 7).**

●——**Art. 246** — Scope — Central Excises and Salt Act — Validity — Act is within legislative competence of Central Legislature under List 1, Item 45, Government of India Act, 1935 — Incidental encroachment on item 27 or 29 of List II does not affect its validity. See Central Excises and Salt Act (1944), S. 6. **AIR 1960 SC 424.**

——**Art. 246** — Finance Act (1951), S. 7 — Competency of Parliament to enact — As the tax imposed by S. 7 of the Finance Act (1951) was admittedly not a tax mentioned in List II or III of the Constitution, the power of Parliament to impose it could be challenged successfully only on the ground that it was incompetent to do so but it could be difficult to substantiate the claim in view of the clear terms of Item 97 of List 1 of the Constitution. See Finance Act (1951), Section 7. **AIR 1957 All 84.**

——**Art. 246, Sch. 7, List I, Entries 82, 86, List 2 Entry 46 — Scope of — Tax on income and tax on net wealth — Distinction — Tax on net wealth, part of which springs from agricultural income — Imposition by Parliament — Constitutionality — Parliament whether commits trespass on field covered by List 2, Entry 46 — Wealth Tax Act (1957), Ss. 2 (m) and 3 — Constitutional validity.**

A tax on income of a person may be deemed to be a levy on his receipts during a specified period, very often after making due allowance for expenses incurred by him. The agricultural income of a person is that which is received by him by way of rent or revenue in respect of land used for agricultural purposes or that which is derived by him from such land as a result of agricultural operations or both and may be in cash or in kind.

A tax on agricultural income would fall within Entry 46 in the State List, while a tax on other categories of income would fall within Entry 82 in the Union List. A tax on income is on that which is received; a tax on net wealth is on that which accumulates. At a given point of time, a tax on net wealth may fall in part on what was originally received and had accumulated and it may fall on the same person as the tax on income does; but the two are different. The prohibition in Art. 246 of the Constitution, is against a trespass by one legislature on a field reserved for another. The issue of trespass has to be adjudged on the doctrine of pith and substance of the impugned tax.

Applying it to the Wealth Tax Act, 1957, there is no doubt that Parliament had committed no trespass whatever on the State field of legislation in imposing a tax on net wealth, part of which may have sprung from agricultural income. This applies not only to agricultural produce like paddy stored by the assessee in their granary, but also to arrears of rent which had accrued due from their tenants. AIR 1932 PC 138, Rel. on. **ILR (1961) 2 Ker 368: 1961 Ker LJ 1046: 1961 Ker LT 905: (1962) 13 STC 277: AIR 1962 Ker 110 (115) (Pt B) (Pr 9) (DB).**

——**Art. 246** — Scope of — Animals and Birds in captivity — Sale of — Levy of tax — Competence of Parliament. See Sales Tax — Central Sales Tax Act (1956), S. 2 (d). **AIR 1960 Ker 360.**

——**Art. 246** — Sales Tax Law Validation Act (1956) — Validity — Parliament held did not transgress its powers under Art. 286 (2). See Sales Tax — Sales Tax Law Validation Act (1956), Section 2. **AIR 1957 Mad 368 (DB).**

——**Art. 246 and Sch. 7, List 3, Entry 2 — Amendment of Criminal Procedure Code — (Representation of the People Act (1951), Section 138).**

It is open to the Parliament to amend the Criminal Procedure Code, though the State also may introduce its own special amendment. For an amendment of the Criminal Procedure Code it is not necessary that an Act as such to amend the

Criminal Procedure Code must be introduced. It may be introduced in any of the Acts of Parliament by introducing a suitable provision in that Act. Since the Parliament has power to amend the Criminal Procedure Code and has power to introduce a provision like Section 138 of Act 43 of 1951, that section has all the force of amending the Cr. P. Code in respect of all offences which fall within the Indian Penal Code. The amendment introduced by Section 138, Representation of the People Act is quite valid. **(1954) 1 Mad LJ 653: 1954 Mad WN 253: 1954 Cri LJ 1126: AIR 1954 Mad 704 (705) (Pt B) (Pr 2).**

——Art. 246, Sch. 7, List 1, Entry 86 and List 2, Entry 49 — 'Assets' in Entry 86 includes land as well — Wealth Tax Act (1957), Section 1 — Act is within legislative competence of Parliament under List 1, Entry 86.

The Wealth-Tax Act is within the legislative competence of the Parliament under Sch. 7, List 1, Entry 86 of the Constitution of India. The word 'assets' in that entry includes land as well and therefore, land other than agricultural land comes within the scope of that entry. Entries in the seventh Schedule being topics of legislation will have to be given the widest possible connotation. AIR 1962 Mys 269, Dist. **1963 Mys LJ (Sup) 365 : (1963) 48 ITR 472 : AIR 1963 Mys 111 (111, 112) (Pt A) (Pr 2) (DB).**

10 (d). Legislative competence of State Legislature.

●——**Art. 246** — Bihar Sales Tax Act (XIX of 1947), Sections 4 (1) and (2) (g) second Proviso as amended by Act (6 of 1949) — Validity of — Provisions held well within legislative competence of the legislature of province of Bihar. See Sales-Tax — Bihar Sales Tax Act (19 of 1947), S. 4 (1). **AIR 1958 SC 452.**

●——**Art. 246, Sch. 7, List 1, Item 52, List 2, Items 24 and 27 and List 3, Item 33 — Scope— 'Industry' — Meaning — U. P. Sugarcane (Regulation of Supply and Purchase) Act (24 of 1953) — If intra vires — (Words and Phrases — 'Industry').**

Production, supply and distribution was within the exclusive sphere of the State Legislature, subject to Entry 33 of List 3. The amendment of Entry 33 of List 3 by the Constitution (Third Amendment) Act, 1954, only enlarged the scope of that Entry without in any manner whatever detracting from the legislative competence of Parliament and the State Legislatures to legislate in regard to the same. It was only after this amendment of Entry 33 of List 3 by the Constitution (Third Amendment) Act, 1954, that foodstuffs including edible oilseeds and oils came to be included within that List and it was possible to legislate in regard to sugarcane, having recourse to Entry 33 of List 3. Save for that sugarcane, being goods, fell directly within Entry 27 of List 2 and was within the exclusive jurisdiction of the State Legislatures. Production, supply and distribution of sugarcane being thus within the exclusive sphere of the State Legislatures, the U. P. State Legislature would be competent to legislate in regard to the same and the impugned Act would be intra vires the State Legislature.

The raw materials would be goods which would be comprised in Entry 27 of List 2. The process of manufacture or production would be comprised in Entry 24 of List 2 except where the industry was a controlled industry when it would fall within Entry 52 of List 1 and the products of the industry would also be comprised in Entry 27 of List 2 except where they were the products of the controlled industries when they would fall within Entry 33 of List 3. This being the position, it cannot be said that the legislation which was enacted by the Centre in regard to sugar and sugarcane could fall within Entry 52 of List 1.

A comparison of the terms of U. P. Sugar Factories Control Act (1 of 1938) with those of the U. P. Sugarcane (Regulation of Supply and Purchase) Act, goes to show that the impugned Act merely confined itself to the regulation of the supply and purchase of sugarcane required for use in sugar factories. There was no question whatever of its trenching upon the jurisdiction of the Centre in regard to sugar industry which was a controlled industry within Entry 52 of List 1 and the U. P. Legislature had jurisdiction to enact the law with regard to sugarcane and had legislative competence to enact the U. P. Sugarcane (Regulation of Supply and Purchase) Act. Tika Ramiji v. State of Uttar Pradesh. **1956 SCJ 625: 1956 SCA 979: 1956 All WR (HC) 657: 1956 SCR 393: AIR 1956 SC 676 (690, 691, 695, 696, 697) (Pt A) (Prs 18, 24, 25).**

●——**Arts. 246, 32, 245**—Orissa Hindu Religious Endowments Act (2 of 1952 as amended in 1954), S. 79-A — Validity — Such a provision is within competence of legislature — Section 79-A is not open to challenge on ground of legislative incompetence —(Orissa Hindu Religious Endowments Act (2 of 1952 as amended in 1954), S. 79-A). See Ibid, Arts. 226 and 32. **AIR 1956 SC 432.**

●——**Arts 246 (3), 146 (3), 229 (3) and 265; Sch. 7, List 1, Items 77 and 96: List 2, Entries 3 and 66; List 3, Entry 47 — Court-fees Act (1870), Section 4 and Sch 2: Art. 1, Cl. (e) (U. P. Amendment) — Court-fee imposed by — Tax or fee.**

Per Full Bench:— The provisions of S. 4 and Sch. 2, Art. 1 (e), Court-fees Act as amended by the Court-fees (U. P. Amendment) Act (10 of 1959) are within the legislative competence of the State Legislature and are valid.

Per Mootham, C. J. :— The levy imposed by the impugned provisions on writ petitions under Art. 226 is a fee and not a tax and comes within the purview of Entry 3 of List 2 in Sch. 7 and is within the legislative competence of the State Legislature by virtue of Art. 246 (3).

The distinction between a fee and a tax drawn by Supreme Court is summarised in AIR 1954 SC 282, AIR 1954 SC 388 and AIR 1954 SC 400. But the definition of fee to be found in the Supreme Court cases is not intended to be exhaustive. The provisions of Art. 146 (3) and Art. 229 (3) show that there exists another class of imposition, also called a fee in the Constitution, which differs from the type of fee which the Supreme Court had under consideration. Though the fees realised under the Court Fees Act are not appropriated for any specific purpose but form part of the general revenues of the State it would fall within the expression 'fee' in the Constitution. Khacheru Singh v. S. D. O., Khurja. **ILR (1960) 1 All 429 : 1960 All LJ 170: 1960 All WR (HC) 137: AIR 1960 All 462 (463 to 466) (Pt B) (Prs 5, 10, 11, 12, 21, 26) (FB).**

●——**Arts. 246 and 245, Sch. 7, List 2, Entry 49 — U. P. Large Land Holdings Tax Act (XXXI of 1957), Ss. 3 (1) Proviso and 5 — Tax is on holding and not on annual value — Act comes under List 2, Entry 49.**

Looking to the whole of the Act the tax under the Act is clearly a tax on the holding and not

on the annual value or the capitalised value of the land and the annual value is only the measure of the tax. Even if it be assumed that the annual value is the capitalised value of land, the capitalised value is only the basis and not the object of taxation. The State legislature was fully competent to have passed the impugned Act because of Entry No. 49 of the State List. Oudh Sugar Mills, Ltd. v. State of U. P., **ILR (1960) 1 All 487: 1959 All LJ 754: 1959 All WR (HC) 544 (2): AIR 1960 All 136 (143, 144, 145, 146) (Pt C) (Prs 16, 26, 29) (FB).**

——**Art. 246 — Adopting law made by another Legislature.**

A State Legislature has power to make laws with respect to only those matters that are exhaustively enumerated in Lists 2 and 3 and has no power whatsoever to make laws with respect to any matter that cannot be found in them. A State Legislature has no residuary powers at all. Adoping a law made by another Legislature is not a matter to be found in Lists 2 and 3. Therefore, no law made by a State Legislature can be justified on the ground that though it is not with respect to any of the matters dealt with in Lists 2 and 3, it is simply adopting a law validly made by another Legislature.

If a Legislature cannot do anything directly, it cannot do it indirectly; if a State Legislature cannot directly enact a law with respect to a certain matter, it cannot do so indirectly by simply adopting a law made with respect to it by another Legislature. **ILR (1954) 2 All 191: 1954 All LJ 477: 1954 All WR (HC) 529: 1954 Cri LJ 1485: AIR 1954 All 728 (733, 734) (Pt E) (Pr 20) (DB).**

[**Overruled** on another point in AIR 1955 All 269.]

●——**Arts. 246, 245**—Property held under Crown grant in U. P. — Legislation for acquisition — U. P. Legislature has exclusive jurisdiction for enacting legislation for its acquisition for public purpose — Section 3, Crown Grants Act, 1895, does not impose restrictions on the powers of Provincial Legislature. 73 IA 123, Rel. on. Surya Palsingh v. U. P. Government, **1951 ALJ 365: 1951 RD (HC) 122: 1951 All WR HC 317: ILR (1952) 2 All 46: AIR 1951 All 674 (692) (Pt T) (Prs 96, 97) (FB).**

——**Arts. 246 (3), 225, 226, Sch. 7, List 2, Entry 3** — High Court prescribing court-fee for proceedings before it in original jurisdiction — Powers of State legislature in this respect — Court-fee on writ petitions. See Ibid, Art. 225. **AIR 1957 Andh Pra 123 (DB).**

——**Arts. 246, 245** — Legislative competence. See Tenancy Laws — Assam Fixation of Ceiling on Land Holdings Act (1 of 1957). **AIR 1959 Assam 147 (DB).**

——**Arts. 246 and 265 and Sch. 7, List 2, Entries 59, 66 and 28 — Markets — Legislation on tolls and fees — Validity of Section 140, Assam Municipal Act — (Municipalities — Assam Municipal Act (1 of 1923), S. 140).**

Entry No. 28 of List 2 Seventh Schedule of the Constitution gives power to the State Legislature to legislate on markets while Entries Nos. 59 and 66 of that list give power to legislate on tolls and fees respectively. Hence it cannot be said that there is no legislative competence to enact Section 140 of the Assam Municipal Act.

Section 140 of the Assam Municipal Act itself gives power to the Board to charge rents, tolls and fees for the right to expose goods for sale in the shops, stalls and standings therein. The Board when it gives the use of the stalls and shops, and further permits the shop-keepers to exercise rights to expose their goods for sale in the municipal market and in consideration therefor charges fees and utilises the same for maintenance it is not levying a tax on the shop-keepers. It is not necessary for it to show that every pie it realised as a fee is spent for the maintenance of the market to show that only a fee is collected. **AIR 1958 Assam 156 (158, 159) (Pt B) (Prs 5, 6) (DB).**

——**Arts. 246 (3), 372 (1) and 266 and Sch. 7, List 2, Entry 3**— Court-fees Act (1870), S. 6 — Government of India Act (1935), Ss. 292 and 100 (3) and Sch. 7, List 2, Item 1 — Effect of constitutional provisions is that Court-fees Act though originally a Central Act, is now Act of State Legislature — State Legislature alone has exclusive power to legislate in respect of court-fees payable in that particular State. See Court Fees Act (1870), S. 6. **AIR 1960 Bom 96.**

——**Art. 246** — C. P. and Berar Sales Tax Act (21 of 1947), S. 2 (g) — Sale of goods — Building contracts — No sale of materials to owner — Competency of State legislature — Contractor not liable to pay tax — (Sale of Goods Act (1930), S. 4). See Sales Tax—C. P. and Berar Sales Tax Act (21 of 1947), S. 2 (g). **AIR 1959 Bom 236.**

——**Art. 246 (3) and Sch. 7, List 2, Entry 18 — 'Land' — Bombay Tenancy and Agricultural Lands (Amendment) Act (13 of 1956) — If ultra vires.**

Under Art. 246 (3) of the Constitution read with List II of the Seventh Schedule, the State Legislature has the power under Entry No. 18 to legislate in the matter of land "that is to say, rights in or over land — including the relation of landlord and tenant". Legislation in connection with land tenures including the relation of landlord and tenant or in connection with transfer and alienation of agricultural land may be enacted by the State Legislatures and that power must encompass legislation to restrict or even extinguish subsisting rights in land.

Hence, the contention that the State Legislature had no power to enact legislation providing for statutory purchase of land by tenants in occupation of lands belonging to the landlords cannot be accepted. AIR 1947 PC 72, Rel. on. **59 Bom LR 616: AIR 1957 Bom 252 (259, 260) (Pt B) (Prs 16, 17) (DB).**

[**Overruled** on another point in AIR 1959 SC 459.]

——**Art. 246 — Government of India Act (1935), Sch. 7, List 2, Item 31 — Bombay Prohibition Act (25 of 1949), S. 1 —Bombay Prohibition Act is competently legislated in respect of medicinal preparations.**

As the word 'liquor' in entry 31 in List 2 of Sch. 7, Government of India Act included medicinal preparations containing alcohol the Bombay Legislature had legislative competence to legislate in respect of medicinal preparations containing alcohol. **AIR 1956 Bom 304 (308, 309) (Pt A) (Pr 8).**

●——**Art. 246 — Power of Bihar Legislature to amend Bengal Settled Estates Act, 1904.**

The Bengal Settled Estates Act applies by its own force to the State of Bihar because sub-s. (2) of S. 1 of that Act provides that it extends to the State of West Bengal and Bihar and to that part of the State of Orissa which on the 9th day of March, 1904, was included in Bengal. The

Bihar Legislaure is accordingly competent to modify or amend such portions of the Bengal Settled Estates Act as it thinks fit. The Bihar Land Reforms Act is within the legislative competence of the Bihar Legislature because the subject dealt with, is within the State List of the Constitution of India. Consequently the sovereign Legislature in exercise of its plenary power can amend a pre-existing law on the same subject. Maharaja Probirendra Mohun Tagore v. State of Bihar. **ILR (1960) 2 Cal 556 : AIR 1959 Cal 767 (771, 772) (Pt C) (Pr 12) (SB).**

■ ——**Arts. 246 and Sch. 7, List 2, Entry 18 —** Bengal Settled Estates Act, Ss. 10 and 29 — Interest of life tenant under — Bengal Act is not indivisible unit —Bihar Legislature has plenary power to legislate with regard to land in Bihar— Validity of Bihar Land Reforms Act cannot be challenged— (Tenancy Laws — Bihar Land Reforms Act (Bihar Act 30 of 1950), S. 1)). See Bengal Settled Estates Act (Bengal Act 3 of 1904), S. 10. **AIR 1959 Cal 767 (SB).**

——**Arts. 246 (3) and 366 (1) and Sch. 7, List 2, Entry 46 — Legislation on matter of taxation in respect of agricultural income — Exclusive right of State — S. 7 (1), Bengal Agricultural Income-tax Act — Constitutional validity — (Bengal Agricultural Income-tax Act (IV of 1944), Ss. 7, 2 (14) and (16) and 4).**

That State Legislature has the exclusive right to legislate on the matter of taxation in respect of agricultural income. But, since the words 'agricultural income' are defined in Art. 366 (1), the State Legislature cannot, of its own motion, extend the meaning of agricultural income, thereby extending its own jurisdiction.

For the purpose of computing the agricultural income of an assessee under the Bengal Agricultural Income-tax Act what is to be considered is receipt actual or constructive. The income of the assessee is the income in respect of the produce of the whole land irrespective of what is taken by the bargadar as his share. Since the receipt of the bargadar is to be computed as receipt by the owner of income, S. 7 (1) cannot be held to be unconstitutional, because in that event it cannot be established that the Agricultural Income-tax Act by proviso to S. 7 (1) or by any other provision increases the jurisdiction of the Legislature which it does not possess. **AIR 1958 Cal 585 (586, 591, 592, 593) (Pt B) (Prs 3, 12, 16).**

——**Art. 246, Sch. 7, List 1, entries 77, 78, 95, List II, Item 365 — Calcutta City Civil Court Act (31 of 1953) — Validity of.**

While 'jurisdiction and powers' of the Supreme Court have been expressly included in Entry 77 of List I, these words have been deliberately left out in Entry 78 of the same List, in respect of the High Courts. The omission is not supplied by Entry 95 because that Entry only enables jurisdiction and powers to be given in respect of the matters enumerated in List 1. The State Legislature being the appropriate body to legislate in respect of administration of justice, and to invest all Courts within the State including the High Court with general jurisdiction and powers in all matters civil and criminal, it must follow that it can invest a High Court with such general jurisdiction and powers (including territorial and pecuniary jurisdiction) and also take away such jurisdiction and powers from the High Court. So far as the Calcutta City Civil Court is concerned, Act 21 of 1953 is not ultra vires the powers of the State Legislature. **61 Cal WN 630 : ILR (1958) 1 Cal 576 : AIR 1957 Cal 534 (543, 544) (Pt B) (Prs 24, 25).**

——**Art. 246 — Scope of provincial orders.**

West Bengal Food Stuffs Anti-Hoarding Order 1951, Notification No. 2817 D. C. S., dated 27-2-1946, under the Bengal Rationing Order, 1943, Notification No. 2818 D. C. S., dated 27-2-1946, and West Bengal Food Grains (Movement Control) Order, 1951, were within the scope and ambit of the legislation permissible to West Bengal Government and in pith and substance the orders issued dealt exclusively with provincial matters. AIR 1953 SC 83, Foll. **58 Cal WN 659 : 1954 Cr LJ 1722 : AIR 1954 Cal 591 (600) (Pt J) (Pr 29) (DB).**

——**Art. 246 and Sch. 7, List 2, Item 54 — Sale of goods — Works contract — (Hyderabad General Sales Tax Act (14 of 1950), Ss. 2 (c), (e), (g), (k), (m), (n). 3 and 4).**

Tax on sale of goods must necessarily be a tax imposed at the time of sale of goods. Where therefore, under a works contract a person undertakes to build a particular building or to make a particular thing, the materials involved in the building or making of the finished product, are not the subject-matter of a sale because there is no agreement to sell the materials nor is the price of goods fixed nor is there a passing of the title in these goods as such, except as part of the building or the thing in which they are embedded. AIR 1954 SC 459, Foll.; (1955) 6 STC 93 (Nag) Dissented from. **ILR (1956) Hyd 162 : (1956) 7 STC 423 : AIR 1956 Hyd 79 (86, 87) (Pt D) (Prs 19, 20) (DB).**

■ ——**Art. 246 (3)**—Power of State Legislature to enact law conferring power on division Benches to hear appeals against orders of single Judge passed under Art. 226 — Kerala High Court Act (5 of 1959), S. 5 — Constitutionality — State Legislature held competent to pass the Act and the Act is valid. See Ibid, Art. 225. **AIR 1961 Ker 96 (FB).**

——**Arts. 246 (2) and 246 (3) —** Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (XII of 1962), S. 3 — Madhya Pradesh Agricultural Produce Markets (Validation) Ordinance (II of 1962) — Enactments validating action which is struck down by judgment — Not open to challenge though it renders judgment to have no legal effect — Legislature competent to enact laws within limits framed by Constitution. See Madhya Pradesh Agricultural Produce Markets (Validation) Act 1962 (XII of 1962), S. 3. **AIR 1965 Madh Pra 6 (DB).**

——**Arts. 246 (2) and 254 (1) —** Scope — Minimum Wages (Madhya Pradesh Amendment and Validation) Act (23 of 1961) is within legislative competence of State legislature — Principal Act and Validation Act both co-exist in M. P. subject to Art. 254 (2). See Minimum Wages (Madhya Pradesh Amendment and Validation) Act (23 of 1961). **AIR 1962 Madh Pra 342 (DB).**

——**Arts. 246, 245, 286 —** Development of sales-tax law in India traced — State of law in pre-Constitution and post-Constitution periods — Competency of State Legislature pointed out — C.P. and Berar Sales Tax Act (21 of 1947), S. 2 (g), Expl. II —Sales Tax Laws Validation Act (1956). See Ibid, Art. 245. **AIR 1962 Madh Pra 225 (DB).**

——**Art. 246, Schedule 7, List 2, Entries 46, 49— S. 65 (4) Madras Agricultural Income Tax Act (V of 1955) — Provision not beyond legislative competence.**

It cannot be said that there is no competency for the State Legislature to enact a tax on the

mere holding of property. As regards the power to tax agricultural income, Entry 46 of List II of the Constitution confers a specific power, and that entry reads, "Taxes on agricultural income". Entry 49, "Taxes on lands and buildings" is sufficiently wide to enable the State Legislature to levy tax even on holdings of agricultural lands. S. 65 (4) of the Madras Agricultural Income-tax Act cannot be challenged as being ultra vires and beyond the powers of legislation of the State. So long as the impugned Act is not ultra vires or unconstitutional the subject is bound by that provision and cannot get out of it by merely calling the legislation clumsy or awkward. **ILR (1964) 2 Mad 312 : 77 Mad LW 422 : 1964 Mad WN 351 : AIR 1964 Mad 556 (560) (Pt C) (Pr 9) (DB).**

——Arts. 246, 245, Sch. 7, List 2, Entry 54 — Subsidiary and ancillary legislation — Competency of State Legislature to enact law for forfeiture by State of sales-tax illegally collected — Madras General Sales Tax Act (9 of 1939), S. 8-B (2) (as amended by Madras Act 1 of 1957)— Amendment is intra vires and valid. See Ibid, Sch. 7, List 2, Entry 54. **AIR 1963 Mad 116.**
[Overruled in AIR 1964 SC 922.]

——Art. 246, Sch. 7, List 2, entry 18 — Madras Land Revenue Surcharge Act (19 of 1954) and Madras Land Revenue (Additional Surcharge) Act (30 of 1955) — Validity.

A surcharge of land revenue would also partake the character of land revenue and should be deemed to be an additional land revenue. The effect of the two Acts (Act 19 of 1954 and Act 30 of 1955) would be, to increase the land-revenue payable by a landholder to the extent of the surcharge levied.

It would not be open to the Government to increase the assessment during the period covered by a settlement which would ordinarily be good for 30 years. But that could not, however, prevent the legislature from increasing the assessment by an enactment. Both under the Government of India Act of 1935 as well as under the Constitution, the State Legislature possess full powers to levy a tax in regard to agricultural lands. Act 19 of 1954 and Act 30 of 1955 being passed by the legislature could not, therefore, be assailed. **72 Mad LW 536 : (1959) 2 Mad LJ 344 : ILR (1959) Mad 1073 : AIR 1960 Mad 543 (545, 546, 547) (Pt A) (Prs 5, 8, 9).**

——Art. 246 (3), Sch. 7, List II, Entry 18 — 'Tenant' — Ex-tenant — If tenant — (Tenancy Laws — Madras Cultivating Tenants Protection Act (25 of 1955, as amended by Act 14 of 1956)— Madras Cultivating Tenants (Payment of Fair Rent) Act (24 of 1956) — Validity).

The term 'tenant' in item 18 List II of the Seventh Schedule of the Constitution includes an ex-tenant. It follows that the circumtsance that the Acts impugned, viz., Madras Acts 25 of 1955 and 24 of 1956 confer rights on persons who were let into possession on tenancy agreements but who continue after the expiry of the terms of their tenancy would not take the Acts beyond the scope of Art. 246 (3) and item 18 of list II of the Seventh Schedule of the Constitution. C. N. Subramania Iyer v. Dharmalinga Padayachi, **1959 Mad WN 1 : ILR (1958) Mad 932 : (1959) 1 MLJ 1 : AIR 1958 Mad 608 (615) (Pt C) (Pr 24) (FB).**

——Art. 246 (3) and Sch. 7, List 2, Entry 54 — Power of State Legislature to make laws —Power to impose tax on sale of goods —Madras General Sales Tax Act (1939) (as amended by Madras Act 8 of 1955), S. 3 (1-A) — Validity — Levy of provisional assessment — (Sales tax — Madras General Sales Tax Act (IX of 1939) (as amended by Madras Act 8 of 1955), S. 3 (1-A)).

It cannot be said that the provisional assessment levied under S. 3 (1-A), Madras General Sales-tax Act, as amended by Madras Act VIII of 1955, is not in truth a tax on the sale of goods falling within entry 54 of the State List but a tax on an anticipated sale. The words of entry 54 designate the centre and not the circumference of the power. If, therefore, the impugned provision has relevance to or connection with the subject assigned, it would be within the State legislative power. Again every legislative power carries with it authority to legislate in relation to acts, matters and things the control of which is found necessary to effectuate its main purpose and carries with it power to make laws governing matters that are incidental or ancillary to the subject-matter. If a tax liability is certain to arise a provision designed to ensure that this shall not be evaded is clearly within the power to enact a law with respect to taxes on the sale of goods. **1957 Mad WN 229 : (1957) 8 STC 127 : 70 Mad LW 100 : (1957) 1 Mad LJ 321 : ILR (1957) Mad 493 : AIR 1957 Mad 325 (330) (Pt C) (Prs 23, 24) (DB).**

——Art. 246 and Sch. VII, List II, Entry 54 — Legislative competence — Power to validate illegal assessments.

It is well settled that the power to validate illegal assessments made by executive authorities is incidental to the power to levy the tax. AIR 1941 FC 16 : (1940) 3 FLJ (FC) 97 : (1941) 1 MLJ (Sup) 65 (FC) and 59 Clr 150, Rel. on. **1956 Mad WN 180 : ILR (1956) Mad 1123 : 69 Mad LW 75: (1956) 7 STC 105 : (1956) 1 Mad LJ 339 : AIR 1956 Mad 298 (300) (Pt C) (Pr 13) (DB).**

——Arts. 246 and 258 — Disposal of applications for import licence — State Government constituting committee including State Government Officer who was acting as sponsoring authority under Import and Export (Control) Act — Order constituting committee amounted to encroachment upon exclusive jurisdiction of Union Government and sponsoring authority ought to have exercised its own individual judgment. See Ibid, Art. 226. **AIR 1965 Mys 143 (DB).**

——Art. 246 — Mysore Village Offices Abolition Act — Act does not contravene Constitution of India — Abolition of village offices, is within competence of State Legislature. See Mysore Village Offices Abolition Act (14 of 1961), S. 2 (1) (n). **AIR 1964 Mys 84 (DB).**

——Art. 246 (2) — Government of India Act (1935), S. 100 — Municipalities — Khandwa Municipality (Validation of Tax) Act (16 of 1941), S. 1 — Legislative competence of Provincial Legislature and its power.

In India the Legislature is competent to put an end to the finality of a decision of a Court and reopen a past controversy and even to pass validating Acts. And in this view the Provincial Legislature has not transgressed its limits in enacting the Khandwa Municipality (Validation of Tax) Act (16 of 1941). AIR 1944 FC 1, Foll. **1956 Nag LJ 321 : ILR (1956) Nag 83 : AIR 1956 Nag 167 (171) (Pt C) (Pr 24) (DB).**

——Arts. 246 and 286 (1) — Sales tax —Orissa Sales Tax Act (14 of 1947), S. 5 (2) (a) (ii) — Validity — Condition in certificate of registration broken by registered dealer-purchaser — Proviso— Legislative competency.

Where an assessee-petitioner being a registered dealer purchases articles mentioned in the certificate of registration from another registered dealer

with the undertaking that the articles are to be resold in Orissa, then on account of this undertaking he is exempt from paying sales tax. But this exemption is a conditional one and it is so provided in S. 5 (2) (a) (ii) itself that if the condition is broken, the prices of goods so utilised shall be included in the taxable turnover of the purchasing registered dealer. There is no Constitutional bar for making such a provision in the Act itself. Where conditional deductions are allowed on the undertaking in the purchasing dealer's certificate of registration, the Legislature is within its jurisdiction to make a provision that on the breach of such an undertaking the purchasing dealer is liable to pay the tax on the basis of the sale which took place with the aforesaid undertaking. O. J. C. No. 253 of 1954 (Orissa). Foll. AIR 1955 SC 786 and (1955) 6 STC 255 (Nag). Disting. **ILR (1956) Cut 478: (1956) 7 STC 645 : 22 Cut LT 208 : AIR 1956 Orissa 145 (146) (Pt A) (Pr 4) (DB).**

——**Art. 246** — Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 3 (i) — Notification under No. 5327 — L. R./Zam D/- 10-5-1955 vesting the properties in the former State of Seraikella in the State of Bihar — Validity —Notification held was not outside jurisdiction of Bihar Legislature. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950), S. 3 (i). **AIR 1963 Pat 475 (DB).**

——**Art. 246 (3). Sch. 7, List 2, Entry 11 — Validating law — Power of State Legislature to enact.**

The State Legislature is competent to pass validating legislation. The power of the State Legislature to promulgate legislation with regard to subject-matter of Education (Sch. 7, List 2, Entry 11) includes the ancillary or subsidiary power to validate doubtful executive action on the same subject: AIR 1941 FC 16. Foll. The legislation contained in S. 9 of the Bihar High Schools (Control and Regulation of Administration) Act (13 of 1960) which speaks of executive orders made before the commencement of the Act and expressly validate such executive orders of the State Government in regard to High Schools is constitutionally valid. The Bihar Legislature is competent to enact such legislation under Art. 246 (3) of the Constitution. **ILR 40 Pat 635 : 1961 BLJR 100 : 1961 Pat LR 6 : AIR 1961 Pat 274 (274, 275, 276) (Prs 4, 5) (DB).**

——**Arts. 246 (3), 286 (1) (a), Explanation, Sch. 7, List 2, Entry 54** — Scope of —Inter-State sales — Tax on, by consuming State — Source of legislative competency. See Ibid, Art. 286 (1) (a), Expl. **AIR 1957 Pat 288.**

——**Arts. 246 (3), 286 and Sch. 7 List 2 Entry 54** — Government of India Act (1935), S. 100 (3) and Sch. 7 — List 2 Entry 48 — "For a province or any part thereof" — Constitutional authority of Provincial Legislature to tax sale transaction. See Government of India Act (1935), S. 100 (3). **AIR 1956 Pat 92.**

——**Arts. 246, 286 and Sch. 7, List 1, Entry 84 and List 2, Entry 54** — Government of India Act (1935), S. 100 and Sch. 7 List 1 Entry 45 and List 2 Entry 48 — Sales-tax and excise tax — Competence of provincial legislature. See Government of India Act (1935) S. 100. **AIR 1956 Pat 92.**

——**Art. 246; Sch. 7, List 3, Item 10**—S. 58 of Bihar Waqfs Act is not ultra vires — Section does not interfere with or abridge any of fundamental rights guaranteed by Constitution — State Legislature was quite competent to legislate about trusts and trustees within State of Bihar. See Bihar Waqfs Act (8 of 1948), S. 58. **AIR 1955 Pat 470.**

●——**Art. 246** —Bihar Land Reforms Act (1950), Pre. — Subject-matter of Act whether within legislative powers of State. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950). **AIR 1951 Pat 91 (SB).**

——**Arts. 246, 22 (7)** — Preventive detention legislation — Powers of State — Successive legislations. See Ibid, Art. 22 (7). **51 Cri LJ 1251: AIR 1950 Pat 332 (DB).**

——**Art. 246 (3)** — Punjab Passengers and Goods Taxation Act (16 of 1952), S. 3 (3), Proviso — Validity — It was within legislative and territorial competence of State to enact Punjab Act (16 of 1952). See Punjab Passengers and Goods Taxation Act (16 of 1952), Proviso to S. 3 (3). **AIR 1954 Punj 264 (DB).**

●——**Art. 246 and Sch. 7, List 2, Item 18—Scope.**

All the provisions of the Punjab Security of Land Tenures Act are concerned with rights in or over land, land tenures, the relation of landlord and tenant and collection of rents and the Act therefore clearly falls under Item 18, List 2, Sch.7. Bhagirath Ram Chand v. State of Punjab, **56 Punj LR 1: AIR 1954 Punj 167 (171) (Pt E) (Pr 13) (FB).**

——**Art. 246 (3) and Sch. 7, List 2, Entry 1 — Power to legislate measures relating to public safety — (Public safety — T. C. Public Safety Measures Act (V of 1950) — (Words and Phrases — "Public Order" and "Public Safety").**

"Punjab Order" in the State List must be interpreted to include "public safety" in its relations to maintenance of public order both of them being interdependent. Consequently the State legislature was competent to pass the T. C. Public Safety Measures Act (V of 1950) which as seen from its preamble was intended to provide for public order as well though styled as "The Public Safety Measures Act". **1953 Cr LJ 1786: 1953 Ker LT 482: AIR 1953 Trav-Co. 540 (540, 541) (Pt A) (Pr 4).**

——**Art. 246** — Travancore-Cochin High Court (Amendment) Act (1 of 1952), Pre. — Act is within competency of State legislature in view of Entry No. 3 in State List and Entry No. 13 in concurrent list. See Travancore Cochin High Court (Amendment) Act (1 of 1952). **AIR 1953 Trav Co. 53 (DB).**

10 (c). Concurrent List.

——**Art. 246** — Order of Governor commuting death sentence confirmed by High Court — Validity — Mandamus directing State to execute death sentence — Cannot be issued under Art. 246 (2) — Parliament and Legislature of State both have power to make laws in respect of matters specified in concurrent list — Legislature of U. P. is therefore entitled to make law in respect of offence under S. 302, Penal Code. See Ibid, Art. 226. **1962 (1) Cr LJ 241 : AIR 1962 All 151.**

——**Art. 246 — Concurrent List — Exclusive power of Parliament — State cannot make laws.**

The power of a State to make laws with respect to any of the matters enumerated in Sch. 7, List 3 is subject to the exclusive power of Parliament, if it has any, to make laws with respect to the same matters. If Parliament has the exclusive power, a State cannot make laws even if the matters are enumerated in List 3. **ILR (1954) 2 All 191: 1954 All LJ 477: 1954 All WR (HC) 529: 1954 Cr LJ 1485: AIR 1954 All 728 (730, 731) (Pt A) (Pr 9) (DB).**

[Overruled on another point in AIR 1955 All 269.]

——**Art. 246, List II Entry 36, List III, Entry 42** — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 1 — Validity of Act — Absence of provision for compensation — Effect — No Parliamentary legislation under Entry 42 of List III — State Legislature could enact under Entry 42 of List III in respect of property acquired that compensation shall be paid in bonds or even that there shall be no compensation. See Tenancy laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 11. **AIR 1952 All 88 (DB).**

●——**Art. 246 (2), Sch. 7, List III — Concurrent List — Underlying principle — (Government of India Act (1935), S. 99, Sch. 7, List III).**

The principle which is underlying the scheme of the Constitution is that the Central Legislature had overriding powers with regard to subjects in the concurrent list. Laws dealing with the subjects mentioned in List III can be passed by the different State Legislatures, but it is always open to the Central Legislature to step in and to put on the statute book a law bringing about uniformity all over the country. The State v. Narayandas Mangilal Dayame, **59 Bom LR 901: 1958 Cr LJ 161: ILR (1957) Bom 880: AIR 1958 Bom 68 (70, 71) (Pt A) (Pr 3) (FB).**

——**Art. 246** — Validity of Press (Objectionable Matters) Act — Trespass upon the field of another Legislature — Concurrent List — Rules of construction. See Press (Objectionable Matters) Act (1951), S. 3 (5). **1954 Cr LJ 1549: AIR 1954 Bom 508 (DB).**

——**Arts. 246 (2), 254 — Existing laws on matters in Concurrent List — Power of Parliament to repeal or amend not restricted.**

By virtue of Art. 246 (2) the power to repeal or amend 'existing laws' on matters in the concurrent list resides both in Parliament and in the State Legislatures whether the law in question be one made by the Centre or a Province or an Indian State. The exercise of that power by a State Legislature is subject to the restrictions in Art. 254 but that article places no restriction on its exercise by Parliament. Hence by enacting S. 5 (b) of the Hindu Minority and Guardianship Act (1956) the Parliament was competent to repeal S. 10 (2) of Travancore Nayar Act (II of 1100). **(1961) 1 Lab LJ 68: 1960 Ker LT 1127: 1961 Ker LJ 29: ILR (1961) 1 Ker 430: AIR 1961 Ker 154 (154, 155) (Pt B) (Pr 4).**

——**Art. 246, Sch. 7, List 3, Entry 18, List III, Entry 5** — Hindu Succession Act (1956), S. 14 — Validity — Rights of Hindu female over land — Section entrenches on Entry 18 of State List — But being legislation under Entry 5 of List 3 is valid. See Hindu Succession Act (1956), S. 14. **AIR 1960 Punj 666.**

——**Arts. 246, 245, Sch. 7, List 3, Entry 22** — Industrial Tribunal constituted under S. 7 of Industrial Disputes Act — Rajasthan Industrial Tribunal (Constitution and Proceedings) Validating Act (1959) enacted by Rajasthan State Legislature and received assent of the President — The State Act must prevail over the provisions of the Industrial Disputes Act in the State of Rajasthan and the legality of the proceeding pending before the Industrial Tribunal constituted under the Industrial Disputes Act cannot be assailed. See Ibid, Art. 245. **AIR 1963 Raj 22.**

11. Constitutional validity of statutes — Test of.

●——**Art. 246 — Vires of Act — Test** — Court is not restricted to pleadings of State — Court will consider whether validity can be sustained under any provisions of Constitution. Burrakur Coal Co. Ltd. v. Union of India, **(1961) 2 SCA 523: 1961 SCD 432: (1961) 1 SCR 44: (1962) 2 SCJ 216: AIR 1961 SC 954 (962, 963) (Pt F) (Pr 25).**

●——**Arts. 246, 245 and 13, 31 (before Constitution (Fourth Amendment) Act, 1955)** — Effect of provisions — Distinction between clauses (1) and (2) of Art. 13 — Power of legislature to make laws in regard to entries in Seventh Schedule whether circumscribed by Part III of Constitution — Law made in excess of power whether ab initio void — Doctrine of eclipse when can be invoked — U. P. Transport Service (Development) Act — Validity of, whether to be tested on basis of Constitution (Fourth Amendment) Act, 1955 — (U. P. Transport Services (Development) Act (9 of 1955), S. 1). See Ibid, Art. 13. **AIR 1959 SC 648.**

●——**Arts. 246, 48, 245 and Schedule VII, List II, entry 15**—Statutes enacted under—Validity—Test—(Bihar Preservation and Improvement of Animals Act (2 of 1956), Preamble) — (U. P. Prevention of Cow Slaughter Act (1 of 1956), Preamble) — (C. P. and Berar Animal Preservation Act (52 of 1949), (as amended by M. P. Acts 23 of 1951 and 10 of 1956), Preamble). See Ibid, Art. 48. **AIR 1958 SC 731.**

●——**Arts. 246, 245** — Constitutional validity of statutes—Tests. See Ibid, Art. 245. **AIR 1957 SC 699.**

●——**Arts. 246, 254** — Government of India Act (1935), Ss. 107, 100, Sch. 7, List 2, Items 2 and 31 and Sch. 7, List 3, Items 2 and 5 — Provincial legislation — Test of repugnancy with Central legislation — Effect of incidental encroachment into field reserved for Centre — (Madras Prohibition Act (10 of 1937), Ss. 4 (2) and 28 to 32) — (Interpretation of Statutes — Vires of Acts — Civil P. C. (1908), Pre.) See Government of India Act (1935), S. 107. **AIR 1957 SC 297.**

●——**Arts. 246 and 13 — Part of law void — Effect.**

(Per Mahajan and Chandrasekhara Aiyar JJ.): Where some provisions of an Act are 'ultra vires', the question whether the Statute as a whole must be pronounced to be 'ultra vires,' depends upon the question whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive, or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the part that is 'ultra vires'. If the offending provisions of the Act are not so inextricably bound up with the part that is valid, the whole Act cannot be pronounced to be 'ultra vires'. State of Bihar v. Kameshwar Singh, **ILR 31 Pat 565: 1952 SCR 889: 1953 SCA 53: 65 Mad LW 527: 1952 SCJ 354: 1952 SCJ 427: 1952 SCJ 446: AIR 1952 SC 252 (277, 296) (Pt I) (Prs 62, 137).**

●——**Art. 246** — The constitutionality of a statute passed by a competent legislature cannot be challenged on the ground that the law made is not reasonable or just. (Per Mahajan J.) State of Bihar v. Kameshwar Singh, **ILR 31 Pat 565: 1952 SCR 889: 1953 SCA 53: 65 Mad LW 527: 1952 SCJ 354: 1952 SCJ 427: 1952 SCJ 446: AIR 1952 SC 252 (278) (Pt K) (Pr 71).**

——**Arts. 246, 245, 13 and Preamble**— Unconstitutionality of legislation—Principle of severability — Interpretation of statutes. See Ibid, Preamble. **AIR 1962 All 521 (DB).**

——**Art. 246** — Vires of Act — Considerations. See Ibid, Art. 245. **AIR 1960 Andhra Pra 115 (DB).**

——**Art. 246** — Validity of Act questioned — Duty of Court — Tests. See Ibid, Art. 245. **AIR 1959 Andhra Pra 398 (DB).**

●——**Art. 246 — Constitutionality of State Acts — Test of — General principles.**

In determining whether an Act of a Legislature exceeds the Legislative bounds, one has to apply the pith and substance rule namely, examine not only the form but also the substance of the Act, its nature and character. If in substance and form the legislation falls within the legislative field assigned to it, then the Act cannot be questioned merely because incidentally it affects or overlaps some other fields of legislation as well.

Courts of law should, as far as it is reasonably practicable, incline in favour of upholding the constitutionality of a legislation.

When the main object and intention of the statute is quite clear the mere unskilfulness or ignorance of the draftsman cannot reduce the statute into a nullity. Rules of grammar have to yield to common-sense.

As a general rule a Court of law is not authorised to supply a cause omissus or to alter the language of a statute for the purpose of supplying a meaning.

The provisions of the Constitution should not be cut down by a narrow and technical construction; it should be given a large and liberal interpretation. Raja Bhairabendra Narayan Bhup v. The State of Assam, **ILR (1956) 8 Assam 379 (FB).**

●——**Art. 246 — Constitutionality of an Act — Test of.**

In deciding about the validity of an impugned legislation, the real test is whether in pith and substance, the Act falls under authorised legislative field. If it does, then the mere fact that incidentally or in its ancillary effect it trenches upon some other legislative fields also will not invalidate the legislation. AIR 1951 SC 318 and AIR 1954 SC 119, Rel. on. Case-law Ref. H. P. Barua v. State of Assam. **AIR 1955 Assam 249 (252) (Pt A) (Pr 2) (SB).**

[Reversed on another point in AIR 1961 SC 232.]

——**Arts. 246, 245, 19, 13 and Pre.** — Bombay Prohibition Act (1949), Ss. 24A, 6A, 59A, 139(d), 12, 13, (as amended by Act 26 of 1952) — Bombay Spirituous Medicinal Preparations (Sales) Rules, 1954, Rr. 2, 3 — Act if imposes reasonable restrictions on consumption of spirituous medicinal preparations — Determination under S. 6A — Effect — Tests for reasonableness — Act ultra vires due to incompetence of legislature and invalid due to inconsistency with Part III of Constitution — Effect — Validity of Act on latter ground has to be judged by subsequent amendments, notifications, etc. — (Constitution of India Preamble, Arts. 13, 19, 245 and 246) — Interpretation of Statutes — Vires — Tests). See Bombay Prohibition Act (25 of 1949) (as amended by Act 26 of 1952), S. 24-A. **AIR 1958 Bom 181.**

——**Art. 246 (3)** — State Legislation — Tests of validity. See Ibid, Art. 245. **AIR 1956 Bom 1 (DB).**

[Reversed on another point in AIR 1957 SC 699.]

——**Arts. 246, 13, 254 and Pre** — Unconstitutionality of legislation — State cannot plead unconstitutionality of its own statutes before Courts. See Ibid, Preamble. **1962 (2) Cri LJ 33: AIR 1962 Cal 338 (DB).**

●——**Art. 246** — Interpretation of statutes — Question of validity of statute — Duty of Court — (Civil P. C. (1908), Pre.). See Interpretation of Statutes. **AIR 1952 Cal 740 (SB).**

——**Arts. 246, 372, 245** — "Subject to the other provisions of this Constitution" — Sales Tax Act validly passed before Constitution — Distribution of power in seventh Schedule not the test of its validity — (Sales Tax — Travancore-Cochin General Sales Tax Act (1125), S. 1). See Ibid, Art. 372. **AIR 1957 Ker 146 (DB).**

[Overruled in AIR 1958 SC 560.]

——**Art. 246 — Validity of Act — Government of India Act — If can be referred to.**

While considering whether a certain Act of State Legislature is within its legislative powers the Court can consider the items of legislative lists in the Government of India Act, 1935.

The fact that to support the validity of an Act reliance is placed on both the Government of India Act and the Constitution, does not show that the Act is invalid. **1958 Mad WN 161: ILR (1958) Mad 452: (1958) Mad LJ (Cri) 591: (1958) 2 Mad LJ 123: 1959 Cr LJ 731: AIR 1959 Mad 261 (265, 266) (Pt B) (Pr 13) (DB).**

●——**Arts. 246, 245 and Sch. 7** — Constitutional validity of enactment — Proper method of approach. See Ibid, Art. 245. **AIR 1958 Mad 608 (FB).**

——**Art. 246** — Constitutional validity of Act — Tests — Validity of Coorg Agricultural Income-tax Act. See Ibid, Art. 245. **AIR 1958 Mys 102 (DB).**

——**Art. 246 — Test in deciding validity of Act.**

It is well settled that what may be called the mere object or motive of a legislative measure, is not by itself an invalidating circumstance. It is not the purpose of a statutory enactment but the constitutional effect and operation of the enactment which determines its validity. In judging the validity of a legislative scheme, what is material to be considered is the purpose or object or the effect in the sense of the function of the impugned legislative provision, that is to say, the operation of the Act, and not the purpose or the effect or the object in the sense of motive. 76 Com LR 1 (186) : 1940 AC 838, Ref. **ILR 1953 Cut 71 : AIR 1953 Orissa 185 (211, 214) (Pt R) (Prs 61, 65) (DB).**

——**Art. 246 — Combined operation of two or more Acts.**

It is only where the combined operation of two or more Acts, which form part of a scheme, invades constitutional limitations by way of legislative competence that one or the other or both become constitutionally void and not where the said Acts are, all taken together, within the competence of the same legislative authority, unless it is clearly made out that some other kind of constitutional limitation is infringed thereby. 1942 AC 41 : 1931 AC 310, Discussed.; 1939 AC 116, Expl. **ILR 1953 Cut 71 : AIR 1953 Orissa 185 (213) (Pt T) (Pr 65) (DB).**

——**Art. 246** — Bihar Mica Act, 1947 (10 of 1948) — Validity — If repugnant to Mica Control Order — Test. See Bihar Mica Act (1947) (10 of 1948), S. 6 (6). **AIR 1958 Pat 496 (DB).**

12. Constitutionality of Acts — Illustrative cases.

Acts held ultra vires.

●——**Art. 246** — Scope — Bihar Land Reforms Act (1950) — Validity of — Ultra vires. See Tenancy laws — Bihar Land Reforms Act (30 of 1950), S. 1. **AIR 1961 SC 189.**

●——**Arts. 246, 248, Sch. 7, List 2, Entry 54** — Bengal Finance (Sales Tax) Act (6 of 1941)

(as extended to Delhi), Ss. 2 (b), (d), (g), (h), (i) — Provisions in Act imposing tax on building contracts, ultra vires the Province of Bengal extended to Delhi by notification — Legality — Part C States (Laws) Act (1950), S. 2 — Scope — (Part C States (Laws) Act (1950), S. 2). See Sales Tax — Bengal Finance (Sales Tax) Act (6 of 1941) (as extended to Delhi), S. 2 (b). **AIR 1958 SC 682.**

——**Art. 246** — Scope — U. P. Administration of Evacuee Property Ordinance — Validity — U. P. Ordinance 1 of 1949 was ultra vires the Governor — Ordinance not validated by Government of India (Third Amendment) Act. See U. P. Administration of Evacuee Property Ordinance (1 of 1949). **AIR 1957 All 561 (DB).**

——**Art. 246 (2), Sch. 7, List 1, Entry 78 and List 3, Entry 26 — Indian Bar Councils (U. P. Amendment) Act, 1950, falls within Sch. 7, List 1, Entry 78 — Act is ultra vires — (Bar Councils (U. P. Amendment) Act (24 of 1950), S. 1).**

The provision in Entry 78 of List 1 is by way of an exception to Entry 26 of List 3. The power conferred by Entry 26 of List 3 is general but since there is a power conferred by Entry 78 of List 1 with respect to persons entitled to practise before the High Courts, the general power must be read subject to that power and a legislation with respect to Advocates must be held to come within Entry 78 of List 1 regardless of whether it comes within Entry 26 of List 3 or not. Thus, the Indian Bar Councils (U. P. Amendment) Act, 1950, is a legislation with respect to persons entitled to practise before High Courts in Entry 78 of List 1. Hence the U. P. Amendment Act is ultra vires the U. P. State Legislature. **ILR (1954) 2 All 191: 1954 All LJ 477: 1954 All WR (HC) 529: 1954 Cri LJ 1485: AIR 1954 All 728 (732. 734) (Pt D) (Prs 16, 22) (DB).**

[**Overruled** on another point in AIR 1955 All 269.]

——**Arts. 246, 225, Sch. 7, List 1, Entry 78 and List 2, Entry 3** — High Court Judges (Conditions of Service) Act (28 of 1954), S. 23-A — Order under, by President — Calcutta High Court (Vacation) Order, 1960 — Validity — Subject-matter of S. 23-A falls within Sch. 7, List II, Entry 3 and not under Sch. 7, List 1, Entry 78 — S. 23-A and Order thereunder are ultra vires — 'Administration of justice' and 'Constitution and Organisation of Courts" — Interpretation of. See High Court Judges (Conditions of Service) Act (1954), S. 23-A. **AIR 1961 Cal 545.**

——**Art. 246** — Bombay Sales Tax Act (3 of 1953), S. 26 (3) — Validity — Allotment of goods of firm amongst partners on its dissolution — Absence of money consideration — Not a sale within Section 4, Sale of Goods Act — S. 26 (3) in so far as it treats it as a sale for purposes of taxation is ultra vires of powers of State Legislature under Sch. 7, List 2, Entry 54. See Sales Tax — Bombay Sales Tax Act (3 of 1953), S. 26 (3). **AIR 1965 Guj 60 (DB).**

●——**Art. 246, Sch. 7, List 1, Entry 66, List 2, Entry 11** — Proviso to Section 4 (27) of Gujarat University Act (L of 1949), (substituted by Act IV of 1961) — Validity — Provision encroaches on field of List 1, Entry 66 and is ultra vires State Legislature — Statutes 207 and 209 are also void. AIR 1952 SC 252, Disting. AIR 1961 SC 459, Rel. on. Shri Krishna Rangnath Mudholkar v. Gujarat University, **(1962) 3 Guj LR 204: AIR 1962 Guj 88 (103, 106, 110, 111, 112, 113, 114, 115, 122) (Pt B) (Prs 32, 37, 42, 43, 44, 45, 46, 63) (FB).**

[**Reversed** in AIR 1963 SC 703.]

——**Art. 246 and Sch. 7, List 2, Item 54 — Hyderabad General Sales Tax Act (14 of 1950), S. 2 (m), Explu. 1 (i) and R. 5 (3) — Validity — (Hyderabad General Sales Tax Act (14 of 1950), S. 2 (m), and Rule 5 (3)).**

The basis of Rule 5 (3) is that the artificial determination of the price of goods cannot be said to square with the powers given by the Constitution to levy a tax on the 'sale of goods'. Expln. (1) (i) to Sec. 2 (m), Hyderabad General Sales Tax Act, 1950, and Rule 5 (3) of the rules made thereunder are ultra vires. **ILR (1956) Hyd 162: (1956) 7 STC 423: AIR 1956 Hyd 79 (82) (Pt A) (Pr 9) (DB).**

——**Arts. 246, 245, 372** — Cochin Abkari Act (1 of 1077 M. E.), Ss. 69, 29 — Validity — There is conflict between S. 69 read with Section 29 of the Act and Arts. 245 (1) and 246 (3) of the Constitution — G. O. Ms. 253/63 Rev. dated 25-3-63 is illegal and has to be struck down. See Ibid, Art. 372. **AIR 1965 Ker 8.**

——**Art. 246** — Travancore-Cochin Public Safety Measures Act (5 of 1950), Section 3 — Validity — Section is ultra vires for lack of sanction of President under Art. 304 (b), Proviso — Art. 304, control Art. 246 — Art. 304 (b), Proviso does not affect validity of repeal under S. 73 of the Act — Repeal under Section 73 is valid — As Section 3 of the Act is void notifications issued under it are also invalid and cannot continue under Section 73 (2)—Suit contracts entered into in February, 1952 not affected by notifications under Essential Supplies (Temporary Powers) Act (1946), also. See Ibid, Art. 304 (b), Proviso. **AIR 1964 Ker 92 (DB).**

——**Art. 246** — Madras Hindu Religious and Charitable Endowments Act (1951), S. 20 — Validity — Provisions held ultra vires — (Madras Hindu Religious Endowments Act (1927) — Validity). See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), S. 20. **AIR 1952 Mad 613 (DB).**

——**Arts. 246, 265 and 276** — City of Nagpur Corporation Act (2 of 1950), Section 114 (2) (d) — Registration fee on heads of cattle sold in corporation area — Whether in nature of tax or fee — Distinction between tax and fee — Imposition is ultra vires and is not saved by Art. 276 (1) — (Government of India Act (1935), S. 142-A (1)). See Municipalities — City of Nagpur Corporation Act (2 of 1950), S. 114 (2) (d). **AIR 1956 Nag 152.**

●——**Arts. 246, 245** — Bihar Land Encroachment Act (31 of 1950) not inconsistent with Criminal Procedure Code. See Criminal P. C. (1898), Section 1 (2) and Ch. 10. **AIR 1955 Pat 1 (SB).**

——**Art. 246** — Control of rents in cantonment areas is within exclusive competence of Parliament — Rajasthan Premises (Control of Rent and Eviction) Act to that extent held ultra vires. See Ibid, Sch. 7, List 1, Entry 3. **AIR 1962 Raj 190 (DB).**

Acts held not ultra vires.

●——**Art. 246 (2)** — Acquisition of coal bearing areas vested in State by Union — Provisions are not ultra vires. See Coal Bearing Areas (Acquisition and Development) Act (1957), S. 4. **AIR 1963 SC 1241.**

●——**Art. 246 and Sch. 7, List 2, Entries 18, 45**— Punjab Resumption of Jagirs Act (XXXIX of 1957), Section 2 (5) — As inserted by Amendment Act of 1959 — Amendment is intra vires. See Tenancy Laws — Punjab Resumption of Jagirs Act XXXIX of 1957), S. 2 (5). **AIR 1962 SC 1305.**

■——**Art. 246** — Sales Tax — Bihar Sales Tax Act (19 of 1947), Section 2 (c) (as amended by Bihar Act (17 of 1950)) — Validity — Absence of President's assent of amending Act — Validity — Section 2 (c) not affected. See Sales Tax — Bihar Sales Tax Act (19 of 1947), Section 2 (c) (as Amended by Bihar Act (17 of 1950)). **AIR 1962 SC 660.**

■——**Art. 246** — Tenancy Laws — Bihar Land Reforms (Amendment) Act — Validity — Acquisition of right to hold melas on Bakasht lands — Legislation within competence of State legislature — Right being a right in an estate, Act saved by Art. 31-A — Acquisition of right by State held valid. See Tenancy Laws — Bihar Land Reforms (Amendment) Act (16 of 1959), S. 1. **AIR 1961 SC 1649.**

■——**Art. 246, Sch. 7, List 1, Entry 89 and List 2, Entry 56** — Rajasthan Passengers and Goods Taxation Act 1959, S. 3 — Constitutionality — Tax levied by Act is tax on passengers and goods and not on income or on fares and freights — It is not ultra vires. See Rajasthan Passengers and Goods Taxation Act (18 of 1959), S. 3. **AIR 1961 SC 1480.**

■——**Art. 246** — Scope — Orissa Mining Areas Development Fund Act (1952) — Validity — Act held intra vires the State Legislature. See Orissa Mining Areas Development Fund Act (27 of 1952). **AIR 1961 SC 459.**

■——**Art. 246** — Scope — Tax imposed by Section 12-A of Bombay Act 54 of 1948 is valid under Sch. 7, List 2, Entry 62 — Legality. See Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948), S. 12-A. **AIR 1957 SC 699.**

■——**Art. 246** — Section 2 (14-a) Income-tax Act, held valid — See Income-tax Act (1922), Sec. 2 (14-A) (as amended by Finance Act (1950)). **AIR 1954 SC 158.**

■——**Art. 246** — Scope — Tax under Act 31 of 1957 is on holding and not on annual value — Act comes under List 2, Entry 49. See Ibid, Art. 245. **AIR 1960 All 136 (FB).**

——**Arts. 246, 245** — Pattadari and Thekadari Abolition Act (10 of 1954) — Validity — Act is intra vires the State Legislature. **AIR 1955 NUC (All) 3534 (DB).**

——**Art. 246** — Hyderabad Tenancy and Agriculturists Act (21 of 1950), Sections 47, 2 and 104 — Section 60 (c), Civil P. C. and Section 47 of Hyderabad Tenancy Act do not occupy the same field — Law of Civil Procedure falls within scope of Entry 13 of List 3 of Sch. 7 — Tenancy law in question is traceable to Entry 18 of List 2 — Section 47 of Hyderabad Tenancy Act,, embracing transfers by operation of law, does not trench upon any of the entries in List 3 — No repugnancy between two Acts — T. P. Act (1882), Sections 2 (d), 5 — Execution sales are 'transfers' as contemplated by Section 47 of Hyderabad Act, 21 of 1950 — Agricultural lands are exempted from attachment in execution — Expression 'other transfers' is not used in restricted sense as in the T. P. Act — Attachment for the purpose of bringing agricultural lands to sale also inhibited. See Civil P. C. (1908), S, 60 (c). **AIR 1964 Andh Pra 514 (DB).**

——**Arts. 246, Sch. 7, List 1, Item 86** — 'Individuals' — Meaning of — Includes Hindu undivided family — Wealth Tax Act (1957), S. 3 — Validity — Section 3 is intra vires. **(1961) 1 Andh WR 272: 1961 Andh LT 291: AIR 1961 Andh Pra 355 (357, 358) (Pt A) (Prs 10, 12, 16, 21, 22) (DB).**

——**Art. 246, Sch. 7, List 2, Entries 18, 49, 47 and 63 — Gift Tax Act (1958) — Validity — Act is valid.**

The Gift Tax Act is intra vires even in so far as it affected transfer of agricultural land. Entry 18 of List 2 does not take away the power of the Parliament to pass an enactment imposing tax in respect of land.

A gift tax would not come within the purview of Entry 47 of List 2. Tax on gift of agricultural lands cannot be brought under entry 63 of List 2 also. The occasion for the levy of the duty is the execution of a document and is unconnected with the actual transfer of property, whereas the impugned statute seeks to impose a tax on the transfer of both movable and immovable properties whether by means of an instrument or not. **ILR (1959) Andh Pra 1340: 1960 An LT 22: (1960) 38 ITR 93: (1960) 1 Andh WR 153: AIR 1960 Andh Pra 115 (116, 117, 118, 119) (Pt A) (Prs 4, 7, 10, 14, 18, 21, 22) (DB).**

——**Art. 246** — Bombay Prohibition Act (25 of 1949), Section 129-A — Constitutionality — Section is not ultra vires. Art. 31 (2) of Constitution. See Prohibition — Bombay Prohibition Act (25 of 1949), Section 129-A. **1964 (2) Cri LJ 523: AIR 1964 Bom 253 (DB).**

——**Arts. 246, 245** — Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946) — Act is valid — It cannot be regarded as legislation on subject of domicile. See Ibid, Art. 245. **1955 Cri LJ 1564: AIR 1955 Bom 439 (DB).**

[**Overruled** on another point in AIR 1958 Bom 68 (FB).]

——**Arts. 246 and 254, Sch. 7, List 1, Item 53, List 2, Items 5 and 6 — West Bengal Fire Services Act (18 of 1950) — Validity — Petroleum Act, 1934 — Scope.**

The Fire Services Act is in pith and substance an Act which comes within the subject-matter of items 5 and 6, certainly item 6 in list 2, 7th Schedule of the Constitution. The Petroleum Act, 1934, if it comes under the Union List, can only come under Item 53 and the subject-matter thereof is not identical with Items 5 and 6 in the State List. Even if the State Act makes an incidental encroachment upon the Central Act it is not rendered invalid thereby. Even if the provisions overlap, there is no repugnancy between the two Acts, because by its own premises the Petroleum Act, 1934 is not meant to be exclusive but is supplementary to, and contemplates the existence of, State Acts relating to the storage of petroleum. Therefore, there is no repugnancy. For the same reasons the argument of 'occupied field' also fails. **AIR 1960 Cal 219 (225) (Pr 18).**

——**Arts. 246, 245 — Calcutta City Civil Court Act (21 of 1953) — Validity of — If ultra vires.**

As the State Legislature can confer general jurisdiction upon the City Civil Court or take away similar jurisdiction from the High Court, the mere fact that there is an incidental encroachment upon any central subject will not make the law invalid. Thus, because promissory note is a central subject, it does not prevent the Stage legislature from investing the City Civil Court with the jurisdiction and powers to try suits based on promissory notes within pecuniary limits which have been fixed. It is not therefore, correct to say that Act (21 of 1953) is beyond the competence of the West Bengal Legislature and as such ultra vires. AIR 1951 SC 69 and AIR 1947 PC 60, Foll. **ILR (1958) 1 Cal 576: 61 Cal WN 630: AIR 1957 Cal 534 (545) (Pt C) (Pr 27).**

——**Art. 246, Sch. 7, List 1, Entry 17 and List 3, Entry 27** — West Bengal Land Development and Planning Act (1948) — Validity — Act held within competence — Government of India Act (1935), Sch. 7, List 1, Entry 17 and List 2, Item 9. See West Bengal Land Development and Planning Act (21 of 1948). **AIR 1952 Cal 679.**

——**Arts. 246 and 248 (2)** — Gift Tax Act (1958) — Act is intra vires of Parliament by virtue of Art. 248 (2) read with Entry 97 of List 1. See Gift Tax Act (1958). **AIR 1962 Ker 97 (DB).**

——**Art. 246** — Madhya Bharat Sthan Niyantran Vidhan of S. Y. 2006 (15 of 1950) — Validity of so far as it extended to Mhow — **Held** not "ultra vires'. See Houses and Rents — Madhya Bharat Sthan Niyantran Vidhan of S. Y. 2006. **AIR 1953 Madh Bha 5 (DB).**

——**Art. 246** — Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamawali Sanshodhan Adhyadesh (1965), (Ordinance No. 3/65), S. 3 — Constitutional validity — Ordinance is not invalid. See Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali Sanshodhan Adhyadesh (1965), (Ordinance No. 3/65), S. 3. **1965 MPLJ 994: AIR 1966 Madh Pra 110 (DB).**

——**Art. 246** — Tax, meaning of — Tax not a levy for service — M. P. Motor Vehicles (Taxation of Passengers), Act, 1959, was not ultra vires the State legislature. See Ibid, Art. 226. **1962 MPLJ (Notes) 79.**

——**Arts. 246, 254, Sch. 7, List 1, Entry 59; List 3, Entry 19 — Scope — Section 9 (a), Opium Act (1878) (as amended by Madhya Bharat Act 15 of 1955) — Validity.**

Entry 59 in List 1 of Sch. 7 is not exhaustive in regard to opium. Actually the control by licence or otherwise of the possession, and storage and sales within the country of the opium is governed by Entry 19 of the concurrent list. The Madhya Bharat Opium Act XV of 1955 amends the provisions of Indian Opium Act not in regard to matters mentioned in Entry 59 of List 1, but in regard to some others. It was also reserved for the President's consideration under Art. 254 (2) as it was an amendment by the State Legislature of the provisions in the existing law on the subject in the concurrent list. Hence the Madhya Bharat amendment is not ultra vires. **1961 MPLJ 1379: 1962 Jab LJ 491: ILR (1960) Madh Pra 1090: (1961) 1 Cri LJ 92: AIR 1961 Madh Pra 13 (14) (Pt A) (Pr 4).**

[**Overruled** on another point in AIR 1963 Madh Pra 337.]

——**Art. 246 — State Legislature not stating provisions of law under which it enacted Act — Validity of Act — (Code of Criminal Procedure (Madras Amendment) Act (Madras Act 34 of 1955)).**

An enactment, if valid under the Constitution will not become ultra vires, because the Legislature does not state its authority for passing that particular piece of legislation or the purpose for which it passes it.

The Madras Act 34 of 1955, is not ultra vires because it does not state under which of the powers conferred on the State Legislature by the Constitution whether Item 3 of List 2 or Items 1, 2, 46 of List 3 was it being enacted. **1958 Mad WN 161: ILR (1958) Mad 452: 1958 Mad LJ (Cri) 591: (1958) 2 Mad LJ 123: AIR 1959 Mad 261 (266, 267) (Pt C) (Pr 15) (DB).**

——**Art. 246** — Provisions of Sections 28 to 32 of Madras Prohibition Act are not repugnant to existing law and are not invalid on that ground. See Madras Prohibition Act (10 of 1937), Ss. 28 to 32. **1954 Cri LJ 1521: AIR 1954 Mad 993 (DB).**

——**Arts. 246, 286** — Madras Commercial Crops Markets Act (20 of 1933), Ss. 6, 6-A—Validity of the Act—Regulates buying and selling within a State — Bearing on export outside State only incidental — Does not control inter-State commerce and hence not ultra vires State Legislature. See Madras Commercial Crops Markets Act (20 of 1933), S. 6. **ILR (1961) Mys 951.**

——**Art. 246** — Orissa Cotton Cloth Control Order (1948), Cl. 5 — Is not ultra vires as amounting to a second delegation of powers vested in State Government by virtue of notification No. 73 (1) T. A. of 1946 issued by Central Government under S. 4, Essential Supplies Temporary Powers Act, 1946. See Orissa Cotton Cloth Control Order (1948), Cl. 5. **AIR 1953 Orissa 233.**

——**Art. 246 — Tenancy Laws — Madras Estates Land Act (1908) (as Amended in Orissa), S. 168-A — Validity.**

Sections 168-A and 117 (2), inserted into the Madras Estates Land Act by the Madras Estates Land (Orissa) Amendment Act 1947, are valid and are not open to objection as regards their validity either on the ground of their being invalid delegated legislation or on the ground of their purporting to vest in the State Government or the Collector arbitrary or discriminatory powers. See Tenancy Laws — Madras Estates Land Act (1 of 1908), (as Amended in Orissa), S. 168-A. **AIR 1953 Orissa 185 (DB).**

——**Arts. 246 and 276** — Municipalities — Bihar and Orissa Municipal Act (7 of 1922), Section 82 (1) (f) and Sch. IV — Constitutional validity — Professional tax — Imposition of — Provision not ultra vires — State Legislature — Falls under Item 60 of List 2 and not under Item 86 of List 1 of Sch. 7 of the Constitution. See Municipalities — Bihar and Orissa Municipal Act (7 of 1922), S. 82 (1) (f). **AIR 1962 Pat 465 (DB).**

——**Art. 246 (3)** — Bihar Sales Tax Act, S. 2 (g) (as amended by Act 6 of 1949) — Section 2 (g) is valid — (Government of India Act (1935), Section 100 (3) and Sch. 7, List 2, Item 48). See Sales Tax — Bihar Sales Tax Act (as amended by Act 6 of 1949), S. 2 (g). **AIR 1956 Pat 178.**

——**Art. 246, Sch. 7, List 2, Entry 35, List 3, Entries 10 and 28** — Bihar Land Reforms Act (1950) — Act is constitutionally valid. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950). **AIR 1953 Pat 337 (DB).**

——**Art. 246** — Bihar Land Reforms Act (1950) — Legislation falls under Entry 36 of List 2 and is not ultra vires though it incidentally trenches upon matters reserved for Union legislature. See Tenancy Laws — Bihar Land Reforms Act (30 of 1950) — Preamble. **AIR 1953 Pat 105 (DB).**

●——**Art. 246** — Bihar Finance Act (1950), Section 12 — Tax imposed by Part 3 is intra vires of Bihar Legislature. See Bihar Finance Act (17 of 1950), S. 12. **AIR 1952 Pat 359 (SB).**

●——**Arts. 246, 19, 23, 14, Part 13** — Bihar Finance Act (1950), Part 3 — Validity — Provisions of, do not contravene Arts. 14, 19, 23 or of Part 13 of the Constitution. See Bihar Finance Act (17 of 1950), Part 3. **AIR 1952 Pat 359 (SB).**

——**Art. 246** — Administration of Evacuee Property Act (1950), S. 12 — Section held not ultra vires. See Administration of Evacuee Property Act (21 of 1950), S. 12. **AIR 1952 Pepsu 12.**

——**Art. 246** — Subject-matter of legislation viz., Payment of Wages Act (1936), S. 6 (as amended)

falls within Entry 24 of List 3 in Sch. 7 of the Constitution and is intra vires the State legislature. See Payment of Wages Act (1936), Section 6 (as Amended by Punjab Act 15 of 1962). **AIR 1964 Punj 513 (DB).**

——Arts. 246, 254 and 265, 13 and Sch. 7, List 1, Item 49 — Punjab Urban Immovable Property Tax Act (17 of 1940) — Not ultra vires the Constitution. See Punjab Urban Immovable Property Tax Act (17 of 1940). **AIR 1963 Punj 354 (DB).**

——Arts. 246 and 254 and Sch. 7, List 2, Item 1 and List 3, Item 14 — Section 9, Punjab Security of the State Act — Validity — (Punjab Safety — Punjab Security of the State Act (12 of 1953), S. 9) — (Contempt of Courts Act (1952), S. 3).

In interpreting an Act the Court has to consider what the pith and substance of the Act is. The pith and substance of Section 9, Punjab Security of the State Act deals primarily with the question of public order and not with the question of contempt. Contempt of the type punishable under S. 9 is not the same kind of contempt as is punishable under Central Act 32 of 1952. The two offences are wholly different and both the enactments can stand together without being considered repugnant to one another. The entire provisions of section 9 fall within the ambit of Entry 1, List 2 and therefore, there is nothing repugnant in this section to the Central Act 32 of 1952. Provisions contained in Section 9 of the Act, being within the competence of the State legislature by virtue of Item 1 of List 2, the section is valid and intra vires. **58 Punj LR 259: 1956 Cri LJ 1015: ILR (1956) Punj 1146: AIR 1956 Punj 169 (169, 170, 171, 172) (Prs 5, 8, 10, 11, 13, 17) (DB).**

●——**Art. 246** — Validity of Rajasthan Act (6 of 1952) — Act not ultra vires of the State Legislature. See Rajasthan Land Reforms and Resumption of Jagirs Act (6 of 1952), S. 1. **AIR 1954 Raj 291 (FB).**

——Arts. 246, 245, 363, Sch. 8, List 2, Item 42 — Pensions Act (1871) — Extension of, to Saurashtra — Act is intra vires and cannot be impugned as being in violation of any clause of Saurashtra Covenant.

State pensions are included in 'the State list in the Sch. 7 as Entry 42 and therefore, the Saurashtra Legislature had jurisdiction to enact the Pensions Act. That being so the Act cannot be impugned only because it is in violation of any clause of the Covenant. The moment the appellant takes shelter under the Covenant the dispute must be regarded as one arising out of the Covenant and ceases to be justiciable by virtue of the provisions of Art. 363 of the Constitution. **9 Sau LR 284: AIR 1956 Sau 119 (120) (Pt B) (Pr 6) (DB).**

13. Presumption of constitutionality.

●——**Art. 246** — Assam Taxation (on Goods carried by Road or on Inland Waterways) Act (10 of 1961), S. 3 — Validity — Burden of proof — Presumption of constitutionality. See Assam Taxation (on Goods Carried by Road or on Inland Waterways) Act (10 of 1961), S. 3. **AIR 1964 SC 925.**

——**Art. 246** — Interpretation of Statutes — Presumption that legislature knows its limits. See Interpretation of Statutes. **AIR 1952 Bom 16 (DB).**

——**Art. 246** — Presumption in favour of legislature — Presumption in favour of Constitutionality of enactment. See Ibid, Art. 245. **1960 Cri LJ 223: AIR 1960 J and K 15 (DB).**

——**Arts. 246, 245 and Pre.** — Unconstitutionality of Legislation — Presumption of constitutionality of a statute. See Ibid, Preamble. **AIR 1962 Mys 269 (DB).**

14. Delegation of legislative functions.

●——**Art. 246** — State legislature cannot confer higher power on municipal bodies than it has under the Constitution — Rule against excessive delegation of legislative powers equally applies in case of municipal bodies. See Ibid, Art. 245. **AIR 1965 SC 1107.**

●——**Art. 246** — Delegation — Notification, dated 11th December, 1956, by Central Government appointing enquiry commission — Validity. See Commissions of Inquiry Act (1952), S. 3. **AIR 1958 SC 538.**

——**Art. 246** — Houses and Rents — U. P. Temporary Control of Rent and Eviction Act (1947), S. 3 — Authorization of District Magistrate to grant permission whether amounts to delegation of legislation. See Houses and Rents — U. P. Temporary Control of Rent and Eviction Act, 3 of 1947, S. 3. **AIR 1952 All 624 (DB).**

——**Art. 246 (1)** — Central Government can validly delegate, under Art. 258 (1) read with Arts. 73 (1) and 246 (1), its functions under S. 7, Explosive Substances Act, to State Governments — Consent given by Governor of State under S. 7 for prosecution under Act after delegation is not open to challenge. See Ibid, Art. 258 (1). **AIR 1962 Andh Pra 322.**

——Art. 246 and Sch. 7, List 2, Item 5 — Madras Village Panchayats Act (10 of 1950), S. 112 — Rules framed under — Constitution of — Election Commissioner to hear election disputes — Validity.

(1) Section 112 of the Madras Village Panchayats Act, 1950, confers on the State Government the power to make rules governing the Constitution of tribunals for the decision of election disputes. (2) It is only a legislative enactment or a rule having statutory authority that can constitute a Court or invest a Judge with authority to determine matters outside his ordinary jurisdiction. (3) The creation of an authority distinct from a Court is not a legislative function. (4) The Election Commissioner constituted under the rules framed under the Madras Village Panchayats Act, 1950, is not a Court stricto senso but he performs the functions assigned to him as a persona designata. (5) The conferring of power to frame rules relating to the decision of election disputes on the State Government does not amount to excessive delegation or abandonment of legislative power. (6) The legislative practice in India supports the validity of this type of legislation.

Thus, the rules framed by the Government under S. 112 (2) (1) constituting the Election Commissioner to hear election disputes under the Madras Village Panchayats Act, 1950, are intra vires and valid. (1955) 1 Mad LJ 201, Foll. **(1955) Andhra WR 754: 1955 Andhra LT (Civil) 532: AIR 1957 Andh Pra 393 (403) (Pt A) (Prs 71, 72).**

——Art. 246 — Delegation of legislative power, when allowed.

While the Legislature cannot abdicate its general law-making powers it may authorise others to do things which it might properly do, but which it cannot conveniently or properly perform. It is not every grant of power by the Legislature involving the exercise of discretion and judgment that amounts to a delegation of legislative power. A legislative body may, after declaring a policy and after fixing a primary standard confer upon the executive or administrative officers the power to

prescribe the administrative rules and regulations to promote the purpose and spirit of the legislation and to carry it into effect; and the action of the Legislature in giving such rules and regulations the force and effect of laws does not violate the constitutional inhibition against delegating the legislative function. **1955 Andh WR 754: 1955 Andhra LT (Civil) 532: AIR 1957 Andh Pra 393 (402, 403) (Pt D) (Pr 69).**

●——**Art. 246** — Delegation of authority to frame rules — Effect on validity of Act. See Tenancy Laws — Assam State Acquisition of Zamindaries Act (18 of 1951), S. 11 (iv). **ILR (1956) 8 Assam 879 (FB).**

——**Arts. 246 (3) and 276** — S. 73 Bombay Municipal Boroughs Act empowering municipal borough to levy profession tax — Discretion of municipality in fixing rate is not uncontrolled — There is no excessive delegation. See Municipalities — Bombay Municipal Boroughs Act (18 of 1925), S. 73. **67 Bom LR 286: ILR (1965) Bom 552 : 1965 Mah LJ 513 : AIR 1966 Bom 15 (DB).**

——**Arts. 246, 245, 258 and 13** — "Law in force" Meaning — Nature and scope of power of entrustment under Art. 258 (1) — Legal effect of notification or order issued in exercise of that power — Notifications under Art. 258 (1), entrusting Commissioners of divisions of Bombay State, functions of Central Government under Land Acquisition Act — Notifications are "laws in force' within Section 87 and survive after bifurcation of Bombay State into States of Maharashtra and Gujarat — Land Acquisition Act (1894), Ss. 3, Cl (c), 4 and 6. See Bombay Reorganization Act (11 of 1960), S. 87. **AIR 1963 Guj 80.**

——**Arts. 246 (3), 245, 277 and Sch. 7, List. 2, Item 5** — Assam Municipal Act (15 of 1957), Sections 68 (1) (a), 80 — Validity — Power of fixing percentage of tax — Does not amount to delegation of legislative power — Sections not ultra vires the Constitution. See Municipalities — Assam Municipal Act (15 of 1957), S. 68 (1) (a). **AIR 1962 Manipur 28.**

——**Arts. 246 and 162** — Scope — States Reorganisation Act (1956), S. 115 (5) — Validity of — Section 115 (5) does not contravene Constitution— Delegation by Central Government of its powers — Extent of. See States Reorganisation Act (1956), S. 115 (5). **AIR 1961 Mys 210 (DB).**

——**Art. 246** — Essential Supplies (Temporary Powers) Act (1946), S. 3 — Delegation of power under S. 3 to Central Government is constitutional. See Essential Supplies (Temporary Powers) Act (24 of 1946), S. 3. **1953 Cri LJ 481 : AIR 1953 Nag 58 (DB).**

——**Arts. 246, 245** — Government of India Act (1935), S. 99 — Power to delegate essential legislative functions. See Govt. of India Act (1935), S. 99. **1953 Cri LJ 481 : AIR 1953 Nag 58 (DB).**

——**Arts. 246, 245** — Section 78 of the Bengal Irrigation Act — Validity — It was open to the legislature to leave it to State Government to determine water rate from time to time — S. 78 of Act, cannot be said to amount to an abdication of legislative function. Bengal Irrigation Act (3 of 1876), S. 78. See Ibid, Art. 245. **AIR 1956 Pat 482 (DB).**

——**Art. 246** —Bihar Finance Act (1950), Part 3 — Is not unconstitutional by reason of delegation of legislative function. See Bihar Finance Act (1950), Part 3. **AIR 1952 Pat 359.**

●——**Art. 246** — Essential Supplies (Temporary Powers) Act (1946), S. 3 — Validity — Delegated legislation. See Essential Supplies (Temporary Powers) Act (1946), S. 3. **1952 Cri LJ 710 : AIR 1952 Pat 220 (SB).**

●——**Art. 246 — S. 30, Punjab District Boards Act — Validity — Section is not invalid on, ground of abdication by State Legislature of its essential legislative function.**

The first limitation, which is inherent in S. 30, Punjab District Boards Act is that a tax can be imposed by the District Board only for the purposes of the District Boards Act. The second limitation, which is expressly stated, is that the power of the District Board to impose a tax does not exceed the power of the State Legislature in the same matter, and there is then the factor of control also clearly expressed that the imposition of a tax is to be effective only with the previous sanction of the State Government. Then there is a further limitation in proviso (b) to S. 30 of the Act which debars a District Board from imposing a tax on any property subject to local rate. In the face of these clear limitations and guiding principles, it is idle to suggest that by enacting section 30 the State Legislature has set up a parallel legislature or that the State Legislature has abdicated its essential legislative function. Section 30 of the Punjab District Boards Act does not offend against the rule of excessive delegation of legislative function. AIR 1959 SC 586, Rel. on. Mangal Ram Roshanlal v. Punjab State, **ILR (1962) 2 Punj 118 : 64 Punj LR 342 : AIR 1962 Punj 350 (352, 353) (Pt A) (Pr 4) (FB).**

——**Art. 246** — Order under S. 3, Essential Supplies (Temporary Powers) Act (1946), by Rationing Controller — Delegated legislation. See Essential Supplies (Temporary Powers) Act (1946) S. 3 (Before amendment in 1950). **AIR 1953 Punj 1.**

——**Art. 246 — Delegation of legislative powers to executive.**

The power conferred upon the executive for regulating the acquisition of paddy and payment of compensation for it under Paddy (Acquisition and Movement) Control Order (1950), cannot amount to delegation of legislative powers which confer upon the executive, arbitrary powers of action in view of the wellknown rules that have to be observed by the executive in carrying out the responsible duties imposed upon them with regard to the acquisition of paddy and the payment of compensation for it. **ILR (1951) TC 655: AIR 1952 Trav-Co 455 (458) (Pt D) (Pr 17) (DB).**

15. Territorial limits of legislative power.

●——**Arts. 246, 245 and Sch. 7, List 3, Entry 28** — Bihar Hindu Religious Trusts Act (1951), Ss. 3, 2 (1); 1 (2) — Applicability of S. 3 — Validity of Act — Principle of territorial nexus — Trust property outside Bihar affected — Act not invalid on ground of extra-territoriality—(Interpretation of Statutes). See Bihar Hindu Religious Trusts Act (1 of 1951), S. 3. **AIR 1959 SC 1002.**

——**Art. 246 (3) — Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946), S. 4 (b) — Validity.**

The Act (25 of 1946) has been made applicable to marriages, contracted outside the State of Bombay, either or both the contracting parties to which are domiciled in the State. There is sufficient territorial connection between such marriages and the Bombay State which is provided by a party to the marriage possessing the domicile of the Bombay State. In enacting S. 4 (b) the Legislature cannot therefore, be said to have exceeded the territorial limits of its powers. It is therefore, a law for the province, which the Provincial Legislature was competent to enact.

Case-law discussed. **1955 Cri LJ 1564 : ILR (1955) Bom 1039 : 57 Bom LR 827 : AIR 1955 Bom 439 (444, 445) (Pt D) (Prs 28, 31, 32, 33) (DB).**

[**Overruled** in AIR 1958 Bom 68 (FB) and considered in AIR 1960 SC 1329.]

——**Art. 246** — Power of State to tax, intra-state and inter-state sales — Contract of sale concluded in another State — Goods delivered in Madras — Liability for taxation under Madras General Sales Tax Act — (Sales Tax — Madras General Sales Tax Act (9 of 1939), Ss. 3 and 22). See Ibid, Art. 245 (1). **AIR 1953 Mad 116 (DB).**

16. Extra-territorial operations.

●——**Arts. 246, 248** — Extra-territorial operation — If legislation with extra-territorial operation is within competence of Union, it is equally within competence of State — "Extra-territorial operation" connotes firstly laws in respect of acts or events which take place inside State but have operation outside State and secondly laws with reference to nationals of State in respect of their acts outside State — In former sense, laws are strictly speaking intra-territorial and it is within competence of Parliament and State to enact such laws — Expression in Art. 245 (2) is to be understood in latter sense — (Per Venkatarama Ayyar J.). See Ibid, Art. 248. **AIR 1955 SC 661.**

●——**Arts. 246, 245, 286** — Sales Tax Legislation operating on non-resident persons — Validity considered — (Per Venkatarama Ayyar J., in dissentient judgment). See Ibid, Art. 245. **AIR 1955 SC 661.**

——**Art. 246** — Income-tax (Amendment) Act (33 of 1954), S. 2 — Income-tax Act (1922), S. 34 (1-A) to (1-D) — Constitutionality — Act is within legislative competence of Parliament —Has no extra-territorial operation and cannot be challenged on that ground. See Ibid, Art. 245 (2). **AIR 1960 Cal 619 (DB).**

ARTICLE 247

——**Arts. 247 and 32 (3)** — Words 'any other Court' in Art. 32 (3) when read along with Art. 247 can only mean any Court other than a High Court. See Ibid, Art. 226. **1952 Cri LJ 660 : AIR 1952 Bhopal 1.**

——**Arts. 247, 245, 246, 248 to 255** — Arts. 245 to 255 deal with respective powers of Union Parliament and State Legislatures and the subjects assigned to each of those legislatures with reference to legislation — Scheme of distribution of legislative powers. See Ibid, Art. 245. **AIR 1958 Mad 403.**

ARTICLE 248

●——**Art. 248** — Himachal Pradesh Legislative Assembly (Constitution and Proceedings) Validation Act (56 of 1958) Ss. 3 and 4 — Constitutional validity. See Ibid, Art. 240. **AIR 1960 SC 1008.**

●——**Arts. 248, 246, Sch. VII, List II, Entry 54** — Bengal Finance (Sales Tax) Act (6 of 1941) — (as extended to Delhi), Ss. 2 (b), (d), (g), (h), (i) — Provisions in Act imposing tax on building contracts, ultra vires the Province of Bengal extended to Delhi by notification — Legality — Part C States (Laws) Act (1950), S. 2 — Scope. See Sales Tax — Bengal Finance (Sales Tax) Act (6 of 1941) (as extended to Delhi)), S. 2 (b). **AIR 1958 SC 682.**

●——**Art. 248, Sch. VII, List I, Entries 86 and 97** — Wealth Tax Act (1957), S. 3 — Validity — Imposition of Wealth tax on Hindu undivided family is ultra vires. (Majority view). See Wealth Tax Act (1957), S. 3. **AIR 1961 All 487 (FB).**

——**Arts. 248, 123, 245 and 246** — Administration of Evacuee Property (Chief Commissioners Provinces) Ordinance (12 of 1949) — Validity. See Administration of Evacuee Property (Chief Commissioners Provinces) Ordinance (XII of 1949). **AIR 1957 All 561 (DB).**

——**Arts. 248, 265, 245, 246 and Schedule VII** — 'Fees' and 'Tax' — Legislative competence — Residuary power with regard to taxation is in Union — Levy of tax as ancillary or incidental to subjects specified in the Lists in Sch. VII. See Ibid, Art. 265. **AIR 1959 Andh Pra 398.**

——**Art. 248 (1)** — Bombay Court-fees Act (XXXVI of 1959), Sch. I, Art. 16 — Levy imposed is neither tax nor fee in the strict sense — It is within legislative competence of the State under Sch. VII, List II, Entry 3. See Bombay Court Fees Act (XXXVI of 1959), Sch. 1, Art. 16. **AIR 1962 Bom 106 (DB).**

——**Arts. 248, 245 (2), 246 and Sch. VII, List I, Item 82** — Income-tax (Amendment) Act (33 of 1954), S. 2 — Income-tax Act (1922), S. 34 (1-A) to (1-D) — Constitutionality — Act is within legislative competence of Parliament — Has no extra-territorial operation and cannot be challenged on that ground. See Ibid, Art. 245 (2). **AIR 1960 Cal 619 (DB).**

——**Art. 248** — Adjustment of boundaries between Foreign States — Limitations to the exercise of executive power — Sanction of Parliament. See Ibid, Art. 226. **AIR 1959 Cal 506.**

——**Arts. 248 (2), 246, and Sch. 7, List I, Entry 97 and List II, Entries 18 and 47**—Gift-tax Act (18 of 1958) — Act is intra vires of Parliament by virtue of Art. 248 (2) read with Entry 97 of List I. See Gift Tax Act (1958). **AIR 1962 Ker 97.**

——**Art. 248** — Power of Parliament to pass retrospective legislation for Madhya Bharat. See Ibid, Art. 20. **AIR 1952 Madh B 181 (DB).**

——**Art. 248 and Sch. VII, List 1, Entry 97** — Sugarcane Cess (Validation) Act (1961), Ss. 3 and 2 (b) — Validity of Act — Scope and effect of S. 3 — Parliament competent to legislate— Act held not colourable in character. See Sugarcane Cess (Validation) Act (1961), S. 3. **AIR 1964 MP 118.**

——**Art. 248** — Gift Tax Act (1958), S. 1 — Validity of Act — Tests — Taxing powers under the Constitution — Tax on gifts of agricultural land— Subject fully within Entry 97 of List I, read with Art. 248 and not covered by Entries 18 and 47 of List II — Act held valid. See Gift Tax Act (1958), S. 1. **AIR 1963 Mad 419 (DB).**

——**Arts. 248, 14 and Sch. 7, List 1, Entries 82, 97** — Income-tax Act (1922) (as amended by Finance Act of 1955), Ss. 2 (6-A) (e) and 12 (1-B) — Loans advanced by controlled company to its share-holder — Legislation bringing such amounts to tax as income — Ss. 2 (6-A) (e) and 12 (1-B) are within legislative competence of Parliament — Legislation does not offend Art. 14. See Ibid, Sch. 7; List 1, Entry 82. **AIR 1961 Mad 146.**

——**Art. 248** — Legislative lists — Entries in — Construction — Schedule VII, List I, Entry 82 — 'Income'. See Income-Tax Act, Ss. 2 (6-A) (c) and 12 (1-B). **AIR 1961 Mad 146 (DB).**

——**Art. 248** — Scheme of Distribution of Legislative powers pointed out. See Ibid, Art. 245. **AIR 1958 Mad 403.**

——**Arts. 248 and 246** — Government of India Act (1935), Ss. 100 and 104 — Legislative entries in Sch. VII — Scope of S. 104. See Ibid, Art. 246. **AIR 1956 Mad 642.**

——**Art. 248, Sch. 1, List I, Item 97; List III, Item 47 — Bihar Hindu Religious Trusts Act (1 of 1951), S. 70 — Validity.**

The contribution made under S. 70 of the Bihar Hindu Religious Trusts Act is in the nature of a fee and not in the nature of a tax and the State Legislature was competent to enact this provision. It is true that there is the element of compulsion in the payment of the fee and it is also true that the fee is not uniform; there is no relationship between the amount of the fee and the services rendered. But the main consideration in such a case is whether the contribution goes to swell the public revenue. The contribution imposed under section 70 does not go to the consolidated fund of the State of Bihar. Under the Act the authorities may be raising revenue from the trustees of religious endowments under S. 70 but the levy is not made for any Government purpose but for the limited specified purpose laid down in S. 70, viz., for defraying the expenses incurred in the administration of the Act. AIR 1952 Mad 613, Disting. AIR 1953 Bom 242, Rel. on. **32 Pat 1148 : AIR 1954 Pat 266 (276) (Pt K) (Pr 20) (DB).**

●——**Art. 248** — Bihar State Management of Estates and Tenures Act (21 of 1949), S. 1 — Act, validity of. See Bihar State Management of Estates and Tenures Act (21 of 1949), S. 1. **AIR 1950 Pat 392 (SB).**

——**Art. 248** — Gift-Tax Act (1958) — Validity— Tax on gift of agricultural land — State legislature not competent to make laws for levy of tax on transfers and alienations of agricultural land — Gift-tax Act (1958), held not ultra vires powers of Parliament. See Ibid, Sch. VII, List I, Entry 97. **AIR 1965 Punj 65 (DB).**

ARTICLE 249

——**Art. 249** — Scheme of distribution of legislative powers pointed out. See Ibid, Art. 245. **AIR 1958 Mad 403.**

ARTICLE 250

——**Art. 250 (1)** — Proclamation of emergency — Effect on legislative powers of Parliament. See Ibid, Art. 353. **1964 (1) Cr LJ 662 : AIR 1964 Cal 279 (DB).**

——**Art. 250** — Scheme of distribution of legislative powers pointed out. See Ibid, Art. 245. **AIR 1958 Mad 403.**

ARTICLE 251

——**Art. 251** — Scheme of distribution of legislative powers pointed out. See Ibid, Art. 245. **AIR 1958 Mad 403.**

——**Art. 251** — Inconsistency between Central Act and State Act. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), S. 20. **AIR 1954 Mad 291 (DB).**

——**Art. 251** — Scope and applicability of — Orissa Mining Areas Development Funds Act (XXVII of 1952) — Act is impliedly repealed on the passing of the Central Act, the Mines and Minerals (Regulation and Development) Act (LXVII of 1957) — Interpretation of Statutes — Implied repeal — Drafting of rule making clauses — Enumeration of particular heads — Scope — S. 18 (2) of Central Act (LXVII of 1957) is not restrictive of powers conferred by sub-S. (1) of S. 18. See Orissa Mining Areas Development Funds Act (XXVII of 1952). **AIR 1962 Orissa 24 (DB).**

[Reversed in AIR 1964 SC 1284.]

ARTICLE 252

●——**Art. 252, 7th Schedule, List II, Items 34 and 62 — Resolutions by State Legislatures surrendering control and regulation of prize competitions to the Parliament — Power to tax betting and gambling cannot be said to have been surrendered to Parliament.**

The Central Act, Prize Competitions Act (1955) adopted by the Mysore Legislative Assembly is with respect to betting and gambling under Entry 34, of List II of the 7th Schedule and the taxing sections of the Mysore Lotteries and Prize Competitions Control and Tax Act (XXVII of 1951) as amended by Act XXVI of 1957 are with respect to tax on betting and gambling under Entry 62 of List II of the 7th Schedule. As by passing the resolution the State Legislatures did not surrender their power of taxation it cannot be said that Cl. (2) of Art. 252 of the Constitution was violated by the amendment of the Mysore Act; nor can it be said that in reality it was a piece of colourable legislation by an indirect attempt to amend the Central Act and a new method of control was devised by imposing a penalty under the name of tax. AIR 1957 SC 699, Dist. M/s. R. M. D. C. (Mysore) Private, Ltd. v. State of Mysore, **(1962) 1 SCA 546 : (1962) 3 SCR 230 : (1962) 2 SCJ 620 : AIR 1962 SC 594 (598, 599, 600) (Pt A) (Prs 12, 14, 15).**

——**Arts. 252 (2) and 212 (2)** — Protection under Art. 212 (2) — Nature of — Immunity under Art. 252 (2) — When available. See Ibid, Art. 212 (2). **ILR (1957) Bom 218.**

——**Art. 252— Estate Duty Act (XXXIV of 1953), S. 5 (2) — Scope — Death of a person prior to the publication of notification under section 5 (2) — Estate duty on agricultural lands — Not leviable — Reference under section 64 (1) of the Act.**

The power to legislate with respect to estate duty on agricultural lands is vested in the Legislature of the State where the property is situate. But Art. 252 of the Constitution makes provision whereby Parliament can make laws in certain circumstances. To entitle Parliament to so legislate the Legislatures of more than one State should pass a resolution. It would be open to the other States to adopt that legislation by merely passing a resolution of their Legislatures.

If under the terms of an enactment the State is brought within its ambit only from a particular date (e. g., date of publication of notification under S. 5 (2) of the Act), the Central Act adopted would have operation only from that date with respect to the State so adopting.

There is nothing in the Act to make the operation of the Act retrospective either by express words or necessary implication to a date earlier than the date of the publication of the notification under S. 5 (2). It must follow that the duty will be leviable in regard to the agricultural lands of a deceased only in case of his death after the publication of the notification by the Central Government under S. 5 (2), that is 11th June, 1955. **(1960) 1 MLJ 385 : ILR (1960) Mad 687 : 73 Mad LW 236: (1960) 38 ITR (ED) 1: AIR 1960 Mad 305 (308) (Prs 14, 15, 16) (DB).**

——**Art. 252** — Scheme of distribution of Legislative powers pointed out. See Ibid, Art. 245. **AIR 1958 Mad 403.**

ARTICLE 253

——**Art. 253** — Agreement for avoidance of double taxation in India and Pakistan, Art. IV —Absence of legislation by Parliament regarding implementation of agreement — Power of Court to interpret it. See Income-tax Act (1922), S. 49-A. **69 Cal WN 640.**

——**Art. 253** — Adjustment of boundaries between foreign States — Limitations to the exercise of

executive power — Sanction of Parliament. See Ibid, Art. 226. **AIR 1959 Cal 506.**

——**Art. 253** — Scheme of distribution of legislative powers pointed out. See Ibid, Art. 245. **AIR 1958 Mad 403.**

●——**Art. 253** — S. 7 of Abducted Persons (Recovery and Restoration) Act (1949) — Validity See Ibid, Art. 19 (1) (d) (e) (f) (g) and (6). **1952 Cri LJ 1313 : AIR 1952 Punj 309 (FB).**

ARTICLE 254

SYNOPSIS

(Constitution of India, Art. 254.)

1. Scope and applicability.
2. Repugnancy of State law to law made by Parliament.
3. Repugnancy of State law to "existing law".
4. "Law made by Parliament".
5. Law made by legislature of a State.
6. Order by State Governor.
7. Existing law.
8. "With respect to one of the matters enumerated in the Concurrent List".
9. "Repugnancy", meaning of.
10. Proof of repugnancy.
11. Effect of repugnancy.
12. Repeal by implication.
13. President's assent (Clause (2)).
14. Proviso to Clause (2).

1. Scope and applicability.

●——**Art. 254** — J. and K., Big Landed Estates (Abolition) Act (17 of 2007) — Applicability — Art. 254 does not apply. See Tenancy laws — J. and K. Big Landed Estates (Abolition) Act (XVII of 2007). **AIR 1959 SC 749.**

●——**Art. 254 — Scope and applicability.**

Article 254 (1) lays down a general rule. Clause (2) is an exception to that Article and the proviso qualifies the exception. Deep Chand v. State of U. P., **1959 SCA 377: 1959 SCJ 1069: ILR (1959) 1 All 293 : (1959) 2 SCR (Suppl) 8 : AIR 1959 SC 648 (664, 665) (Pt C) (Pr 28).**

——**Art. 254 — Applicability.**

It applies only when there is inconsistency between Central and State Acts. **(1962) 1 Lab LJ 309 : (1961) 3 Fac LR 92 : AIR 1961 All 321 (324) (Pt A) (Pr 8).**

—Art. 254 (2) — Applicability and scope —Laws in force on date when Constitution took effect — Art. 254 (2) will not apply.

Art. 254 (2) only contemplates laws being made by the Legislature of the State subsequent to the inauguration of the Constitution and has no application to laws in force on the date the Constitution took effect. **1955 An LT (Cri) 205.**

——**Art. 254** — Unconstitutionality of legislation — State cannot plead unconstitutionality of its own statutes before Courts. See Ibid, Pre. **1962 (2) Cri LJ 33 : AIR 1962 Cal 338 (DB).**

——**Art. 254 — Scheme of distribution of legislative powers.**

Articles 245 to 255 deal with the respective powers of the Union Parliament and the State Legislatures and the subjects assigned to each of those legislatures with reference to legislation. See Ibid, Art. 245. **AIR 1958 Mad 403.**

——**Art. 254** — Domicile and citizenship of Indian Union — Indian domicile does not do away with concept of subsidiary domicile of the constituent State — In the matter of minority, succession and marriage such State domicile has relevance — Conflict between State Laws and Laws made by Parliament relating to these matters have to be resolved on principles of private international law. See Ibid. Art. 5. **(1965) 1 Mys LJ 577 : AIR 1966 Mys 100 (DB).**

——**Art. 254** — Applicability — Art. 254 can only apply if there is legislation by Parliament in regard to some of those matters enumerated in list I or in list III of 7th Schedule. See Ibid, Art. 13. **1951 Cri LJ 1081 : AIR 1950 Pat 265 (DB).**

2. Repugnancy of State law to law made by Parliament.

●——**Art. 254 — Sections 29 and 30 of the Road Transport Corporation Act, 1950 not repugnant to S. 3 of the Income-tax Act, 1922.**

There is no repugnancy between Ss. 29 and 30 of the Road Transport Corporation Act, 1950 and S. 3 of Income-tax Act, 1922 and hence on that ground it cannot be suggested that the Act of 1950 should prevail over the Income-tax Act of 1922. Hence the claim of the Road Transport Corporation that Ss. 29 and 30 of the State Act do not contemplate payment of income-tax by the Corporation and, therefore, no such tax can be levied on its income is without force.

Every year a fresh Finance Act is passed and it is by virtue of such Finance Act that income-tax is assessed from year to year and hence the argument that the Road Transport Corporation Act is later in point must fail.

It is true that Ss. 29 and 30 do not contemplate the payment of income-tax. But it is hardly necessary for the Act to make provision that tax, if chargeable, would be paid. In fact the Companies Act does not make such specific provision though no one can suggest that there is repugnancy between the provisions of Companies Act and the Income-tax Act. Andhra Pradesh State Road Transport Corporation v. I. T., Officer, B. I. B. Ward, Hyderabad, **(1964) 7 SCR 17 : (1964) 52 ITR 524 : (1964) 34 Com-Cas 473 : (1964) 1 ITJ 738 : (1964) 2 MLJ (SC) 33 : (1964) 2 Andh WR (SC) 33 : (1964) 2 SCJ 167 : AIR 1964 SC 1486 (1494) (Pt B) (Pr 22).**

●——**Art. 254 (1)— Repugnancy between Prize Competitions Act (1955) and Mysore Act (XXVII of 1951) — Effect of Mysore Amending Act (XXVI of 1957).**

The inconsistency between the Central Act, Prize Competitions Act (1955) and the Mysore Lotteries and Prize Competitions Control and Tax Act (XXVII of 1951) would operate on that portion of the Mysore Act which became repugnant to Ss. 4 and 5 of the Central Act as to prohibition of prize competitions and licensing of prize competitions, e.g., S. 8 of the Mysore Act and consequently that portion of S. 12 (1) (b) of the Mysore Act which deals with taxes in respect of prize competitions for which a licence had been obtained under S. 8 might be said to have become void and not the rest. Therefore, by the omission of words 'for which a licence had been obtained" under S. 8, the rest of the clause would be valid. The effect of the Mysore amending Act XXVI of 1957 is that the abovementioned words were deemed to have been omitted as from 1st April, 1956, the day when the Central Act came into force and the rest of Clause (b) is not repugnant to any of the provisions of the Central Act. AIR 1959 SC 648, Rel. on. M/s. R. M. D. C. (Mysore), Private, Ltd. v. State of Mysore, **(1962) 1 SCA 546 : (1962) 2 SCJ 620 :**

(1962) 3 SCR 230: AIR 1962 SC 594 (600, 601) (Pt C) (Pr 16).

●——**Arts. 254 and 13 (1) — Motor Vehicles (Amendment) Act whether wholly repugnant to provisions of U. P. Transport Service (Development) Act — Section 6, General Clauses Act — Effect of — (Motor Vehicles (Amendment) Act (1956), S. 1)— (U. P. Transport Service (Development) Act (IX of 1955), S. 1) — (General Clauses Act (1897), S. 6).**

Presumably, Parliament with a view to introduce a uniform law throughout the country passed the Amending Act inserting Chapter IV-A in the Motor Vehicles Act, 1939. It is manifest that the Amending Act occupies the same field under the State Act after the Amending Act and therefore to that extent the State Act must yield its place to the Central Act. But the same cannot be said of the schemes framed under the U. P. Act before the Amending Act came into force. What is void under Art. 254 (1) is not the entire Act but only to the extent of its repugnancy with the law made by Parliament. Therefore under Art. 254 (1) the law under the U. P. Act subsists to support the schemes framed thereunder and it becomes void only in respect of schemes framed under the Central Act.

While under Art. 13 (1) all the pre-Constitution laws, to the extent of their inconsistency with the provisions of Part III, are void, under Art. 254 (1) the State Law to the extent of its repugnancy to the law made by Parliament is void. If the pre-Constitution law exists for the-post-Constitution period for all the past transactions, by the same parity of reasoning, the State law subsists after the making of the law by Parliament, for past transactions. In this view, both the laws can co-exist to operate during different periods. Deep Chand v. State of U. P., **1959 SCA 377: 1959 SCJ 1069: ILR (1959) 1 All 293: (1959) 2 SCR (Suppl.) 8: AIR 1959 SC 648 (667, 668, 669) (Pt F) (Prs 31, 32, 33, 34, 35, 36).**

——**Art. 254 and Sch. VII, List III, Entry 13** — C. P. Code (1908), S. 102 — Amendment by U. P. Act (XXIV of 1954) and by Central Act (LXVI of 1956) — Central amendment prevails over State amendment — Suit for recovery of Rs. 1,700 filed in 1956 — Decree passed after 1-1-1957 — Second appeal and not revision lies — AIR 1961 All 320, **Overruled. ILR (1962) 1 All 657: 1961 All LJ 996: 1961 All WR (HC) 761: AIR 1962 All 299 (300) (Pr 3) (DB).**

——**Art. 254 (1) — Scope — U. P. Sugarcane Cess Act (XXII of 1956), S. 3 (1) — Validity — (U. P. Sugarcane Cess Act (XXII of 1956), S. 3 (1)) — (Industries Development and Regulation Act (1951), S. 9).**

It cannot be said that as S. 3 (1) of the impugned Act is repugnant to S. 9 of Act (LXV of 1951) and it is void under Art. 254 (1) of the Constitution. The field of sugarcane is not covered by Act (LXV of 1951) as amended by Act (XXVI of 1953) and the legislative powers of the State Legislature in regard to sugarcane are not affected by it in any manner. AIR 1956 SC 676, Foll. **AIR 1957 All 159 (165) (Pt F) (Pr 27) (DB).**

——**Art. 254** — Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1951), S. 1 — Validity of Act — Repugnancy with Land Acquisition Act, 1894. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 1. **AIR 1952 All 88 (DB).**

——**Art. 254** — Madras General Sales Tax Act (9 of 1939), S. 2 (h) Explanation 2 — Validity — Explanation not repugnant to Sale of Goods Act (1930) — No question of repugnancy under S. 107 of Government of India Act (1935), arises. See Sales Tax — Madras General Sales-tax Act (9 of 1939), S. 2 (h); Explanation 2. **AIR 1960 Andh Pra 203.**

——**Art. 254** — Motor Vehicles Act (1939), S. 48-A (Mad) — If void on ground of repugnancy to S. 48 (3) (xxi). See Motor Vehicles Act (1939), S. 48-A (Mad). **AIR 1959 Andh Pra 476.**

——**Arts. 254 and 372** — Motor Vehicles Act (1939) (as amended by Act 100 of 1956), Chapter IV-A, S. 68-B — Whether void being repugnant to Art. 372 — Whether overrides Chap. IV — Whether a fetter on future legislation. See Motor Vehicles Act (1939 as amended by Act 100 of 1956), Chap. IV-A. **AIR 1959 Andh Pra 292.**

——**Art. 254 — Repugnancy — Essential Supplies (Temporary Powers) Act (1946) and Madras Essential Articles Control and Requisitioning (Temporary Powers) Act (XIV of 1946) — If inconsistent with each other.**

While the Central enactment provides for the production, supply and distribution of certain commodities including edible oils, the Madras Legislation referred to essential articles of different kind which are listed in the schedule annexed to the enactment. The two enactments do not operate over the same territory. In such a situation, there can be no question of there being repugnancy between the two enactments and one prevailing over another. **1958 Andh LT 598.**

——**Art. 254 (2)** — Lay off compensation — Application under S. 33-C by workers employed by textile mill in Vidarbha region after extension of C. P. and Berar Act to textile industries in that region — Maintainability. See Industrial Disputes Act (1947), Ch. V-A. **AIR 1963 Bom 189 (DB).**

——**Art. 254 — S. 8 — Validity — Forward Contracts (Regulation) Act (1952).**

As the Notification applying S. 15 of the Forward Contracts (Regulation) Act (1952) to Cotton was issued long after the suit contracts violating the provisions of S. 8 of the Bombay Forward Contract Control Act (LXIV of 1947) were entered into, the Central Act could not apply to the suit contracts and hence S. 8 of the Bombay Act could not be held to be repugnant to the provisions of the Central Act. (Held further that though S. 29 of the Forward Contracts (Regulation) Act (1952) provided for repeal of corresponding laws in the State, the question whether and to what extent that provision would affect the provisions of the Bombay Forward Contracts Control Act did not fall to be considered in the present case). **ILR (1960) Bom 600: 62 Bom LR 277: AIR 1960 Bom 532 (534, 541) (Pt D) (Prs 8, 22) (DB).**

——**Art. 254 — Essential Supplies (Temporary Powers) Act (24 of 1946), (as amended by Acts 19 of 1949 and 52 of 1950), S. 7** — Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) Enhancement of Penalties) Act (36 of 1947), S. 2 — Repugnancy in Central and State Acts on same matter — (Government of India Act, 1935, S. 107 (2)). See Essential Supplies (Temporary Powers) Act (XXIV of 1946) (as amended by Acts XIX of 1949 and LII of 1950), S.7. **1953 Cri LJ 1602: AIR 1953 Bom 371 (DB).**

——**Art. 254 (2) — Repugnancy — West Bengal Land Development and Planning Act (XXI of 1948) and Land Acquisition Act (1894) — No repugnancy between two Acts — Even if repugnancy is assumed S. 2 of State Act will prevail,**

only to the extent of amendment introduced by West Bengal Land Development and Planning (Amendment) Act, 1955.

The provisions in the West Bengal Land Development and Planning Act, 1948, are in no way inconsistent with or repugnant to the Land Acquisition Act, 1894. The field of operation of the State Act though having certain common features, namely, provisions relating to acquisition of land, is considerably different from the field of operation of the Land Acquisition Act. There is no conflict between the provisions of the two statutes. On the other hand, the provisions of the State Act are complementary to the provisions of the Central Act.

The basic, principle of repugnancy is that there must be a conflict between the two Acts and it cannot be said that such a conflict arises by reason of the absence of a provision in the Central Act similar to that provided in S. 9 of the State Act. On the other hand, it is clear that the State Act is making a provision regarding disposal of land, a question on which the Central Act is silent, and for that reason, the doctrine of repugnancy has no application.

Both the Acts are pre-Constitution Acts. The State Act was amended by the West Bengal Land Development and Planning (Amendment) Act, 1955, but the only amendment made to S. 2 of of the Act was that the following Clause was inserted therein, namely; 'but does not include a purpose of the Union'. It was this amendment which was reserved for the consideration of the President and received his assent and not the entire Act, which is a pre-Constitution Act. It cannot, therefore, be contended that the Act in is entirely, or at any rate S. 2 of the Act should prevail over the Central Act within the State. **69 Cal WN 801 : AIR 1966 Cal 359 (360, 361, 363) (Prs 5, 9, 18) (DB).**

——**Art. 254** — Oriental Gas Company Act — Validity. See Ibid, Art. 246. **AIR 1961 Cal 267.**

——**Art. 254** — West Bengal Fire Services Act (XVIII of 1950) — Validity. See Ibid, Art. 246. **AIR 1960 Cal 219.**

——**Art. 254 — Conflict between State Legislature and Parliament — Harmonious construction.**

Where possible, a construction which harmonises statutes within the respective legislative competence of the State Legislature and Federal Parliament to the one that creates a conflict or repugnancy should be preferred. **62 Cal WN 406: (1958-59) 14 FJR 330 : (1958) 2 Lab LJ 61 : AIR 1958 Cal 373 (376, 377) (Pt C) (Pr 15).**

——**Arts. 254, 240, 246 (4)** — Government of Part C States Act (1951), Ss. 21 and 22 — Part C State Law — Repugnancy with Central law — Effect — "Pith and substance" rule — Applicability — State Act is void. See Ibid, Art. 240. **AIR 1961 Madh Pra 216 (DB).**

——**Art. 254** — Conflict between Central and State laws — Efforts should be made to reconcile them. See Interpretation of Statutes. **(1964) 1 Mad LJ 191 : AIR 1965 Mad 54 (DB).**

●——**Art. 254 — S. 48-A, Motor Vehicles Act (Mad. Amendment) — Validity — Should not be construed as a power to vary the route as if it is a condition of permit.**

Per Ramachandra Iyer, C. J. and Jagadisan, J.: If it is necessary to refer to Art. 254 of the Constitution, and to decide the question of constitutional validity of S. 48-A of the Motor Vehicles Act (Madras Amendment) it would fall within Art. 254 (1) and become infirm as against S. 48 as amended by the Central Act C of 1956. It is however, preferable to adopt the golden mean and to hold that S. 48-A operates to the extent to which it can operate as regards conditions of permit recognised and provided for under Central Act. The power of the Transport authority to vary the conditions of the permit contained in S. 48-A of the Act would enable the authority only to alter the enumerated conditions specified in S. 48 (3) (as amended in 1956) and which may be embodied in the permit; but this power should be correlated only to such conditions as the authority can validly include under the present enactment and should not be construed as a power to vary the route as if it is condition of a permit. AIR 1959 Andh Pra 476, Rel. on. S. V. Natesa Mudaliar, Proprietor, S. L. N. S. Transport, Kancheepuram v. Sri. Dhanapal Bus Service (Private), Ltd., Kancheepuram. **ILR (1964) 1 Mad 288 : (1964) 2 Mad LJ 23 : AIR 1964 Mad 136 (144) (Pt C) (Pr 14) (FB).**

——**Art. 254** — Sections 35 and 36 of Madras Aliyasanthana Act, 9 of 1949 — Provisions are not void as being repugnant to law made by Parliament viz., Ss. 7 (2) and 30 of Hindu Succession Act — So long as S. 7 (2) of the Succession Act permits testamentary disposition of undivided interest fact that Aliyasanthana Act permits someone else to transform that interest which was undivided at one stage into divided interest by making a claim for partition would not be a justification for deducing a repugnancy between the two Acts. See Madras Aliyasanthana Act (9 of 1949), S. 35. **(1963) 2 Mys LJ 552.**

——**Art. 254 (1)** — Ss. 18, 19, 33 and 37 (3) of the Orissa Act 1 of 1952— Banking Companies Act (1949), Ss. 45-A, 45-B — Inconsistency between — Effect. See Banking Companies Act (1949) (as amended in 1953), S. 45-A. **AIR 1954 Orissa 186.**

●——**Art. 254** — Act ousting jurisdiction of civil Court. See C. P. Code (1908), S. 4. **AIR 1955 Pat 1 (SB).**

——**Arts. 254, 19 and 26** — Travancore-Cochin Hindu Religious Institutions Act (15 of 1950), S. 66 (vi) — Section 66 of the Act does not offend Articles 19, 26 and 254 of the Constitution. See Ibid, Art. 19. **AIR 1956 TC 19.**

——**Art. 254 — Repugnancy between S. 7, C. P. Code and S. 20, T. C. Act (XXII of 1951) — S. 20 is void to that extent.**

When there is an apparent conflict or repugnancy between the provision contained in section 7 of the Code of Civil Procedure which is a Central Act and the saving clause as to revision contained in section 20 of the Civil Courts Act which is an Act passed by the State Legislature, the provision contained in the Central Act has to prevail and the provision in the law made by the State Legislature, has to the extent of such repugnancy, to be ignored as being void, under Art. 254 of the Constitution. **1952 Ker LT 538 : AIR 1953 Trav-Co 41 (43) (Pt C) (Pr 4) (DB).**

——**Art. 254 — Repugnancy — Test — Industrial Disputes Act, 1947.**

The Industrial Disputes Act 14 of 1947 passed by the Central Legislature (as amended by Act 48 of 1950) has replaced the Travancore-Cochin Industrial Disputes Act 16 of 1950. The inference would seem fairly, clear that the Central Parliament intended to make its legislation upon the subject of industrial disputes exhaustive so as to exclude any State legislation upon that subject. The result is that Central Act prevails. Hence the Central Act governs the industrial disputes in the State of Travancore-Cochin. Case-

law Ref. **ILR (1951) Trav-Co 458 : 1951 KLT 121 : AIR 1951 Trav-Co 203 (207) (Pt A) (Pr 15).**

3. Repugnancy of State law to "existing law".

●——**Art. 254 (2)** — Bombay Prohibition Act (XXV of 1949), Ss. 66 (1) (b) and (2), 129-A and 129-B — Scheme of —Trial of offence under Section 66 (1) (b) — Report of Chemical Examiner in cases not covered by S. 129-A — Admissibility in evidence under S. 150, Criminal P. C. — Ss. 129-A and 129-B how far repugnant to provisions of S. 510, Criminal P. C. See Bombay Prohibition Act (XXV of 1949), S. 66 (1) (b). **(1963) 2 Cr LJ 418 : AIR 1963 SC 1531.**

●——**Art. 254 (2)** — Municipalities — Orissa Municipal Election Validation Ordinance (1 of 1959), S. 5 — Section not repugnant to any existing law. See Municipalities — Orissa Municipal Election Validation Ordinance (1 of 1959), S. 5. **AIR 1962 SC 945.**

●——**Art. 254** — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (XI of 1952), S. 37 — Validity. See Tenancy Laws — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (XI of 1952), S. 37. **AIR 1960 SC 796.**

●——**Arts. 254 (2), 245, Sch. 7, List 3, Item 13** —Bihar Hindu Religious Trusts Act (1 of 1951), Ss. 2 (1), 3, 4 (5), 28, 29 — Baidyanath temple in Bihar is public trust — Act applies to the temple — Act is not bad on ground of extra territorial operation because it takes trusts in Bihar out of purview of S. 92, Civil P. C. — AIR 1954 Pat 262, **Reversed** — (Civil P. C. (1908), S. 92). See Bihar Hindu Religious Trusts Act (1 of 1951), S. 2 (1). **AIR 1959 SC 1073.**

●——**Art. 254** — Effect of incidental encroachment into field reserved for Centre — Constitutionality of Ss. 4 (2) and 28 to 32, Madras Prohibition Act. See Government of India Act (1935), S. 107. **1957 Cri LJ 409 : 1957 SCJ 216 : (1957) MLJ (Cr) 88 : (1957) 1 MLJ (SC) 59 : (1957) 1 An WR (SC) 59 : AIR 1957 SC 297.**

●——**Art. 254 (2) — U. P. Civil Laws (Reforms and Amendment) Amendment Act (9 of 1963), S. 2 — Amendment Act of 1963 is not invalid— Order of Chief Justice transferring appeal to District Judge for administration purposes is judicial order — Legislature can validate such order by amending Act even if order was not valid prior to amendment — Civil P. C. (1908), Ss. 4 and 24 — High Court Rules and Orders — Allahabad High Court Rules of Court (1952), Ch. V, R. 1.**

The U. P. Civil Laws (Reforms and Amendment) Amendment Act, 1963, is not invalid and the order of transfer of a First Appeal by the High Court to the District Judge, though passed before the Amendment Act received the assent of the Governor and was published in the U. P. Gazette, is valid since after its publication and confers jurisdiction on the District Judge to hear and dispose of the appeal : 1963 ALJ 515, Ref. to.

Clause 2 of Art. 254, Constitution, comes into operation only if there exists a repugnancy and not if the State Legislature has merely made a law on a matter on which there already existed a law made by the Parliament or there was an existing law. Repugnancy as contemplated by the Article does not necessarily mean contradiction by implication. Where an Act passed by the Parliament or the existing law permits the coexistence of another enactment having inconsistent provisions, it cannot be said the law is repugnant to the law made by the Parliament or the existing law as the case may be. Special law prevails over the general law, and consequently, the special law shall be applicable to matters covered by that law, while the general law to other matters.

With regard to the transfer and hearing of appeals there exists no specific provision to the contrary in Civil P. C. Consequently the State Legislature could make a law even though in variation of the provisions of Civil P. C. by conferring special jurisdiction or power on any authority. AIR 1941 FC 16 and AIR 1942 FC 27, Rel. on.

The Courts cannot restrict the scope of general words on supposed intention of the Legislature which does not appear from enactment itself. Thus the special jurisdiction or power contemplated by S. 4 Civil P. C. could be conferred on any Court including the Civil Court. Hence, if the District Judge had not under the provisions of Civil P. C. the power to hear a case the special law could confer on him such jurisdiction.

Section 2 of the Amendment Act of 1963 was not repugnant to S. 24 Civil P. C., nor was it repugnant to the Bengal, Agra and Assam Civil Courts Act. Hence, no assent of the President was necessary before the law could be valid and enforceable.

It is true that, under S. 3 (1) of the Act of 1954 appeals already instituted before the High Court had to be heard by the High Court and such appeals could not be transferred to District Judges for hearing. But after the passing of the Amendment Act of 1963 the effect of Sub-section (1) disappeared as soon as the High Court passed an order of transfer under sub-section (1-A).

The order of transfer passed on an application of a party is a judicial order and, consequently, a similar order passed on an administrative grounds shall also be a judicial order.

Further, the rules of the Allahabad High Court have been framed by the Judges of the Court and consequently, any order passed in accordance with the rules can be deemed to be in fact as an order of the High Court. Hence, under R. 1, Chapter V of Rules of 1952 the Chief Justice could reserve to himself the power to pass an order of transfer and, therefore, the order of the Chief Justice could not be declared invalid simply because it was passed by him and not by any other Judge of the High Court. **1964 All LJ 980.**

——**Art. 254** — U. P. Sales Tax (Validation) Act (15 of 1958), S. 4 — S. 4 comes into conflict with the provision of Civil P. C., which is a law enacted by the Centre and must on that account be held to be void in view of Art. 254. See Ibid, Art. 226. **AIR 1959 All 557.**

——**Art. 254 (1)** — Scope — Madras Commercial Crops Markets Act, 1933 — If void as being repugnant to Cocoanut Committee Act (1944). See Madras Commercial Crops Markets Act. **AIR 1961 Andh Pra 138.**

——**Art. 254** — Hyderabad Regulation XXIV of 1358-F is not repealed by provisions contained in the two Central Acts — Determinations of character of legislation — Pith and Substance. See Essential Supplies (Temporary Powers). Act (1946) (as Amended by Act LII of 1950), S. 17 (4). **AIR 1959 Andh Pra 225 (DB).**

——**Art. 254 (1)** — Validity — S. 4 (1), Proviso of Madras Hindu (Bigamy Prevention and Divorce) Act — Not repugnant to S. 494, I. P. C. See Madras Hindu (Bigamy Prevention and Divorce) Act (VI of 1949), S. 4 (1), Proviso. **1955 Cri LJ 1233 : AIR 1955 Andhra 181.**

——**Art. 254 — Madras Prohibition Act (10 of 1937), S. 4 (1) (a) — Dangerous Drugs Act (1930), Ss. 8, 39 — Possession of Ganja — No inconsistency between Central Act and Madras Act — Assuming that, there is inconsistency, Madras Act will prevail over earlier Central Act.**

Under Art. 254 (1) any provision of law made by a State Legislature in respect of the subjects included in the Concurrent List so long as it is not repugnant to any provision of a central legislation is valid.

There is really no repugnancy between the provisions of the Madras Prohibition Act in regard to ganja and the Dangerous Drugs Act. Even assuming that there is any repugnancy between the two Acts, by reason of S. 2 of the Madras Prohibition (Supplementary) Act, 1941, which had received the assent of the Governor-General, the Madras Act of 1937 will prevail as against the earlier Central Law (Dangerous Drugs Act). Art. 254 (2) would be inapplicable in such case. AIR 1941 Mad 533, Disting. **1955 An LT (Cri) 205.**

——**Art. 254** — Sales tax legislation — Imposition of Sales tax in respect of — Validity of transactions where property passed outside State — Pre-Constitution period — Assessment and realisation after Constitution. See Sales Tax — Assam Sales Tax Act (XIV of 1947), S. 2 (12). **AIR 1960 Assam 116 (DB).**

——**Art. 254** — Repugnancy of State Law to existing law. See Government of India Act (1935), S. 107. **1960 Cr LJ 317: AIR 1960 Assam 37 (DB).**

——**Art. 254 (2)** — Effect of S. 8, Bombay Act LXIV of 1947 — Does not remove prohibitions imposed by Central legislation — Forward contracts, dated 26th February, 1952, and S. 3 held illegal. See Bombay Forward Contracts Control Act (LXIV of 1947), S. 8. **AIR 1955 Bom 35 (DB).**

——**Art. 254** — Legislation by incorporation — Cotton fabrics declared goods of special importance — Imposition of sales tax under S. 5 (1), of Bengal Act VIII of 1944, in excess of 2 per cent laid down in S. 15, of Central Act, was ultra vires, till the time the former section was amended to conform with latter section. See Sales Tax — Bengal Finance (Sales tax) Act (8 of 1941), S. 5 (1), (as it stood prior to its amendment by Act XIII of 1959). **AIR 1965 Cal 203.**

——**Art. 254 (2)** — Trial before City Sessions Court in West Bengal — S. 269 (4) Cri P. C. not applicable — Amendment by W. B. Act. XXVI of 1956, is valid. See Cr. P. Code (1898), S. 269 (4). **1964 (1) Cr LJ 30: AIR 1964 Cal 30 (DB).**

■ ——**Art. 254** — Hyderabad Legal Practitioners Act (6 of 1318 F), S. 3 — Civil P. C. (1908), O. 3, R. 1 — S. 3 is not good law either on the ground that it is an unreasonable restriction and also is void being inconsistent with O. 3, R. 1. See Hyderabad Legal Practitioners Act (6 of 1318 F.), S. 3. **AIR 1951 Hyd 140 (FB).**

——**Art. 254** — Travancore-Cochin Vehicles Taxation Act and Companies Act, 1913 — No conflict between two Acts — Former is not hit by Art. 254 — (Travancore-Cochin Vehicles Taxation Act (XIV of 1950) Preamble). **1958 Ker LJ 413: 1958 Ker LT 631: ILR (1958) Ker 666: 1958 Mad LJ (Cr) 813: AIR 1958 Ker 398 (399) (Pt B) (Pr 14) (DB).**

——**Art. 254 — Scope of — Motor Vehicles Act (1939), S. 64 (2) (as inserted by Madras Act XXXIX of 1954) and S. 64-A (as inserted by Central Act C of 1956) — Repugnancy in State Act, S. 64 (2) (Madras) and Central Act, (S. 64-A) — (Motor Vehicles Act (1939), Ss. 64 (2) (Mad) and 64-A).**

Sub-section (2) of S. 64 introduced by Madras Act (XXXIX of 1954) is not repugnant to S. 64-A inserted newly by Central Act (C of 1956) and is therefore not void under Art. 254 (1) of the Constitution. It is quite possible for the Tribunal appointed under S. 64 and the State Transport Authority to function concurrently as revisional authorities under S. 64 (2) (Mad) and S. 64-A respectively, the former over both the regional and the State Transport Authorities and the latter over the Regional Transport Authorities, and hence test of harmonious co-existence and simultaneous obedience is satisfied.

The Act does not say that the revisional jurisdiction is to be exercised only by the State Transport Authority or give any indication that no other remedy than an appeal under S. 64 or a revision under S. 64-A is open to an aggrieved party. AIR 1956 SC 676; 1956 SCJ 625 and AIR 1930 Cal 628, Rel. on. The existence of concurrent powers of revision in two different authorities does not necessarily lead to conflicts and difficulties. It is quite apparent that the Tribunal constituted under S. 64 which has powers of revision over both the State and the Regional Transport Authorities is the superior authority. That apart, administrative difficulties in the actual working of the two provisions is no ground for holding that they are mutually repugnant and if such difficulties do actually exist it is for the appropriate Legislature to resolve them by repealing one or the other of the provisions. **1957 Ker LJ 565: 1957 Ker LT 685: (1957) Mad LJ (Cri) 652: AIR 1958 Ker 19 (21) (Pt A) (Prs 3, 4, 5).**

——**Art. 254** — Scope — Notificaton under S. 3 (2), M. P. Official Languages Act — Validity — Not repugnant to any provision under Civil Procedure Code or Criminal Procedure Code or to Art. 254 of the Constitution. See M. P. Official Languages Act (1950), S. 3 (2). **AIR 1959 Madh Pra 208 (DB).**

——**Art. 254** —Madras Children Act (4 of 1920) — Rules under S. 44, R. 7 — Offence committed by juvenile — Exclusively triable by Court of Session — Jurisdiction of Juvenile Court to try accused not taken away by S. 29-B, Criminal P. C. — Procedure to be followed by Juvenile Court is that laid down for summons cases — Procedure does not contravene Art. 14, Constitution of India — See Madras Children Act (4 of 1920) — Rules under, S. 44, R. 7. **AIR 1960 Mad 308.**

——**Art. 254** — Provisions of Ss. 28 to 32 of Madras Prohibition Act are not repugnant to existing law. See Madras Prohibition Act (X of 1937), Ss. 28 to 32. **1954 Cr LJ 1521: AIR 1954 Mad 993 (DB).**

——**Art. 254 (1)** — S. 4 (2), Madras Prohibition Act, is not repugnant to Evidence Act. See Madras Prohibition Act (X of 1937), S. 4 (2). **1954 Cr LJ 1521: AIR 1954 Mad 993 (DB).**

——**Art. 254** — Bombay Agricultural Debtors Relief Act (28 of 1939), S. 52 — Validity — No repugnancy with S. 48, C. P. Code. See Debt Laws — Bombay Agricultural Debtors Relief Act (XXVIII of 1939), S. 52. **AIR 1961 Mys 259.**

——**Art. 254 (2)** — Repugnancy — Essential Supplies (Temporary Powers) Act (1946) — Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (1950) (XII of 1951), S. 8 — No repugnancy between two Acts. **ILR (1956) Cut 374: 22 Cut LT 375: 1956 Cr LJ 1334: AIR 1956 Orissa 194 (198) (Pt E) (Pr 14) (DB).**

——**Art. 254** — Scope — Bihar Shops and Establishments Act, 1953 (VIII of 1954), S. 26 (2) — Validity — If repugnant to existing law. See Bihar Shops and Establishments Act (1953) (VIII of 1954), S. 26 (2). **AIR 1958 Pat 442 (DB).**

——**Art. 254, Sch. 7, List 3, Item 7 — S. 78, Bengal Irrigation Act — Validity — (Bengal Irrigation Act (III of 1876), S. 78)**

The determination of the water rate is not a matter of contract between the parties; it is an exercise of statutory power and, therefore, no question of repugnancy between S. 78 on one side and the provisions of the Indian Contract Act on the other arises. **1956 BLJR 383: AIR 1956 Pat 482 (488) (Pt G) (Pr 13) (DB).**

■——**Art. 254 — Bihar Land Encroachment Act (XXXI of 1950) — Validity — [Limitation Act (1908) Ss. 28, 29].**

Provisions of Bihar Land Encroachment Act are certainly repugnant to the provisions of the Limitation Act, inasmuch as they completely ignore the law of limitation which prevails in this country. Limitation being the result of a statute law, no exemption or deviation from it can be recognised except what the statute itself provides, and in the impugned Act no exemption whatsoever is provided.

If the title of the public in the so-called public land has been extinguished by efflux of time, then that title cannot be revived when the Act does not expressly lay down that notwithstanding what is contained in the law of limitation, that title stands revived. The repugnancy to the Limitation Act is therefore apparent and real, and limitation is to be found in item No 13 of List 3 of the Seventh Schedule. Even though the Amending Act, by which the opening words "subject to the provisions of any law for the time being in force" in S. 2 (ii) were deleted, had received the assent of the President, that is immaterial if the parent Act in which we find the artificial definition of 'public property' and the stringent provisions of Ss. 3, 4, 5, 6 and 9 had not received the President's assent.

Art. 254 (2) of the Constitution will be fully applicable, and it will not be open to the Collector to evict any man who has perfected his title to the subject-matter of the dispute by being in possession of it for a period of twelve years. Brij Bhukan v. S. D. O., Siwan, **33 Pat 690: 1954 BLJR 513: AIR 1955 Pat 1 (27, 28, 29, 30) (Pt V) (Prs 19, 20) (SB).**

■——**Art. 254** — Bihar Land Encroachment Act (XXXI of 1950) not inconsistent with Cr. P. Code. See Cr. P. Code (1898), S. 1 (2), and Ch. X. **AIR 1955 Pat 1 (SB).**

——**Arts. 254, 246, Sch. 7 List II, Item 1 and List III, Item 14** — S. 9, Punjab Security of the State Act — Validity — (Public Safety — Punjab Security of the State Act (12 of 1953), S. 9) — (Contempt of Courts Act (1952), Ss. 3, 4). See Ibid, Art. 246. **1956 Cri LJ 1015: AIR 1956 Punj 169 (DB).**

——**Art. 254 (1)** — S. 2, E. P. Act, XLVIII of 1948 if inconsistent with provisions of Evacuee Property Act. See East Punjab Requisitioning of Immovable Property (Temporary Powers) Act (XLVIII of 1948), S. 2 (as amended by E. P. Act XI of 1951). **AIR 1954 Punj 241 (DB).**

——**Arts. 254 (1), 366 (10)** — Government of Part C States Act (1951), S. 43 (1) — Section 43 (1) is void — Repugnancy of State law to existing law — (Weekly Holidays Act, 1942) — See Ajmer Shops and Commercial Establishments Act (4 of 1956), S. 43 (1). **AIR 1959 Raj 257.**

■——**Art. 254 — Repugnancy between two State laws.**

Repugnancy has to be founded on the impossibility of co-existence. The new grounds of disqualification added in S. 66 of the Travancore- Cochin Hindu Religious Institutions Act, 1950 will certainly affect persons convicted by a criminal Court of offences involving moral turpitude and the members of the Legislature, but that does not necessarily mean that the two new grounds of disqualification are anything more than an addition or supplement to the four that already existed in the Cochin Hindu Religious Institutions Act (1 of 1081) when the Constitution came into force. P. M. Bramadathan Nambooripad v. Cochin Devaswom Board, **1955 Ker LT 516: ILR (1955) TC 741: AIR 1956 Trav-Co 19 (23) (Pt H) (Pr 17) (FB).**

■——**Arts. 254, 14 and 21** — Sales tax — Travancore Cochin General Sales Tax Act (1125), Ss. 19 and 21 — S. 21 is not ultra vires the Constitution, Criminal P. C., or Evidence Act — Gist of offence under S. 19 (b) is not validity of assessment, but is non-payment of tax within time — Thus there is no violation of Art. 14 or Criminal P. C., or Evidence Act — Criminal P. C. and Evidence Act apply to trial of offence under S. 19 — Ambit of offence is not thereby enlarged — AIR 1954 Mad 833, Diss. from. See Ibid, Art. 14. **1955 Cri LJ 1289: AIR 1955 Trav-Co. 220 (FB).**

4. "Law made by Parliament".

■——**Art. 254** — Conflict between S. 15, Payment of Wages Act and S. 54, Bombay Co-operative Societies Act — To the extent that S. 54 of the Co-operative Societies Act imposes a bar on a proceeding being instituted under S. 15 of the Payment of Wages Act, it is repugnant — The provision in the Central Act (Payment of Wages Act) prevails — Application under S. 15 of the Payment of Wages Act — Not barred by S. 54 of the Bombay Act — Employee has either remedy. Farkhundali Nannhay v. V. B. Potdar, **(1962) 4 FLR 22: (1962-63) 23 FJR 79: ILR (1962) Bom 1: 63 Bom LR 985: (1962) 1 Lab LJ 51: 1962 Nag LJ 106: AIR 1962 Bom 162 (165) (Pt C) (Pr 10) (FB).**

——**Art. 254** — Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (11 of 1952), S. 6 (g) — Transfer of Property Act (1882), S. 58 — Part C States (Laws) Act, 1950 — Conflict between provisions of S. 6 (g) of Abolition Act and S. 58 T. P. Act — Section 6 (g) not void after amendment of S. 22, Government of Part C States Act, in 1954 — "Law made by Parliament in S. 22, Explanation, as it stood prior to its amendment in 1954 — Part C States (Laws) Act 1950, extending Transfer of Property Act to Vindhya Pradesh, whether covered. — See Government of Part C States Act (1951) (as amended in 1954), S. 22. **AIR 1961 Madh Pra 216.**

——**Art. 254** — Part C States (Laws) Act (30 of 1950), S. 2 — Scope — Central Government not empowered to amend or modify Central Act already in force in Part C States — It also cannot achieve that result by extending law prevailing in Part A State which has modified or amended Central Act — Provisions of S. 35, Stamp Act (1899) as modified by S. 5, Indian Stamp (East Punjab Amendment) Act (27 of 1949) cannot be extended to Delhi. See Part C States (Laws) Act (1950), S. 2. **AIR 1965 Punj 279 (DB).**

——**Art. 254** — Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950) (as amended by Act 37 of 1957), S. 2 (1) and (2) — Control of rents in cantonment areas is within exclusive competence of Parliament — Act to that extent held ultra vires. See Ibid, Sch. VII, List 1, Entry 3. **AIR 1962 Raj 190 (DB).**

5. Law made by legislature of a State.

●——Arts. 254, 366 (22), Sch. VII, List II, Entry 18 — Orissa Private Lands of Rulers (Assessment of Rent) Act (XIII of 1958), S. 2 (h) — Definition of Ruler in S. 2 (h) — Inconsistency with definition in Art. 366 (22) — Does not render Orissa Act invalid — Subject-matter of Act is different and is covered by Entry 18 of List II.

The definition of the word 'Ruler' prescribed by S. 2 (h) of the Orissa Act is wider than that prescribed by Art. 366 (22). The dependants of the Ruler and his relatives are not included in the latter definition, though they are expressly included in the former. But the definition prescribed by Art. 366 is intended for the purpose of interpreting the articles in the Constitution itself unless the context otherwise requires and so the argument that the definition of the word 'Ruler' prescribed by the Act is inconsistent with the definition prescribed by Art. 366 (22), has really no substance or meaning. Besides, it is fallacious to assume that the Act has made any provision in respect of Rulers as such. What the Act has purported to do is to authorise the levy of assessment and rent in respect of lands situated in Orissa, these lands are the private lands of the Rulers as defined by S. 2 (h) and so, there is no doubt that the whole object of defining the word 'Ruler' is to specify and describe the lands in respect of which the operative provisions of the Act would come into play. Once it is conceded, as it must be, that the Orissa Legislature was competent to pass the Act under Entry 18 of List II of the Seventh Schedule, it is idle to suggest that the method adopted by the Act in describing the lands which are made liable to pay assessment, introduces any infirmity in the Act itself. Therefore, the contention that the definition of the word 'Ruler' is inconsistent with Art. 366 (22) and that makes the whole Act void is without any substance. Rani Ratnaprova Devi v. State of Orissa. **1964 SCD 892: 30 Cut LT 525: (1964) 6 SCR 301: AIR 1964 SC 1195 (1199, 1200) (Pt B) (Pr 13).**

●——Arts. 254, 246, Sch. 7, List II, Entry 11 and List 1, Entries 63, 64, 65 and 66 and List III Entry 25 — Scope and interpretation of—Use of expression "Subject to" in List II, Entry 11 — Implication of — Power to legislate with respect to medium of instruction — Extent of powers of State Legislature and Union — Gujarat University Act (50 of 1949), S. 4 (27) Proviso (as amended by Act 4 of 1961) and S. 38 A — Provisions are not ultra vires of State Legislature — AIR 1962 Guj 88 (FB), **Reversed.** See Ibid, Art. 246. **AIR 1963 SC 703.**

——**Art. 254** — U. P. Sales Tax Act (XV of 1948), S. 2 (h) — Validity. See Sales Tax — U. P. Sales Tax Act (XV of 1948), S. 2 (h). **AIR 1964 All 284.**

——**Art. 254** — Applicability — Memorandum of appearance by standing counsel — Stamp duty — Art. 254 applies to a law made by the Parliament, which the Parliament is competent to enact. Matters of court-fee occur as item No. 3 in List II in Sch. 7 which is within the exclusive jurisdiction of a State. See Civil Procedure Code (1908), O. 27, R. 9. **AIR 1960 All 588.**

——**Art. 254** — Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 1. Act not invalid. See Tenancy Laws — U. P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 1. **AIR 1952 All 88 (DB).**

——**Art. 254 (2)** — Constitutionality of Madras Civil and Village Courts (Amendment) Act (XVI of 1951). See Madras Civil and Village Courts (Amendment) Act (XVI of 1951), S. 1. **AIR 1959 Andh Pra 3 (DB).**

——**Art. 254 (2)** — Scope and effect of — Validity of Ss. 13 and 14, Assam State Road Transport Act See Assam State Road Transport Act (XXX of 1954), S. 13. **AIR 1957 Assam 139 (DB).**

——**Arts. 254 (1), 367 (2) — "Law made by the Legislature of a State" — Bombay Forward Contracts Control Act (LXIV of 1947).**

Essential Supplies (Temporary Powers) Act (1946), though a pre-Constitution legislation, was adopted by the Parliament after the coming into force of the Constitution. The provisions of the Act read with the Cotton Control Order (1950) issued under S. 3 of the Act and the Notification issued by the Textile Commissioner on 16-7-1953 under Cl. 6 of the Cotton Control Order (1950) relaxing the prohibition placed on contracts in cotton would be 'a law made by Parliament' within the meaning of Art. 254 (1): AIR 1954 SC 465, Foll. The expression 'a law made by the Legislature of State' in Art. 254 (1) and Art. 367 (2) refers to a post-Constitution law. The question of repugnancy between a law made by a Provincial Legislature, before the Constitution and a law made by Parliament cannot be decided under Art. 254: AIR 1954 SC 311, Foll. AIR 1956 Madh B 199, Rel. on.; AIR 1955 Bom 35 and AIR 1954 SC 752, Dist. Provision in Cl. 21 of the Adaptation of Laws Order (1950) cannot confer on the Court any power to construe Art. 254 with a view to bringing an Act passed by the Provincial Legislature before the Constitution within the four corners of Art. 254. 'State Act' in Cl. (59) of S. 3 of the General Clauses Act (1897) does not mean an Act passed by a Provincial Legislature before the Constitution though the Legislature is continued as the Legislature of the State after the Constitution. Hence, the Bombay Forward Contracts Control Act (LXIV of 1947) cannot be held to be "a law made by the legislature of a State" within the meaning of Art. 254 (1); and therefore S. 8 of the Bombay Act cannot be held to be void and inoperative on the ground of the same being repugnant to the Notification issued by the Textile Commissioner on 16-7-1953. **ILR (1960) Bom 600: 62 Bom LR 277: AIR 1960 Bom 532 (535 to 539) (Pt A) (Prs 10, 12 to 15, 17) (DB).**

——**Art. 254** — Houses and Rents — West Bengal Premises Tenancy Act (XII of 1956), Ss. 16 (2) and 30 (5) — Constitutional validity —Provisions are not ultra vires. See Houses and Rents — West Bengal Premises Tenancy Act (XII of 1956), S. 16 (2). **('62) 66 Cal WN 757.**

——**Arts. 254 and 245** — (Government of India Act (1915), S. 79)— Power of local Legislature to make law — Extent of its extra-territorial jurisdiction. See Ibid, Art. 245. **AIR 1956 Cal 216 (DB).**

——**Art. 254** — Repugnancy. See Tenancy Laws— Jammu and Kashmir Big Landed Estates (Abolition) Act (2007), Preamble. **AIR 1953 J and K 25 (DB).**

——**Art. 254** — M. B. Muafi and Inam tenants and sub-tenants Protection Act — Validity. See Tenancy Laws — M. B. Muafi and Inam Tenants and Sub-tenants Protection Act (XXXII of 1954), S. 4. **AIR 1957 Madh B 63 (DB).**

——**Arts. 254, 245, 246, Sch. 7, List I, Entry 59, List III, Entry 19** — Section 9 (a), Opium Act (1878), as amended by Madhya Bharat Act (15 of 1955) — Validity — Provision is governed by Sch. 7, List III, entry 19 and is intra vires

State Legislature. See Ibid, Art. 245. **AIR 1961 MP 13.**

[**Overruled** on another point in AIR 1963 MP 337.]

——**Art. 254** — Industrial Disputes (Madras Amendment) Act (12 of 1949), S. 5 — Validity — Government of India Act (1935), S. 107. See Industrial Disputes Act (1947), S. 5. **1952 Cri LJ 744 : AIR 1951 Mad 191 (DB).**

——**Art. 254 — Applicability — Conditions for — Mysore Police Act (5 of 1908), S. 40 — Not invalid on ground of repugnancy with S. 144 Criminal P. C.**

The validity of S. 40, Mysore Police Act cannot be challenged on ground of repugnancy with S. 144 Criminal P. C. For invoking Art. 254 of the Constitution the competing provisions of law must be with respect to one of the matters enumerated in the concurrent list and there must be repugnancy between them, neither of these conditions are satisfied.

Whereas the subject of criminal procedure is a concurrent subject being entry 2 in the Concurrent List, the topics dealt with in the Mysore Police Act are exclusively State subjects, viz., public order and police set out in the first two entries in the State List. There is or may be a certain amount of overlapping between the ideas covered by S. 144 of the Code of Criminal Procedure and S. 40 of the Mysore Police Act. But, then, so long as such a law is in its pith and substance one within the exclusive competence of a State Legislature, such overlapping as there may be between any of its provisions and S. 144 of the Code of Criminal Procedure may not amount to any such extensive encroachment into a field which is not its own as to render the law invalid or incompetent. **1962 Mys LJ (Supp) 411.**

——**Art. 254** — Law made by Parliament and State Law — Repugnancy in — Bombay Village Panchayats Act falls under Sch. VII, List II, Entry 5 and not under List III, Entry 2 — Art. 254 cannot apply. See Ibid, Sch. VII, List II, Entry 5. **1961 (2) Cr LJ 789 : AIR 1961 Mys 257 (DB).**

——**Art. 254. Sch. 7, List 2, Entries 54, 64, 65** — Mysore Sales Tax Act, S. 22 — Constitutional validity — S. 22 is not ultra vires of Art. 14 of Constitution or Criminal P. C. — (Criminal P. C. (1898), Ss. 1 (2), 5) — AIR 1954 Mad 833, Diss. from. See Sales Tax — Mysore Sales Tax Act Act (46 of 1948), S. 22. **AIR 1958 Mys 143.**

●——**Art. 254 (1)** — Mysore Chief Court Act, S. 15 (3) — Validity. See Ibid, Art. 225. **AIR 1955 Mys 65 (FB).**

——**Art. 254** — Bihar Sales Tax Act (IX of 1959), S. 20A — Validity — Dealer has no right to challenge its validity on ground of violation of Art. 19 (1) (f) of the Constitution — S. 20-A is valid and intra vires the State legislature. See Ibid, Art. 19 (1) (f). **AIR 1966 Pat 54 (DB).**

——**Art. 254** — Sales Tax — Bihar Sales Tax Act (11 of 1947), S. 2 (c)—Validity. See Sales Tax—Bihar Sales Tax Act (XI of 1947), S. 2 (c). **AIR 1953 Pat 87 (DB).**

[**Reversed** on another point in AIR 1955 SC 661.]

——**Arts. 254, 13, 246, 265 and Sch. 7, List II,** — Punjab Urban Immovable Property Tax Act (1940), Ss. 1 and 3 — Not ultra vires the Constitution. See Punjab Urban Immovable Property Tax Act (XVII of 1940). **AIR 1963 Punj 354 (DB).**

——**Art. 254 (1), Sch. VII, List II, Item 3, List III, Item 13 — Conflict between existing law and law made by State Legislature — Rajasthan Civil Courts Law (Extension) Act (II of 1957) falls under List II, item 3 of the Sch. VII and not under List III, item 13 — Does not conflict with Ajmer Courts Regulation (IX of 1926) — Is intra vires—Rajasthan Civil Courts Laws (Extension) Act (II of 1957) — Ajmer Courts Regulation (IX of 1926).**

The purpose and the object of the Rajasthan Civil Courts Laws (Extension) Act (II of 1957) extending Rajasthan Civil Courts Ordinance (VII of 1950) to Ajmer area of the State was to bring the Courts existing in the Ajmer area in line with the pattern which stood established in the rest of this State. Therefore, in its pith and substance the legislation fell within item No. 3 of the State list and, had essentially nothing to do with item No. 13 of the Concurrent List, though some of the matters provided thereunder might appear slightly to trench upon the field of item No. 13 of the Concurrent list also. There was thus no question of any real conflict between the "existing law" and Act IX of 1926 as applicable to the former State of Ajmer. Art. 254 did not adversely affect the Act of 1957 and the same was perfectly constitutional and intra vires of the Legislature of the State. AIR 1951 SC 69 : AIR 1959 SC 544 : AIR 1957 SC 297, Rel. on. **ILR (1960) 10 Raj 1678.**

——**Art. 254 (1), Sch. VII, List II, Item 3** — Rajasthan Premises (Control of Rent and Eviction) Act (1950), S. 22 — Validity — (Civil P. C. (1908), S. 100). See Houses and Rents — Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950), S. 22. **AIR 1954 Raj 252.**

——**Art. 254 (1)** — Applicability. See Houses and Rents — Rajasthan Premises (Control of Rent and Eviction) Act (XVII of 1950), S. 6. **AIR 1954 Raj 252 (DB).**

——**Art. 254, Sch. 7, List II, Item 3 and List III, Item 13 — Repugnancy — S. 12 (4) of Saurashtra Act (XXII of 1951) not void on ground of repugnancy to provisions of Civil Procedure Code — (Houses and Rents — Saurashtra Rent Control Act (XXII of 1951), S. 12 (4)) — (Civil Procedure Code (1908), S. 4 (1) and O. 11, R. 21).**

Section 12 (4) of Saurashtra Act imposes upon tenants the obligation to deposit in Court such amount as may appear to the Court to be reasonably due as arrears. The pith and substance of the Act is within the State's legislative competence and is listed as item 3 in the State List. This provision is in the interest of the landlord and its validity cannot be questioned. The impugned clause as well as other procedural provisions should be regarded as adjunct to the primary object of the Act and within the legislative competence of the State Legislature. The impugned penal clause is saved by S. 4 (1), Civil Procedure Code and no exception can be taken to it on the ground that it is repugnant to any of the provisions of the Civil Procedure Code and is hit by Art. 254 (1) of the Constitution. AIR 1942 FC 27 : AIR 1950 FC 59 and AIR 1954 Pat 97, Applied. **9 Sau LR 199 : AIR 1956 Sau 58 (61, 62) (Pt C) (Pr 6) (DB).**

——**Art. 254 — Applicability to Part C States — Repugnancy between Government of Part C States Act and Parliamentary legislation — Effect — V. P. Act XI of 1953 is not void under Art. 254 (1)—(Tenancy Laws — V. P. Abolition of Jagirs and Land Reforms Act (XI of 1953), Ss. 1 and 37 — Government of Part C States Act (1951), Sections 21, 22).**

In Art. 254 (1) the words used are "the Legislature of a State". The heading neither of the part nor of the Chapter contains any indication

of a restriction of the general meaning; part XI is called 'the relation between the Union and the States obviously including those in Part C. Further, the very fact that Art. 254 (2) expressly refers to a Part A or B States shows that the general statements in the first clause was meant to include Part C States as well.

Under Ss. 21 and 22 of the Act XLIX of 1951 no repugnant legislation on a concurrent subject can at all be made by a Part C legislature; it will have to go to the Parliament itself. In the event of repugnancy to existing law on a concurrent subject the State enactment will be void.

If the State legislation supplements and does not in effect repeal, then if even it is on the same concurrent subject there is no repugnancy.

Held, that there was no repugnancy between the U. P. Abolition of Jagirs and Land Reforms Act, 1953 and any of the Parliamentary legislation and hence the Act was not void under Art. 254 (1).

Held, further that inasmuch as S. 37 of the U. P. Act XI of 1953 makes the decision of the Land Reforms Commissioner final subject only to an appeal provided by S. 32 and ousts the jurisdiction of Civil Courts, it contravenes provisions of S. 9 C. P. Code, and is to that extent ultra vires the U. P. State legislature under S. 22 of the Government of the Part C. States Act, 1951. **AIR 1954 Vin P 24 (28, 30, 31) (Pt E) (Prs 21, 22, 37).**

6. Order by State Governor.

——Art. 254 (2) — Law made by Legislature of State — Orissa Iron and Steel Products (Control of Prices and Distribution) Order (1951).

If statutory rules and orders are validly made in exercise of the powers conferred by a statute, they for all practical purposes have the same effect as if enacted in that statute. Hence the Orissa Order is a law made by the Orissa Legislature for the purpose of Art. 254 (2). **ILR (1956) Cut 374 : 22 Cut LT 375 : 1956 Cr LJ 1334 : AIR 1956 Orissa 194 (197) (Pt B) (Pr 10) (DB).**

7. Existing law.

●——**Art. 254** — Mysore House Rent and Accommodation Control Order (1948), Cls. 9 (1), 16 — Applicability — Effect of application of T. P. Act to Mysore State — Order saved as existing law under Art. 372 and not affected by repugnancy under Art. 254 of the Constitution — Non-compliance with Cls. 9 (1) and 16 — Affects power of Court to execute decree for possession. See Houses and Rents — Mysore House Rent and Accommodation Control Order (1948), Cl. 9 (1). **AIR 1961 SC 272.**

——Art. 254 — 'Existing law.'

The 'existing law' contemplated by Art. 254 includes a State enactment. **1955 Ker LT 516 : ILR (1955) TC 741 : AIR 1956 Trav-Co 19 (23) (Pt G) (Pr 15) (DB).**

8. "With respect to one of the matters enumerated in the Concurrent List."

●——**Art. 254, Sch. 7, List 3, Item 22** — Rajasthan Industrial Tribunal (Constitution and Proceedings) Validating Act (1959), S. 2 — Tribunal originally constituted under S. 7 of Industrial Disputes Act, before its amendment in 1956 — Reference made between 10-3-1957 and 15-4-1959 — Effect of passing of validating Act — Constitution of Tribunal and reference validated by S. 2 — Act is validly enacted and prevails in Rajasthan — Industrial Disputes Act (1947) (as amended in 1956), S. 7-A. See Rajasthan Tribunal (Constitution and Proceedings) Validating Act (1959), S. 2. **AIR 1964 SC 444.**

●——**Art. 254** — Scope — Repugnancy between Central Act and Provincial Act — Provincial Act to prevail. See Government of India Act (1935), S. 107 (2). **AIR 1961 SC 823.**

●——**Art. 254 (2) — U. P. Sugarcane (Regulation of Supply and Purchase) Act (XXIV of 1953) — If repugnant to Industries (Development and Regulation) Act (LXV of 1951) (as amended by Act (XXVI of 1953) and to Essential Commodities Act (X of 1955).)**

The articles or class of articles relatable to the scheduled industry, in S. 18-G, Industries (Development and Regulation) Act (LXV of 1951) (as amended by Act XXVI of 1953) were finished products and not raw materials for the manufacture or production of the articles or class of articles in the scheduled industry. Sugarcane which is the raw material for the manufacture or production of sugar could, therefore, not be included in the category of the article or class of article relatable to the sugar industry. Section 18-G therefore, did not cover the field of sugarcane and the Central Government was not empowered by the introduction of S. 18-G by Act XXVI of 1953 to legislate in regard to sugarcane. The legislative powers of the Provincial Legislatures in regard to sugarcane were not affected. The field was clear for the operation of State legislation and there was no repugnancy at all between Act LXV of 1951 and the U. P. Sugarcane (Regulation of Supply and Purchase) Act (XXIV of 1953).

Similarly, there is no repugnancy whatever between the provisions of the Essential Commodities Act (X of 1955) and the impugned Act and the Rules framed thereunder as also the U. P. Sugarcane Regulation of Supply and Purchase Order, 1954 do not trench upon the field covered by Act X of 1955. There being no repugnancy at all, therefore, no question arises of the operation of Art. 254 (2) of the Constitution and no provision of the impugned Act and the Rules made thereunder is invalidated by any provision contained in Act LXV of 1951 as amended by Act XXVI of 1953 or Act X of 1955 and the Sugarcane Control Order, 1955, issued thereunder. Tika Ramji v. State of Uttar Pradesh, **1956 SCA 979 : 1956 SCR 393 : 1956 All WR (HC) 657 : 1956 SCJ 625 (SC) : AIR 1956 SC 676 (700, 701, 702, 703, 704) (Pt C) (Prs 34, 36).**

●——**Art. 254 (2) — Principle embodied in.**

The important thing to consider with reference to Art. 254 (2) is whether the legislation is "in respect of the same matter". If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Art. 254 (2) will have no application. The principle embodied in S. 107 (2), Government of India Act 1935 and Art. 254 (2), Constitution of India is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State. Zaverbhai v. State of Bombay, **1954 SCJ 851 : 1954 Cr LJ 1822 : 1954 SCA 1295 : 1955 All WR (Sup) 1 : 1955 SCR 799 : 57 Bom LR 589 : AIR 1954 SC 752 (757) (Pt B) (Pr 8).**

●——**Art. 254 (2) — Legislation by Parliament and State "in respect of the same matter' — Rule of construction — (Essential Supplies (Temporary Powers) Act (1946) (as amended by Act LII of 1950), S. 7) — (Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act (XXVI of 1947), S. 2.).**

Section 7 of the Essential Supplies (Temporary Powers) Act, 1942 is a comprehensive Code covering the entire field of punishment for offences under the Act graded according to the commodities and to the character of the offence. The subject of enhanced punishment that is dealt within the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act (XXXVI of 1947) is also comprised in the Essential Supplies (Temporary Powers) Act, 1946 (as amended by Act LII of 1950), the same being limited to the case of hoarding of foodgrains. Hence S. 7 of the Central Act is a Legislation in respect of the same matter as Bombay Act XXXVI of 1947.

The question of punishment for contravention of orders under the Essential Supplies (Temporary Powers) Act both under Bombay Act XXXVI of 1947 and under Central Act LII of 1950, constitutes a single subject-matter and cannot be split up. On this principle rests the rule of construction relating to statutes that "when the punishment or penalty is altered in degree but not in kind, the later provision would be considered as superseding the earlier one". (1937) 1 KB 518, Foll. Majority view in AIR 1953 Bom 371. Affirmed. Zaverbhai v. State of Bombay, **1954 SCJ 851 : 1954 Cr LJ 1822 : 1954 SCA 1295 : 1955 All WR (Supp) 1 : 1955 SCR 799 : 57 Bom LR 589: AIR 1954 SC 752 (757, 758) (Pt C) (Prs 9, 10).**

——Art. 254 and Sch. VII, List 3, Entry 13 —C. P. Code (1908), S. 102 — Amendment by U. P. Act XXIV of 1954 — Scope and effect of.

The State amendment made in 1954 to S. 102, C. P. Code, by U. P. Act (XXIV of 1954) is not in any manner affected by the amendment made to that section by Parliament in 1956 by Central Act LXVI of 1956. Hence, so far as the State of Uttar Pradesh is concerned, no second appeal lies in any suit of the nature cognizable by Courts of Small Causes when the amount or value of the subject-matter of the original suit does not exceed Rs. 2,000. **ILR (1961) 1 All 287 : 1961 All LJ 4 : 1961 All WR (HC) 77 : AIR 1961 All 320 (321) (Pt A) (Pr 10).**

[**Overruled** in AIR 1962 All 299.]

●——**Art. 254 (2)** — Repugnancy between State and Central Legislation. See U. P. Industrial Disputes Act (XXVIII of 1947), S. 3. **AIR 1954 All 538 (FB).**

[**Reversed** on another point in AIR 1961 SC 420.]

——**Art. 254** — The question of occupied field is absolutely irrelevant when the Court is concerned with Lists I and II and with the concurrent List. See Ibid, Art. 246. **AIR 1960 Andh Pra 115 (DB).**

——**Art. 254, Sch. 7, List 3, Entry 5**—In order to attract this Article, the pre-condition is, the law must be with respect to "one of the matters enumerated in the concurrent list." See Tenancy Laws — Hyderabad (Abolition of Jagirs) Regulation (1358, Fasli), S. 21 (2). **1960 Andh LT 1 (DB).**

——Art. 254 (2) — Applicability.

If any subject falls within any of the items catalogued in List III, Art. 254 (2) comes into play. **(1959) 1 Andh WR 161 : ILR (1958) Andh Pra 740 : AIR 1959 Andh Pra 3 (6) (Pt B) (Pr 11) (DB).**

——Art. 254 (2) — Topic outside purview of subjects catalogued in List III — Conflict between State and Central enactments.

In regard to matters included in the State list, even if there is any inconsistency between the Provincial and Central enactments, the former will supersede the latter. The conflict must exist with respect to an existing law within the concurrent list. If the topic is outside the purview of the subject catalogued in List III, the Provincial statute does not yield to the Central one; on the other hand, it takes effect in spite of the conflict between the two. **ILR (1958) Andh Pra 740 : (1959) 1 Andh WR 161 : AIR 1959 Andh Pra 3 (6) (Pt E) (Pr 14) (DB).**

——Arts. 254 (2) and 246 — Doctrine of occupied field — Test of repugnancy.

As far as our Constitution is concerned, the doctrine of occupied field cannot be applied, if that doctrine means that if Parliament legislates on a particular subject and thereby occupies the field, the State Legislature is completely debarred from legislating on the same subject. The very fact that a particular subject is in the Concurrent List means that both Parliament and the State Legislature are entitled to legislate with regard to that subject. Therefore, Parliament cannot exclude or oust the State Legislature merely by legislating on any particular subject. Our Constitution clearly recognises, the right of both Parliament and the State Legislature to legislate concurrently with regard to a subject mentioned in the Concurrent List, and, therefore, the doctrine of repugnancy to be applied in India is not so stringent as would be applied in other countries where the constitutional position is different. The repugnancy that has got to be found is the repugnancy in the actual provisions of the two laws and not with regard to the subject-matter of the two laws. Therefore, the proper test is whether effect can be given to the provisions of both the laws or whether both the laws can stand together. If effect cannot be given to both the laws and both the laws cannot stand together, then the law made by Parliament must prevail as against the law made by the State Legislature. AIR 1939 FC 74, Rel. on. 37 Com WLR 466: AIR 1953 Pat 14 (FB), Ref. **55 Bom LR 387 : 1953 Cr LJ 1602 : ILR (1954) Bom 117 : AIR 1953 Bom 371 (382) (Pt B) (Pr 34) (DB).**

——**Art. 254** — Bengal Finance (Sales Tax) Act (1941), S. 2 (b), (d) (g)—Rules under S. 36 (1)—R. 2 — Validity — Building contracts — Nature of — Supply of materials by contractor under lump sum building contract whether amounts to sale of goods. See Sales Tax — Bengal Finance (Sales Tax) Act (VI of 1941) (as amended by Act (XIX of 1954), S. 2 (b). **AIR 1957 Cal 283.**

——**Art. 254 (2)**—Government of India Act (1935), S. 107 (2) — Factories Act (1948), Ch. VIII, Bombay Industrial Relations Act, 1946 (11 of 1947), Sch. II; Items 9, 11 — Validity of Bombay Act — Factories Act and Bombay Act occupy different fields and deal with separate subjects — No repugnancy between them — Provisions as to leave with wages in Bombay Act not void for repugnancy. **(1964) 5 Guj LR 705 : ILR (1964) Guj 841 : (1965) 1 Lab LJ 567 : AIR 1965 Guj 112 (128, 129) (Pt G) (Pr 22) (DB).**

——Art. 254 — Test of repugnancy — City Improvement Board Regulations (Hyderabad), R. 21 — R. 21 is not repugnant to S. 106, T. P. Act or S. 9, Civil Procedure Code.

To attract the application of Art. 254 of the Constitution, it is necessary that both the Central and the State laws should occupy the same field and should be about identical matter. The test of repugnancy is, that it should not be possible

for both the laws to stand together, and that obedience to one should necessitate the contravention of the other. The State law, only when it thus impairs or detracts from the operation of the Central Act, and will be void to that extent. If both the laws can be obeyed at the same time there is no repugnancy. R. 21, City Improvement Board Regulation empowers the Superintending Engineer to get a tenant evicted without seeking eviction from the Rent Controller or the Civil Court. This cannot be said to be repugnant to S. 106, T. P. Act, because that section expressly confines its application to cases where there is no 'contract or local law or usage to the contrary'. It cannot be said to be inconsistent either with S. 9, Civil Procedure Code because in that section also suits cognizance of which is either expressly or impliedly barred are exempted. **ILR (1955) Hyd 737 : AIR 1956 Hyd 10 (12) (Pt B) (Pr 3) (DB).**

——Art. 254 — Hyderabad Jagirdars Debt Settlement Act (XII of 1952) — Validity.

The C. P. Code, does not cover the same field as the Jagirdars Debt Settlement Act, and accordingly the provisions of the Act cannot become void on the ground of repugnancy. **ILR (1955) Hyd 510 : AIR 1955 Hyd 194 (200) (Pt D) (Pr 28) (DB).**

——Art. 254 — Conditions for application of Article.

The article relates to inconsistencies that may exist between the laws made by Parliament and the laws made by the Legislatures of the State, in respect of a matter which is enumerated in the Concurrent List and it is not applicable in respect of a matter which comes within the scope of State List :AIR 1957 SC 297, Rel. on. **1961 Ker LT 470 : (1961) 2 Ker LR 168 : 1961 Ker LJ 504 : ILR (1961) 2 Ker 340.**

——Art. 254 — Pre-Constitution Laws — Bombay Industrial Relations Act (XI of 1947) (as adapted in M. B.), Ss. 27-A, 32, 33 and 97 — Industrial Disputes Act (1947) does not prevail as against State Act — Applicability of Art. 254.

Art. 254 (1) is intended to deal with a case where both the Legislature of a State and the Parliament legislate with respect to one of the matters enumerated in the concurrent list. The Bombay Industrial Relations Act adapted by the Legislature of the United State of Gwalior, Indore and Malwa by Act No. XXXI of 1949, was a pre-Constitution legislation and cannot be held to be law made by the Legislature of a State for the purpose of applying Art. 254. AIR 1954 SC 311, Rel. on. The law made by the Parliament, viz., the Industrial Disputes Act, cannot by using the provisions of Art. 254. Cl. (1) and Cl. (2), override the impugned provisions of the Bombay Industrial Relations Act.

Further, the effect of the impact of Art. 254 (2) of the Constitution is that the provisions of the law made by the State will prevail in State notwithstanding any repugnancy that may exist between that law and the law made by the Parliament. There is no direct conflict between the provisions of the Bombay Industrial Relations Act and the Industrial Disputes Act. **1956 Madh BLJ 826 : Madh BLR 1956 Civil 271 : ILR (1956) Madh B 353: AIR 1956 Madh B 199 (204, 205) (Pt B) (Prs 37, 38-a, 41, 48, 49) (DB).**

——Art. 254 — Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali Sanshodhan Adhyadesh (1965), (Ordinance No. 3 of 1965), S. 3 — Constitutional validity — Ordinance is not invalid — It deals with a subject specified in the State List (Entry 19) and does not attract Art. 254 of the Constitution. See Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali Sanshodhan Adhyadesh (1965), (Ordinance No. 3/65), S. 3. **1965 MPLJ 994: AIR 1966 Madh Pra 110 (DB).**

——Art. 254 — M. B. Official Language Act (LXVII of 1950), S. 2 — Civil Procedure Code (1908), S. 137 (3) — No inconsistency between Official Language Act and Civil Procedure Code — Even assuming some inconsistency, S. 137 (3) will prevail.

The Official Language Act is not a measure enacted solely for the subordinate Courts. It declares Hindi as the official language for all purposes in all the departments of the State of Madhya Bharat. There is no inconsistency between Official Language Act and sub-s. (3) of S. 137, Civil Procedure Code. The Official Language Act does not prohibit the use of English altogether for purposes for which English was being used immediately before the commencement of the Constitution. S. 137 of the Code while recognising Hindi as the language of the Court permits the optional use of English for purposes mentioned in sub-s. (3). Even if it is taken that there is some inconsistency, the provisions of sub-s. (3) of S. 137 will prevail under Article 254 (1) inasmuch as "civil procedure, including all matters included in the Code of Civil Procedure at the commencement of the Constitution" is one of the matters enumerated in the concurrent list. **1957 Jab LJ 22 : 1957 MPC 42 : AIR 1957 MP 1 (4) (Pt C) (Pr 6).**

——Art. 254 — Repugnancy of State law to Union law.

Under Art. 254, any question of repugnancy can arise only as between a law made by the Legislature of a State in regard to a matter in the Concurrent List, and a law made by Parliament in regard to the same subject in the Concurrent List; no question of repugnancy under Art. 254, could arise in respect of a law made by the Legislature of a State in regard to a subject falling entirely within the State List and the State Legislature is acting wholly within its powers under the State List. AIR 1947 PC 72, Rel. on. **36 Mys LJ 61 : 1958 Cr LJ 1327 : (1958) 9 STC 714 : 1958 Mad LJ (Cr) 536 : ILR (1958) Mys 74 : AIR 1958 Mys 143 (145) (Pt A) (Pr 6) (DB).**

——Art. 254 — Repugnancy — Doctrine of occupied field —Bihar Mica Act, 1947 (X of 1948)— Validity — Act, if repugnant with Mica Control Order. See Bihar Mica Act, 1947 (X of 1948), S. 6 (6). **AIR 1958 Pat 496 (DB).**

——Art. 254 — 'With respect to one of the matters enumerated in the concurrent list' — Meaning of — State law relating to different subject-matter — Validity — (Administration of Evacuee Property Act (1950), Ss. 4 and 12) — (Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (III of 1947), Ss. 4, 5, 8 and 11).

If there is any inconsistency between the law passed by Parliament and the law passed by the State Legislature, the general rule as meant by Cl. (1) is that the law of Parliament shall prevail. Cl. (2) applies only to a case where the law made by the State Legislature with respect to one of the matters in the Concurrent List contains any provision repugnant to the earlier law made by Parliament with respect to the same matter.

Since the Central Act XXX of 1950 as subsequently amended and Bihar Act III of 1947, as subsequently amended, relate to different matters enumerated in the Concurrent List, Art. 254 (2) of the Constitution can have no application.

Held, on facts the provisions of the Bihar Act, viz., Ss. 4, 5, 8 and 11 were repugnant to the provisions of Ss. 4 and 12 of the Central Act and therefore, void to the extent they were repugnant to the provisions of the Central Act. AIR 1953 Pat 14 (FB), and AIR 1953 SC 298, Relied on. **1957 BLJR 520: ILR 36 Pat 606: AIR 1958 Pat 43 (45 to 47) (Pt A) (Prs 3, 4) (DB).**

●——**Art. 254 — Test of validity of State law — Doctrine of "occupied field" — Its inapplicability.**

The doctrine of "occupied field" is where a competent Legislature expressly or impliedly evinces its intention of covering the whole field, that is a conclusive test of inconsistency where another legislature assumes to enter to any extent upon the same field. This doctrine of "occupied field" cannot be invoked to test the validity of a State Law under Art. 254 of the Constitution. In the framework of the Indian Constitution, the concurrent List is not a forbidden field to the State Legislature and the mere fact that the State Legislature has legislated on a matter in the Concurrent List is not enough to attract the mischief of Art. 254. There must be actual repugnancy between such legislation and existing law as required by Art. 254 (1) and then and then only would the existing law prevail to the extent of the repugnancy and not otherwise: 37 Com WLR 466 (489), Rel. on. Mangtulal v. Radha Shyam, 31 **Pat 921: 1953 BLJR 151: AIR 1953 Pat 14 (20) (Pt C) (Pr 18) (FB).**

——**Art. 254** — Motor Vehicles Act (1939), S. 64, Cl. (h) (as added in Punjab) and S. 64-A (inserted by Act C of 1956) — Supervisory power — S. 64 (h) (Punj) and S. 64-A (Parliament) do neither overlap nor are repugnant — They cover different aspects and can co-exist — S. 64-A (Parliament) does not abrogate or repeal by implication S. 64 (h) (Punjab). AIR 1960 Pat 537 and AIR 1958 Ker 19, Rel. on. **ILR (1962) 1 Punj 285: AIR 1962 Punj 94 (98, 99) (Pt A) (Prs 7, 9).**

●——**Arts. 254, 246, 366 (10), Sch. 7, List 2, Item 18 and List 3, Item 27** — Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 30— Validity — Conflict between existing Indian law, (namely, Land Improvement Loans Act, 1883 and Agriculturists Loans Act, 1884), and Central Act (namely, 1954 Act) — Central Act prevails — Doctrine of occupied field, applicability. See Displaced Persons (Compensation and Rehabilitation) Act (1954), S. 30. **AIR 1961 Punj 34 (FB).**

●——**Art. 254 — 'Pith and substance rule' — (Government of India Act (1935), S. 107 (1)).**

The pith and substance rule has nothing to do with the questions which arise under S. 107 (1), Government of India Act, 1935, or under Art. 254 of the Constitution. AIR 1945 PC 98 and AIR 1942 FC 27, Rel.on. Velayudhan, In re, **(1955) 6 STC 331: 1955 Ker LT 399: 1955 Cr LJ 1289: AIR 1955 Trav-Co 220 (223) (Pt B) (Pr 13) (FB).**

——**Art. 254 — Industrial Disputes Act (Central) has replaced Travancore-Cochin Industrial Disputes Act — (Industrial Disputes Act (1947) (as amended by Act 48 of 1950), S. 1)—(Travancore-Cochin Industrial Disputes Act (16 of 1950), S. 1.)**

According to Art. 254, when there are two competing Statutes relating to a concurrent subject, the statute passed by Parliament has to prevail over the statute passed by the State Legislature. 1951 Ker LT 121, Foll.

The Industrial Disputes Act passed by the Central Legislature as amended by Act 48 (XLVIII) of 1950 and made applicable to the whole of India except the State of Jammu and Kashmir has, therefore, replaced the Travancore-Cochin Industrial Disputes Act which no longer continues to be in force. **(1952) 2 Lab LJ 9: AIR 1952 Trav-Co 371 (373, 374) (Pt A) (Pr 6).**

9. Repugnancy, meaning of.

●—**Art. 254 — Repugnancy between two statutes — Principles for ascertaining.**

Repugnancy between two statutes may be ascertained on the basis of the following three principles:

(1) Whether there is direct conflict between the two provisions; (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field. Deep Chand v. State of U. P., **1959 SCA 377: ILR (1959) 1 All 293: 1959 SCJ 1069: (1959) 2 SCR Supp 8: AIR 1959 SC 648 (665) (Pt D) (Pr 29).**

——**Art. 254 — 'Repugnancy' — Connotation.**

Repugnancy falls to be considered when the law made by Parliament and the law made by the State Legislature occupy the same field because if both these pieces of legislation deal with separate and distinct matters though of a cognate and allied character, repugnancy does not arise. Tika Ramji v. State of Uttar Pradesh, **1956 SCA 979: 1956 SCR 393: 1956 All WR (HC) 657: 1956 SCJ 625: AIR 1956 SC 676 (697) (Pt B) (Pr 26).**

——**Art. 254 — Motor Vehicles Act (1939), S. 64-A — Section as amended by Mad. Act XX of 1948, is not repugnant to the section as it stands amended by Central Act C of 1956 — Hence it is not repealed and is operative.**

Section 64-A of the Motor Vehicles Act as amended by the Madras Act, XX of 1948, is not repugnant to S. 64-A as amended by Central Act C of 1956 and is therefore, not void under Art. 254 (1) of the Constitution. Therefore, it is still operative and is not repealed either expressly or by necessary implication.

A comparison of the two sections does not lead to the inevitable conclusion that the two sections cannot co-exist. There is no incompatibility between these two sections and they do not cover the same field. While the State Act which confers revisional jurisdiction on the State Government is of the wide amplitude, the Central Act which invests the State Transport Authority with powers to revise the orders of the Regional Transport Authority is of limited character. That tribunal could revise the orders of the Regional Transport Authority only if they are found to be improper or illegal.

The question of repugnancy would arise only if the Parliament and the State Legislature were legislating on an identical subject-matter. If the legislation made by the State Legislature operates in one field while the law made by the Parliament operates in another, the question of inconsistency does not at all arise. It is true that the Central Act introduced some important changes in the earlier Act but it does not purport to be an exhaustive code on the subject of Motor Transport. Thus, the Central Act can be regarded as supplementary to the State Act. AIR 1958 Ker

19, AIR 1960 Pat 537, AIR 1962 Punj 94 and (1959) 2 Andh WR 332, Rel. on. (1964) 1 Andh LT 282: (1964) 1 Andh WR 280: ILR (1965) Andh Pra 431.

——Art. 254 — Principle of repugnancy when applies — Two statutes of same legislature — Attempt should be to harmonise them — Income tax Act and Road Transport Corporations Act, 1950 — Not inconsistent with each other — Income of Road Transport Corporations — Held subject to income-tax — Income-tax Act (1922), S. 3 — Road Transport Corporations Act (1950), Ss. 3, 4. (1961) 2 Andh WR 393: (1963) 47 ITR 101: AIR 1962 AP 323 (333, 334) (Pt G) (Prs 15, 17) (DB).

——Art. 254 (1) — Government of India Act (1935), S. 107 (1) — Bombay Industrial Disputes Act (XXV of 1938), S. 2 (3) — Industrial Disputes Act (1947), S. 1 (2) — Enactment of Central Act of 1947 — Effect on Bombay Act XXV of 1938 — Bombay Act not void on ground of repugnancy— Applicability of Bombay Act to cotton textile industry in Ahmedabad area not affected — No fresh notification under Bombay Act XI of 1947 necessary — Bombay Industrial Relations Act, 1946 (XI of 1947), Ss. 2 (3), 2 (4).

The objects of an Act of Parliament and that of a State Legislature may be similar and yet there would be no repugnancy if they supplement each other and can co-exist, if the paramount legislation does not cover the entire field occupied by the State law and is not inconsistent with the latter.

When a party whose case is not hit by the proviso to the sub-section (8) of S. 526 of the Code intimates to the magistrate that he intends to move an application for transfer, it becomes imperative for the magistrate to adjourn the case. In doing so the magistrate does not grant an adjournment under S. 345, Cri P. C., but under S. 526 (8). The only term that can be imposed on such a party is that he can be required to execute a bond, without sureties, of an amount, not exceeding two hundred rupees, that he will make the transfer application within a reasonable time, to be fixed by the magistrate. No other terms such as payment of costs, can be imposed on the party.

The explanation appended to sub-section (9) of S. 526 Cri. P. C. cannot be interpreted to mean that a Court can, while granting adjournment, under sub-section (8), order payment of costs, in exercise of its powers, under S. 344. It simply means that the Court may, even in those cases in which it is not bound to adjourn the inquiry or trial under sub-section (8), grant adjournment in exercise of its powers, under S. 344, for making an application for transfer, if the circumstances of the case constitute a reasonable cause for adjournment within the meaning of that section. If the adjournment is granted under S. 344, then alone, the Court may impose such terms, including the payment of costs, as it may think fit: AIR 1942 Mad 178, Rel. on. AIR 1938 All 112, Diss. from. **(1964) 5 Guj LR 705: (1965) 1 Lab LJ 567: ILR (1964) Guj 841: AIR 1965 Guj 112 (122, 123, 124, 125, 126) (Pt B) (Prs 12, 14, 16, 18) (DB).**

●——Arts. 254 and 372 — Hyderabad Cr P. Code — If repugnant to (Indian) Cr. P. Code applied to the State by Act (1 of 1951), (Cr. P. Code Amendment Act) — Repeal, if ultra vires — Case pending on the date of enforcement of Act 1 of 1951 — Hyderabad Code, if saved for that case.

The accused in a criminal case pending before the Hyderabad Court contended that a charge cannot be framed when all the prosecution witnesses had not been examined and relied on S. 213, Hyderabad Code. It was overruled because by that time the (Indian) Cr. P. Code, had been applied. The accused applied under Arts. 227 and 228 of the Constitution and raised the following contentions. (1) The repeal of the Hyderabad Code by S. 25 of Act 1 of 1951 was ultra vires. (2) Hyderabad Code, S. 213 is not repugnant to the Cr. P. Code. (3) The provisions of the Hyderabad Code were saved in his case which was pending at the time of enforcement of Act 1 of 1951.

Held: The High Court usually prefers not to express any opinion on a constitutional question when it could rest its judgment on other grounds in the matter before it.

In deciding question of ultra vires the discussion of the questions not necessarily involved in the decision of the point in dispute should be avoided.

Prior to the coming into force of the Constitution all Hyderabad laws were in force in the State. After the date of Constitution 26-1-1950, under Art. 372 read with Art. 254 of the Constitution, the provisions of the State laws repugnant to the corresponding laws of India or which contravene any other provision of the Constitution would be void and the laws of the Parliament will prevail.

Where the State law is superseded by exercise of the legislative power of Parliament the sphere of legislative power of the State so far as regards that subject becomes void. Where therefore the Central Legislature evinced its intention to cover a field exclusively it becomes an "occupied field" and all State laws in respect of that matter are rendered invalid. (AIR 1939 Cal 628 relied).

In such circumstances the Hyderabad Code governing the same subject (Cr. P. Code), would be regarded as repugnant to Cr. P. Code and became void.

The provision of Hyderabad Cr. P. Code, S. 213, is not a substantive right but is only procedural and no person has a vested right in procedure. Pannalal v. Hyderabad State, **ILR (1952) Hyd. 684: 1952 Cr. LJ 1740: AIR 1952 Hyd 187 (190, 191) (Pts C, D) (Prs 11, 12, 15) (FB).**

——Art. 254 — No conflict or repugnancy between Cl. (2) of S. 43-A as introduced by Madras Amendment in 1954 and Cl. (8) of S. 57 as introduced by Central Legislature. See Motor Vehicles Act (1939), S. 43-A (2) (Mad) (as amended in 1956). **AIR 1965 Mad 54 (DB).**

●——Art. 254 — Central Act and State Act — Repugnancy or inconsistency in Hindu Succession Act (1956), Ss. 7 (2) and 30 (1) and Madras Aliyasanthana Act, 1949 (Madras Act IX of 1949), S. 36 (3), (4) and (5) — There is no conflict between the provisions of these Acts.

Repugnancy between two sets of provisions contained in enactments must exist in fact and not depend merely on a possibility. Inconsistency which is the same as repugnancy depends upon the intention of the paramount Legislature to express by its enactment completely, exhaustively or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. The pith and substance of the matter is to find out whether the law made by Parliament and the law made by the State Legislature occupy the same field or not. AIR 1939 FC 74 and AIR 1956 SC 676 and (1930) 43 CLR 472, Rel. on.

Applying the above test there is no conflict either direct or indirect between the two sets of

provisions, namely, S. 36 (3), (4) and (5) of the Madras Aliyasanthana Act, 1949, and Ss. 7 and 30 (1) of the Hindu Succession Act, 1956, Ss. 36 (3), (4) and (5) of Aliyasanthana Act relate to devolution of the shares allotted to divided members, whereas S. 7 (2) and S. 30 (1) of the Hindu Succession Act 1956, relate to the undivided interest of the coparceners, in a family. Sundara Adapa v. Girija, **40 Mys LJ 1: AIR 1962 Mys 72 (77, 79) (Pt F) (Prs 10, 16, 17) (FB).**

——**Art. 254 (2)** — Repugnancy — Iron and Steel (Control of Production and Distribution) Order (1941) — (Orissa Iron and Steel Products (Control of Prices and Distribution) Order (1951), — No repugnancy between two Orders. **ILR (1956) Cut 374: 22 Cut. LT 375: 1956 Cr LJ 1334: AIR 1956 Orissa 194 (198) (Pt D) (Pr 13) (DB).**

——**Art. 254 (2) — Repugnancy — Test of obedience — Inconsistency when one Act is more stringent than other — Iron and Steel (Control of Production and Distribution) Order (1941) — (Orissa Iron and Steel Products (Control of Prices and Distribution) Order (1951) — Orissa Order is not more stringent than Central Order)**

The test of obedience which is based on Whybrow's case, (1910) 10 CLR 286, is not the only test for determining inconsistency between two enactments. There may be an inconsistency when both the enactments impose prohibitions against the same act, but one of them is more stringent than the other. It cannot however be said that the Orissa Order is in any way more stringent than the Central Order. **ILR (1956) Cut 374: 22 Cut LT 375 : 1956 Cr LJ 1334: AIR 1956 Orissa 194 (198) (Pt F) (Pr 15) (DB).**

——**Art. 254 (2)** — Repugnancy — Iron and Steel (Control of Production and Distribution) Order (1941) — Orissa Iron and Steel Products (Control of Prices and Distribution) Order (1951) — Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (VII of 1955), S. 18 — Immunity from criminal prosecution given by section does not involve inconsistency between two orders. **ILR (1956) Cut 374: 22 Cut LT 375: 1956 Cr. LJ 1334: AIR 1956 Orissa 194 (198, 199) (Pt G) (Pr 17) (DB).**

——**Art. 254 (1)** — Bihar Shops and Establishments Act (VIII of 1954), as amended by Act (XXVI of 1959) — No repugnancy between this Act and Central Acts, XIV of 1947, XX of 1946 and IV of 1936 — No repugnancy within meaning of Art. 254 (1) of Constitution. See Bihar Shops and Establishments Act (VIII of 1954) as amended by Act (XXVI of 1959). **AIR 1964 Pat 180 (DB).**

——**Art. 254** — Motor Vehicles Act (1939), S. 64-A (Central) and S. 64-A (Bihar) — No repugnancy between — Bihar section not repealed by Central section. See Motor Vehicles Act (1939), S. 64-A (Central). **AIR 1960 Pat 537 (DB).**

——**Art. 254** — Constitutional validity of Statutes — Principle of pith and substance. See Representation of the People Act (1951), S. 126. **1957 Cri. LJ 648: AIR 1957 Pat 252 (DB).**

●——**Art. 254 — Repugnant — Meaning of.**

No State law can be repugnant to an Act of the Parliament unless it involves either directly or ultimately a contradictory proposition probably, contradictory duties or contradictory rights. Statutes may do more than impose duties; they may for instance, confer rights; and one statute is inconsistent with another when it takes away a right conferred by that other even though the right be one which might be waived or abandoned without disobeying the statute which conferred it: 20 Com WLR 148; 37 Com WLR 466. Foll. Mangtulal v. Radha Shyam, **31 Pat 921: 1953 BLJR 151: AIR 1953 Pat 14 (22) (Pt E) (Pr 23) (FB).**

——**Art. 254 (1)** — Rajasthan Premises (Control of Rent and Eviction) Act (1950), Ss. 13 (1) (a), 13 (4), 13 (5) (as amended by Rajasthan Act 9 of 1952) — Validity — No conflict between these provisions and Ss. 108 (g) and 114, T. P. Act — Repugnancy when arises — (Transfer of Property Act (1882), Ss. 108 (g), 114) See Houses and Rents — Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950) (as amended by Rajasthan Act 9 of 1952) S. 13 (1) (a). **AIR 1959 Raj 59.**

10. Proof of repugnancy.

●——**Art. 254 — Necessity of proving direct conflict between State Law and Union Law.**

Under Art. 254 there must be direct proof of the conflict established before the Court should conclude that State Legislation is void. Further where a State Law is inconsistent with Union Law it is pro tanto and only pro tanto invalid. It is, therefore, the Court's duty to see if it is possible to compare the two enactments so to speak quantitatively in order that what is excessive or contradictory in the State enactment and nothing more shall be deemed void. Mangtulal v. Radha Shyam, **31 Pat 921: 1953 BLJR 151: AIR 1953 Pat 14 (21) (Pt D) (Pr 19) (FB).**

11. Effect of repugnancy.

——**Art. 254 (1) — Government of India Act (1935), S. 107 (1) — Acts of Parliament and State Legislature on same subject-matter — Validity of State Act — Test of repugnancy — Effect of repugnancy on State Act — Act not void retrospectively.**

Repugnancy falls to be considered when the law made by Parliament and the law made by the State Legislature occupy the same field. The principles on which the repugnancy can be ascertained are : (1) Where there is direct conflict between the two provisions; (2) where Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and (3) Where the Central and the State laws occupy the same field. AIR 1959 SC 648, Rel. on. In case where there is no question of inconsistency, it would become necessary to compare the two statutes to discover whether the two legislatures sought to exercise their powers over the same subject-matter or whether the law enacted by the Parliament was intended to be a complete exhaustive Code, or, in other words, evinced expressly or impliedly an intention to cover the whole field. AIR 1956 SC 676, Rel. on. As regards the effect of repugnancy, the words 'to the extent of the repugnancy' in section 107 (1) and Article 254 (1) are crucial and it is clear that what would become void was not the entire State Act but only to the extent of its repugnancy with the law made by Parliament. Further, when the subject-matter and the period of operation coincide in the two Acts, there would be complete repugnancy and the whole of the State law would become void. But the operation of the Central Act may be entirely prospective leaving the State law to be effective in regard to things already done under the State Act. The principle is that a provision in a Statute that with effect from a particular date an existing law would be void to the extent of the repugnancy has no retrospective effect as in the case of repeal where there is no saving clause or a provision as in the General Clauses Act, and therefore, does not affect pending prosecutions or

actions taken under such law. To hold that a prospective declaration that a statute is void affects pending cases or finished transactions is to give it indirectly retrospective operation. Thus whether the State Act is viewed as having become void as a result of repugnancy or as impliedly repealed, the result would be the same and the past transactions would not be affected but would be valid and binding and the Act would subsist for all past transactions and for enforcing all rights and liabilities accrued before the Central Act came into force. **(1964) 5 Guj LR 705 : ILR (1964) Guj 841 : (1965) 1 Lab LJ 567 : AIR 1965 Guj 112 (119, 120, 121) (Pt A) (Prs 7, 10) (DB).**

● **——Arts. 254 and 311 (2) —** Railway Establishment Code (1937), Rr. 1711 and 2043 — Conflict between Railway Establishment Code and Payment of Wages Act — Code prevails — (Payment of Wages Act (1936), Ss. 7 and 10). See Railway Establishment Code (1937), Rule 1711. **AIR 1957 Punj 130 (FB).**

12. Repeal by implication.

● **——Art. 254—Rule of implied repeal—S. 2 of Bombay Act XXXVI of 1947 cannot prevail against S. 7 of Central Act XXIV of 1946 — (Essential Supplies (Temporary Powers) Act (1946), S. 7)—(Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act (XXXVI of 1947), S. 2).**

On a question under Art. 254 (1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment will be equally applicable to a question under Art. 254 (2) when the further legislation by Parliament is in respect of the same matters as that of the State law. Hence, S. 2 of Bombay Act No. XXXVI of 1947 cannot prevail as against S. 7 of the Essential Supplies (Temporary Powers) Act (XXIV of 1946) as amended by Act LII of 1950. Zaverbhai v. State of Bombay, **1954 SCJ 851: 1954 Cr LJ 1822 : 1954 SCA 1295 : 1955 All WR (Supp) 1 : 1955 SCR 799 : 57 Bom LR 589 : AIR 1954 SC 752 (758) (Pt D) (Pr 11).**

——Art. 254 (2), Sch. 7, List I, Item 59 and List III, Item 19 — Drugs Act (1940), Ss. 1 and 2 — Hyderabad Opium and Intoxicating Drugs Act (IV of 1333-F) (as amended by Act XXII of 1953) — Notification under — G. O. Ms. No. 1376, Revenue, dated 5th September, 1962 — Not ultra vires on ground of repugnancy — Drugs Act not exhaustive and self-contained — Extension of, to Andhra Pradesh — No repeal by implication. **(1964) 1 Andh LT 285: ILR (1964) Andh Pra 1092: AIR 1964 Andh Pra 430 (435) (Pt A) (Prs 6; 9) (DB).**

——Arts. 254, Sch. 7, List 2 Entries 3, 54, 66 — Sales Tax — Assam Sales Tax Rules (1947), R. 74 — Validity — Amendment of Court-Fees Act by addition of Art. 11 (c) in Sch. 2 — Effect — Does not repeal R. 74 by implication — (Court-fees Act (1870), (as amended by Assam Act 8 of 1950), Sch. 2, Art. 11 (c)) — (Government of India Act (1935), Sch. 7, List 2, Item 48). See Sales Tax — Assam Sales Tax Rules (1947), R. 74. **AIR 1959 Assam 216.**

——Art. 254 — Repugnancy — Principle of implied repeal of prior Act by subsequent Act — Application of.

The principle of implied repeal of a prior Act by a subsequent Act can be invoked only in those cases where the two Acts, by a competent Legislature, are inconsistent or repugnant. In that event the Court might well be invited to hold that the later Act impliedly repealed the earlier. Even in such cases the Court leans against an implied repeal unless the two Acts are so manifestly repugnant to each other that effect cannot be given to both at the same time. Besides special Acts cannot be repealed by general Acts, unless by express or necessary intendment. **AIR 1956 Assam 142 (150) (Pt F) (Pr 17) (DB).**

(Reversed on another point in AIR 1957 SC 414.)

——Art. 254 — Repugnancy between statutes — Implied repeal — Tests.

There may be inconsistency in the actual terms of the rival statutes. Even though there may be no direct conflict, a State law may become inoperative because Parliamentary legislation is intended to be a complete exhaustive code on the subject with which it deals. Inconsistency between the State and Parliamentary legislation may also arise where two Legislatures seek to exercise their powers over the same subject-matter. If Parliament evidences its intention to cover the whole field, that would be a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field. So also if on the same subject there are two competing Acts and if the provisions of a later Act are inconsistent with, or repugnant to, those of the earlier Act, then the two cannot stand together and the earlier stands impliedly repealed by the later.

Whenever it is sought to establish that there is a repugnancy between two competing statutes which must inevitably result in supersession of one of them, there is always a presumption in favour of the validity of both statutes. Every endeavour has, therefore, to be made to reconcile the two and consider both in such a way as to avoid repugnancy. AIR 1939 FC 74 and AIR 1939 Cal 628 and (1930) 43 CLR 472 and (1926) 37 CLR 466 and AIR 1956 SC 676 and AIR 1959 SC 648, Foll. **ILR (1960) Bom 559 : 62 Bom LR 277 : AIR 1960 Bom 532 (540, 541) (Pt C) (Prs 19, 20, 21) (DB).**

——Art. 254 — Municipalities — Travancore District Municipalities Act (1116), Sections 286, 287 — Repeal of — Sections impliedly repealed by T. C. Act X of 1125 — Travancore-Cochin Motor Vehicles Act, S. 72. See Municipalities — Travancore District Municipalities Act (1116), S. 286. **ILR (1960) Ker 338.**

——Arts. 254, 372 — Repeal by implication — Bombay Industrial Relations Act (11 of 1947) (as adapted in M. B.), Section 97 — Does not stand repealed by reason of the enactment of Sections 23, 24 of Industrial Disputes Act — (Interpretation of Statutes) — (Civil P. C. (1908), Pre.). See Ibid, Art. 372. **AIR 1956 Madh Bha 199 (DB).**

——Art. 254 — Repeal of Acts — Principles relating to — Jhabua State Agriculturists Relief Act — Scope and object of — Not repealed by M. B. Act LXII of 1950. See Debt Laws — Madhya Bharat Money Lenders Act (LXII of 1950), S. 22. **AIR 1958 Madh Pra 63.**

● **——Art. 254** — Provisions have not ceased to be operative after extension of Indian Evidence Act and Transfer of Property Act to Mysore State — Section 5 not void on ground of repugnancy to above Central Acts — Nor is it impliedly repealed,

See Debt Laws — Mysore Agriculturists Relief Act (XVIII of 1928), Section 5. **AIR 1965 Mys 54 (FB).**

●——**Art. 254 — Repugnancy — Implied repeal — Tests — Sections 44-A and 62 (d) added by Motor Vehicles East Punjab (Amendment) Act (XXVIII of 1948) not repugnant to provisions of the Central Act C of 1956.**

The provisions of Section 44-A and Cl. (d) of Section 62 added by the Motor Vehicles East Punjab (Amendment) Act (XXVIII of 1948) are not so repugnant to or inconsistent with the provisions of Central Act C of 1956 that they must be deemed to have been impliedly repealed.

The tests may be briefly summarised as under: (1) Whether the provisions of the Punjab Act are wholly incompatible with the later Central Act; (2) whether the two statutes together would lead to wholly absurd consequences; (3) whether the Parliament by enacting Act C of 1956 covered the whole field on the matter or evinced intention to cover the same. AIR 1956 SC 676 and AIR 1954 SC 752, Applied.

There is no conflict between the Central and Punjab Acts, Section 44-A. There is no repugnancy between Cl. (d) of Section 62 of the Punjab Act and the various Clauses of Section 62 of the Central Act as amended by Act C of 1956. Act C of 1956 has not provided anything repugnant to the Punjab Act and there is nothing to show that the Parliament had covered the whole field of legislation on the matter of issuing temporary permits and the purpose for which they could be issued. Whenever any need was felt for the same, the Legislature could aways add to the purposes already provided for the issue of permits of temporary nature. Ambala Ex-Servicemen Transport Co-operative Society, Ltd. v. State of Punjab, **60 Punj LR 515: ILR (1958) Punj 1590: AIR 1959 Punj 1 (6, 7) (Pt B) (Prs 22, 23, 24) (FB).**

——**Art. 254** — Penal Code (1860), Section 292 — Section 292 is not impliedly repealed by Press (Objectionable Matter) Act (1951) — (General Clauses Act (1897), S. 26) — (Press (Objectionable Matter) Act (1951) — (Interpretation of Statutes — Repeal — Implied repeal — 'Repugnancy' — (C. P. C. (1908) Preamble). See Penal Code (1860), S. 292. **AIR 1956 Punj 85.**

13. President's assent — (Clause (2)).

——**Art. 254 (2) and Item 41 of List III of Sch. VII** — Notice issued to petitioners prior to passing of Zamindari Abolition and Land Reforms Act (1951) and declaration made after Act came into force declaring share in sir property as evacuee property — Validity of — U. P. Zamindari Abolition and Land Reforms Act (1951) which was subsequent enactment divesting petitioners of their sir rights had received assent of President — Provisions of subsequent enactment prevalied in spite of provisions of Section 4, Administration of Evacuee Property Act (1950), by reason of Art. 254 (2), of Constitution of India — Notice under Section 7 (1), of the Act though valid when issued could not stand in way of divesting sir rights of petitioners and in absence of sir rights subsequent declaration treating such rights as evacuee property was totally ineffective. **1964 All LJ 696.**

——**Art. 254 — Inconsistency between State Act and Central Act — Matter in concurrent list — President's assent to State Act—State Act prevails.**

The assent of the President had been obtained for the U. P. Industrial Disputes Act and, therefore, if there is any repugnancy between this Act and the Central Industrial Disputes Act, it will be the State Act which would prevail. **(1962) 1 Lab LJ 309: (1961) 3 Fac LR 92: AIR 1961 All 321 (324) (Pt B) (Pr 8).**

——**Art. 254 (2) — U. P. Act XXX of 1953 does** not amend C. P. Code, and did not require sanction of President for its validity. See U. P. Board of Revenue (Declaration of Procedure and Validation) Act (XXX of 1953). **AIR 1954 All 660 (DB).**

——**Art. 254 (2), Proviso** — Andhra Pradesh General Sales Tax (Second Amendment) Act (2 of 1959) — Act not assented to by President like the Parent Act — Act is not invalid on this ground. See Sales Tax — Andhra Pradesh General Sales Tax (Second Amendment) Act (2 of 1959). **AIR 1964 Andh Pra 266 (DB).**

——**Arts. 254 (2), 366 (10)** — Land Acquisition Act (1894), Sections 4, 6, 9 — Amendment of Sections 4, 6 and 9 by Bombay Commissioners of Divisions Act, VIII of 1958 — Validity — Bombay Act having received assent of President the amendments are valid in the State. **67 Bom LR 101: 1965 Mah LJ 290: ILR (1965) Bom 394: AIR 1965 Bom 224 (237, 238) (Pt B) (Pr 32) (DB).**

——**Art. 254 (2)** — Assent of President to State Act is part of legislative power — Notifications dated 9th September, 1963 and 1st October, 1963 issued under Section 3 (1) (a) read with Section 5 (2) and S. 30 (2) respectively — Validity — Notifications are not ultra vires. See Minimum Wages Act (1948) (as Amended by Maharashtra Amendment) Act (3 of 1963), S. 3 (1) (a). **AIR 1965 Bom 169 (DB).**

——**Art. 254(2), Sch. 7, List II, Entries 3, 45; List III, Entry 43** — Bengal Public Demands Recovery (Validation of Certificates and Notices) Act (XI of 1961) — Validity — Act falls under Entries 3 and 45 of State List — Does not fall under Entry 43 of Concurrent List — State Legislature was competent to enact it — Assent of President under Art. 254 (2) was not necessary. AIR 1940 Cal 215, Rel. on. **1962 Cal LJ 210: (1964) 51 ITR 366: AIR 1964 Cal 165 (171, 172) (Pt E) (Prs 14, 15) (DB).**

——**Art. 254 (2)** — Government of India Act (1935), Section 107 (2) — Industrial Disputes Act (1947), Section 1 (2) (as amended in 1950 and 1956) Bombay Industrial Relations Act 1946 (11 of 1947), Section 2 — Amendment of Central Act 14 of 1947 in 1950 and 1956 — Effect on Bombay Act, 11 of 1947 — Amendments not creating repugnancy — Bombay Act not void for want of fresh assent by President. **(1964) 5 Guj LR 705: ILR (1964) Guj 841: (1965) 1 Lab LJ 567: AIR 1965 Guj 112 (126, 127) (Pt D) (Pr 19) (DB).**

——**Art. 254 (2)** — Motor Vehicles Act (1939) (as amended by M. P. Act 2 of 1963), Section 68-D (1), Explanation — Validity of — Explanation though limiting right of filing objections to classes of persons therein mentioned is valid as Act has received assent of President under Art. 254 (2) — Constitution of India, Art. 254 (2). See Motor Vehicles Act (1939) (as Amended by M. P. Act 2 of 1963), Section 68-D (1), Explanation. **AIR 1965 Madh Pra 196 (DB).**

——**Art. 254 (2)** — City of Bangalore Improvement (Amendment) Act (XIII of 1960), Sections 2, 3 — Introduction of Section 27-A, Parent Act validating retrospectively acquisition of land under Mysore Land Acquisition Act, for purposes of city improvement in contravention of Ss. 14, 15, 16, 17 or 18 or 27 of Parent Act—Provisions are in respect of 'existing law' within meaning of Art. 254(2) —Amendment Act not reserved for assent of President in accordance with proviso to Art. 213 (1) is invalid. See City of Bangalore Improvement (Amendment) Act (XIII of 1960), Section 2. **AIR 1962 Mys 218 (DB).**

——**Art. 254** — Mysore Tenancy Act — Assent of President not obtained — Validity. **AIR 1955 NUC (Mys) 5377 (DB).**

——**Art. 254 (2)** — Assent of President under Art. 254 (2) avoids inconsistencies in laws of legislatures. See Municipalities — Orissa Municipal Election Validation Ordinance (1 of 1959), Section 5 (1). **AIR 1960 Orissa 46 (DB).**

——**Art. 254, Sch. VII, List III, Item 42 — Orissa Estates Abolition Act (1 of 1952) — Validity.**

The provisions of the Orissa Estates Abolition Act were relatable to Entry 42 of List III even in 1952 when the President gave his assent and hence, by virtue of Art. 254 (2) they would prevail over the corresponding provisions of the Land Acquisition Act. **ILR (1957) Cut 299: AIR 1957 Orissa 247 (251) (Pt F) (Pr 19) (DB).**

——**Art. 254 (2) — Repugnancy between T. P. Act and Orissa Act (1 of 1952) — Effect — (Tenancy Laws — Orissa Estates Abolition Act (1 of 1952), Sections 20 (2) and 28 (3)) — (T. P. Act (1882), Section 67).**

Sections 20 (2) and 28 (3), Orissa Estates Abolition Act, 1952 may offend some of the provisions of the Transfer of Property Act regarding the rights of a mortgagee. But the Orissa Act has been assented to by the President and hence would prevail over any provision of the Transfer of Property Act inconsistent with it by virtue of Art. 254 (2) of the Constitution. **20 Cut LT 417: (1954) 24 Com Cas 392: ILR (1954) Cut 504: AIR 1954 Orissa 186 (188) (Pt B) (Pr 9).**

●——**Art. 254** — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947) — Act amended by Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1951 — Necessity of assent of President to amending Act under Constitution of India, Art. 254 (2). See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947). **AIR 1953 Pat 14 (FB).**

●——**Art. 254** — S. 11 of Bihar Act 3 of 1947 — Bihar Act as extended by Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1951, is repugnant to existing law within meaning of Art. 254 (1), Constitution of India — Consent of President not received to Bihar Amending Act of 1951 — Section 11 is void. See Houses and Rents — Bihar Buildings (Lease, Rent and Eviction) Control Act (III of 1947). **AIR 1953 Pat 14 (FB).**

——**Arts. 254, 246, Sch. VII, List III, Entry 22** — Industrial Tribunal constituted under Section 7 of Industrial Disputes Act — Rajasthan Industrial Tribunal (Constitution and Proceedings) Validating Act (1959) enacted by Rajasthan State Legislature and received assent of the President — The State Act must prevail over the provisions of the Industrial Disputes Act in the State of Rajasthan and the legality of the proceeding pending before the Industrial Tribunal constituted under the Industrial Disputes Act cannot be assailed. **(1962) 1 Lab LJ 609: 1962 Raj LW 669: ILR (1962) 12 Raj 571: (1963-64) 24 FJR 133: (1962) 5 Fac LR 8: AIR 1963 Raj 22 (24) (Pt C) (Pr 7) (DB).**

——**Art. 254** — President's assent, if was necessary. See Rajasthan Panchayat (Amendment) Ordinance (15 of 1955). **AIR 1956 Raj 107.**

——**Art. 254** — Code of Civil P. C. (Rajasthan Amendment) Act (Rajasthan Act 20 of 1952), Section 2 — Act inserting Section 48-A in Civil P. C. is valid — Bill had been reserved for assent of the President as required by the Constitution. The Rajpramukh had prepared this bill and reserved it for consideration of the President before 8-3-1953 on which date the Legislature was summoned in Rajasthan — Act is retrospective in operation. See Civil P. C. (1908), S. 48-A (Rajasthan Amendment). **ILR (1956) 6 Raj 53.**

——**Art. 254** — Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950)—Preamble — Cl. (2) of Art. 254 does not apply since the Act is not an Act which was reserved for the consideration of the President and has received his assent. See Debt Laws — Travancore-Cochin Holdings (Stay of Execution Proceedings) Act (8 of 1950) — Preamble. **AIR 1953 TC 327.**

14. Proviso to Clause (2).

●——**Art. 254 (2), Proviso — Scope — Repeal simpliciter.**

(Obiter):— There is much to be said for the view that a repeal simpliciter is not within the Proviso to Art. 254 (2). Tika Ramji v. State of Uttar Pradesh, **1956 SCA 979: 1956 SCR 393: 1956 All WR (HC) 637: 1956 SCJ 625: AIR 1956 SC 676 (706) (Pt D) (Pr 40).**

●——**Art. 254 (2), Proviso — Scope — U. P. Sugarcane (Regulation of Supply and Purchase) Act (XXIV of 1953) and U. P. Sugarcane Regulation of Supply and Purchase Order, 1954 — If repealed by Section 16 of Essential Commodities Act (X of 1955) or by Cl. 7 of Sugarcane Control Order, 1955.**

While the proviso to Art. 254 (2) does confer on Parliament a power to repeal a law passed by the State Legislature, that power is, under the terms of the proviso, subject to certain limitations. It is limited to enacting a law with respect to the same matter adding to, amending, varying or repealing a "law so made by the State Legislature" with reference to a matter in the Concurrent List containing provisions repugnant to an earlier law made by Parliament and with the consent of the President. The U. P. Sugarcane (Regulation of Supply and Purchase) Act is a substantive law covering of field not occupied by Parliament, and no question of its containing any provisions inconsistent with a law enacted by Parliament could therefore, arise. To such a law, the proviso has no application and Section 16 (1) (b), Essential Commodities Act (X of 1955) and Cl. 7 (1) of the Sugarcane Control Order, 1955, must, in this view, be held to be void.

The U. P. Sugarcane Regulation of Supply and Purchase Order, 1954, could not be validly repealed by the Central Government as was purported to be done by Cl. 7 of the Sugarcane Control Order, 1955, and that repeal was of no effect with the result that the U. P. Sugarcane Regulation of Supply and Purchase Order, 1954, stood unaffected thereby. The result, therefore, is that there was no repeal of the U. P. Sugarcane (Regulation of Supply and Purchase) Act (XXIV of 1953), or the U. P. Sugarcane Regulation of Supply and Purchase Order, 1954 by Section 16 of Act X of 1955 or by Cl. 7 of the Sugarcane Control Order, 1955. Tika Ramji v. State of Uttar Pradesh, **1956 SCA 979: 1956 SCR 393: 1956 All WR (HC) 657: 1956 SCJ 625: AIR 1956 SC 676 (706, 707) (Pt E) (Prs 40, 41).**

●——**Art. 254 (2) — Government of India Act (1935), Section 107 (2) — Power of Central Legislature or Parliament to repeal directly Provincial or State legislation enacted with respect to same matter.**

Under Section 107 (2), Government of India Act, 1935 the position was that though a law enacted by the Central Legislature and within its competence would override Provincial legislation

covering the same field, the Central Legislature had no authority conferred upon it under the Government of India Act to enact a statute repealing directly any Provincial statute. (1896) AC 348, Rel. on.

Art. 254 (2), Constitution of India, is in substance a reproduction of Section 107 (2), Government of India Act, 1935. But by the proviso to Art. 254 (2) the Constitution has enlarged the powers of Parliament and under that proviso, Parliament can do what the Central Legislature could not under Section 107 (2) of the Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State when it relates to a matter mentioned in the Concurrent List. The position then is that under the Constitution, Parliament can, acting under the proviso to Art. 254 (2), repeal a State law. But where it does not expressly do so, even then the State law will be void under that provision if it conflicts with a later "law with respect to the same matter that may be enacted by Parliament." Zaverbhai v. State of Bombay, **1954 SCJ 851: 1954 Cri LJ 1822: 1954 SCA 1295: 1955 All WR (Sup) 1: 1955 SCR 799: 57 Bom LR 589: AIR 1954 SC 752 (756, 757) (Pt A) (Pr 7).**

——Art. 254 — Proviso — Power of Parliament — Power of Court to adjudicate upon reasonableness of legislative measure.

Under Art. 254 of the Constitution of India, the Parliament has overriding and plenary powers of legislation and, in exercise of that authority, it could amend, repeal, modify or add to any existing law. If the Legislature is invested with authority to legislate in regard to a particular topic, the Court cannot adjudicate upon the reasonableness of such a measure. **ILR (1959) Andh Pra 827: (1959) 1 Andh WR 174: 1959 Cri LJ 300: 1959 Andh LT 294: 1959 MLJ (Cr) 176: AIR 1959 Andh Pra 144 (145, 146) (Pt B) (Prs 6, 16) (DB).**

——Art. 254 (2) — Government of India Act (1935), Section 107 — "Further Legislation" — Meaning of —State law repugnant to Central law or existing law — State law prevails until there is further legislation with respect to the same matter by Central Legislature. See Government of India Act (1935), S. 107 (2). **1953 Cri LJ 1602: AIR 1953 Bom 371 (DB).**

——Art. 254 (2), Proviso — Scope of—Different from Section 107, Government of India Act, 1935 — (Government of India Act (1935), Section 107).

Whether under the Constitution or under the Government of India Act, the Central Legislature or Parliament had always the power to override any legislation passed by a Provincial or State Legislature provided the subject is dealt with found a place in the Concurrent List. That important principle is reiterated in Art. 254 and the proviso to Cl. (2) merely emphasises that important principle. The departure made by the additional words contained in the proviso to Cl. (2) of Art. 254 is that wider power is conferred upon Parliament directly to tackle State legislation and to amend, vary or repeal State legislation. These additional words in no way restrict the competence of Parliament. **ILR (1955) Bom 49: 56 Bom LR 1000: AIR 1955 Bom 35 (37) (Pt A) (Pr 3) (DB).**

——Art. 254 — Existing laws on matters in concurrent list — Power of Parliament to repeal or amend not restricted. See Ibid, Art. 246 (2). **AIR 1961 Ker 154.**

——Art. 254 (2), Proviso — Scope.

Now by the proviso to Art. 254 (2) of the Constitution the powers of the Parliament have been enlarged and under that proviso the Parliament can do what the Central Legislature could not do under Section 107 (2) of the Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State in the circumstances mentioned in the Article. **1957 BLJR 520: ILR 36 Pat 606: AIR 1958 Pat 43 (47) (Pt B) (Pr 5) (DB).**

ARTICLE 255

——Art. 255 — Mysore Existing Laws (Construction of References to Values) Act (XII of 1957), Sections 3, 2 — Substitution of Naya Paisas in place of pies in Mysore Sales Tax Act — Effect — Tax expressed in terms of Naya Paisas cannot be challenged as unconstitutional. See Ibid, Art. 212. **AIR 1963 SC 589.**

——Arts. 255 and 265 — Freedom of trade — Assam Taxation (on Goods Carried by Roads or on Inland Waterways) Act (13 of 1954) — Validity. See Ibid, Art. 301. **AIR 1961 SC 232.**

——Art. 255 — Previous sanction under Art. 304 (b), Proviso, not obtained — Enactment, if invalid — Subsequent assent — Effect. See Ibid, Art. 304 (b), Proviso. **AIR 1960 Andh Pra 234 (DB).**

——Art. 255 — States Re-organisation Act, 1956— Distintegration of State of Hyderabad — Constitutional validity. See Ibid, Art. 1. **AIR 1957 Andh Pra 734 (DB).**

——Arts. 255, 207 and 212 — Governor's recommendation — Bill imposing tax on certain articles introduced without Governor's recommendation — Governor's assent published in Gazette — Defect cured by assent — Act not invalid — Bengal Finance (Sales Tax) (Second Amendment) Act, 1955.

Though there was no recommendation from the Governor for the imposition of tax on bullion and specie under the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955, the assent of the Governor to the Act having been published in the Calcutta Gazette Extraordinary on September 19, 1955, the defect is cured and the Act cannot be said to be invalid on that ground: AIR 1958 Raj 192 (194), Rel. on. **69 Cal WN 273: AIR 1966 Cal 81 (83) (Prs 15, 16).**

——Arts. 255, 301 and 304 — Kerala Agriculturists Debt Relief Act (XXXI of 1958), Section 11-A — Constitutional validity — Section is valid and does not infringe Arts. 14, 13, 301 or 304. See Debt Laws — Kerala Agriculturists Debt Relief Act (XXXI of 1958), Section 11-A. **AIR 1965 Ker 39 (FB).**

——Art. 255 — Scheme of distribution of legislative powers, pointed out. **71 Mad LW 291: (1958) 28 Com Cas 270: AIR 1958 Mad 403 (406) (Pt A) (Pr 5).**

[**Overruled** on another point in 1961 (2) Mad LJ 494.]

——Art. 255 — Previous sanction of President required by Art. 304 (b) not obtained — Assent of President to the Act after it was enacted obtained — Defect cured by Art. 255. See Ibid, Art. 304 (b). **AIR 1963 Mys 49 (DB).**

——Art. 255 — Scope — Amendment of Section 35 of Land Acquisition Act — Scope and effect of. See Land Acquisition (Bihar Amendment) Act (Bihar Act XI of 1956), Section 4. **AIR 1959 Pat 488 (DB).**

——Art. 255 — Assent of President to Bill — Should be obtained before it becomes an Act and not after its becoming an Act. See Ibid, Art. 200. **1965 Raj LW 118.**

——**Art. 255** — Rajasthan Passengers and Goods Taxation Act (18 of 1959), Section 3—Rajasthan Finance Acts amending Section 3 of the Act of 1959 without obtaining assent of the President — Taxes imposed by the amended Act during 1961 and 1962 not valid —Effect of Validating Act of 1964 — **Held** that Section 4 not only validated the impugned provisions of the Finance Acts but also re-enacted them with retrospective effect — Taxes collected during the period held legal. See Ibid, Art. 304 (b) Proviso. **1965 Raj LW 118.**

——**Art. 255** — Imposition of octroi duty — Restriction on freedom of trade — Absence of previous sanction of President — Effect. See Municipalities — Rajasthan Town Municipalities Act (XXIII of 1951), Section 59. **AIR 1958 Raj 192 (DB).**

——**Art. 255** — Scope of — Rajasthan Motor Vehicles Taxation Act (11 of 1951), Sections 4 and 11— Validity of. See Rajasthan Motor Vehicles Taxation Act (XI of 1951), Section 4. **AIR 1958 Raj 114 (FB).**

——Art. 255 — Subsequent assent by President — Sufficiency — Non-compliance with Section 207 — Effect.

It is clear from the provisions of Art. 255 that in cases where the Constitution required that a bill cannot be moved or introduced without the recommendation or previous sanction of the President or the Governor or the Rajpramukh, the Act would not be invalid simply because such a recommendation or a previous sanction is not made, provided subsequent assent is given by that authority. Rajasthan Sales Tax Act received the assent of the President of India on 22nd December, 1954 as published in Rajasthan Gazette, Extraordinary, dated 30th December, 1954. So even if the Court were to find that the bill was not introduced or moved on the recommendation of the Rajpramukh as required by Art. 207 the Court could not hold the Act invalid since it had received the assent of the President of India. **(1957) 8 STC 798: 1957 Raj LW 518: ILR (1957) 7 Raj 1035.**

ARTICLE 256

——**Art. 256** — Exercise of executive power of State — Limitations — Boundary dispute between India and Pakistan regarding Berubari Union No. 12 — "Radclife Award" — Agreement between Prime Ministers of India and Pakistan — Interpretation — Enforcement of agreement — Directive of Central Government to State — Implementation — Writ against State — Agreement if Act of State — Question of cession of territory, if involved in agreement — Jurisdiction of Municipal Courts. See Ibid, Art. 226. **AIR 1959 Cal 506.**

ARTICLE 258

——**Art. 258** — "Law"—Notification by President under Art. 258 (1) of the Constitution held to have force of law—Commissioner appointed under notification under Art. 258(1) could appoint Additional Special Land Acquisition Officer as Collector for purposes of Section 5-A, Land Acquisition Act. See Bombay Re-organisation Act (1960), Section 87. **AIR 1964 SC 648.**

——Art. 258 (1) — Scope — Provision enables President to entrust to States functions which are vested in Union and not those which are vested in him as President.

Art. 258 (1) enables the President to entrust to the State the functions which are vested in the Union, and which are exercisable by the President on behalf of the Union; it does not authorise the President to entrust to any other person or body the powers and functions with which he is by the express provisions of the Constitution as President invested. The power to promulgate Ordinances under Art. 123, to suspend the provisions of Arts. 268 to 279 during an emergency, to declare failure of the Constitutional machinery in States under Art. 356, to declare a financial emergency under Art. 360, to make rules regulating the recruitment and conditions of service of persons appointed to posts and services in connection with the affairs of the Union under Art. 309 —to enumerate a few out of the various powers—are not powers of the Union Government; these are powers vested in the President by the Constitution and are incapable of being delegated or entrusted to any other body of authority under Art. 258 (1). The plea that the very nature of these powers is such that they could not be intended to be entrusted under Art. 258 (1) of the Sate or officer of the State, and therefore Cl. (1) must have a limited content, proceeds upon an obvious fallacy. Those powers cannot be delegated under Art. 258 (1) because they are not the powers of the Union, and not because of their special character. Jayantilal Amratlal Shodhan v. F. N. Rana, **(1964) 5 SCR 294 : (1964) 5 Guj LR 481 : (1964) 2 SCA 284 : AIR 1964 SC 648 (656) (Pt A) (Pr 12).**

——Art. 258 (1) — Scope — Powers under, whether of executive character.

Per Majority:— The plea about the placing of Art. 258 in Ch. II of Part XI and the character of the two preceding Articles as indicative of the character of the powers conferred by Art. 258 (1) being executive is not at all decisive: for Cl. (2) of Art. 258, and Cl. (3) of Art. 261, which occur in Ch. II, deal with matters Legislative and judicial.

Per Subba Rao and Wanchoo, JJ.:— Where Chapter II of Part XI dealing with administrative relations deals with matters other than executive functions, it has specifically referred to these other matters which have to be dealt with by law or which are judgments of Courts; otherwise the whole of Chapter II of Part XI is concerned with the executive power of the Union or the State and, therefore, deals with executive functions. When Art. 258 (1) is giving power to the President to entrust his functions to the Government of a State or its officers in relation to any matters to which the executive power of the Union extends, the intention is to entrust only executive functions and no other. The word 'functions' even though it is not qualified by the word 'executive' in Art. 258 (1) must take its colour from what follows and if that is so, functions to be entrusted must be of the same nature as the executive power of the Union. Taking therefore, the language used in Art. 258 (1), it is capable of only one meaning, viz., that it enables the President to ask the State Government or its officers, with its consent, to carry out functions which pertain to the executive power of the Union vesting in him and to no other kind of power. Jayantilal Amratlal Shodhan v. F. N. Rana, **(1964) 5 SCR 294 : (1964) 5 Guj LR 481 : (1964) 2 SCA 284 : AIR 1964 SC 648 (663) (Pt C) (Prs 32, 33).**

——**Art. 258 (1)** — Functions of Central Government under Section 7, Explosive Substances Act, (1908), delegated to all State Governments — State Government has jurisdiction to give consent in respect of offence against Act. See Explosive Substances Act (1908), S. 7. **1965 (1) Cri LJ 1 : AIR 1965 All 15 (DB).**

——**Art. 258 (1)** — Notification dated 20th March, 1952, by Central Government under Art. 258 (1)

— Validity. See Land Acquisition Act (1894), S. 3 (ee). **AIR 1962 All 208.**

——**Arts. 258 (1), 73 (1) and 246 (1)** — Explosive Substances Act (1908), S. 7 — Central Government can validly delegate, under Art. 258 (1) read with Arts. 73 (1) and 246 (1), its functions under S. 7, Explosive Substances Act, to State Governments — Consent given by Governor of State under S. 7 for prosecution under Act after delegation is not open to challenge — AIR 1960 All 376. considered — Explosive Substances Act (1908), S. 7— Power of consent of Central Government for prosecution under Act — Delegation to State Governments — Valid. **1962 Mad LJ (Cri) 366 : 1962 (2) Cri LJ 318 : (1962) 1 Andh LT 438 : (1962) 1 An WR 396 : AIR 1962 Andh Pra 322 (323) (Pt A) (Pr 26).**

—**Arts. 258 and Sch. VII, List III, Item 42 — (as amended by Constitution (Seventh Amendment) Act, 1956)— Acquisition of land within State area for purposes of Union — Delegation of power by Central Government to State Government — Validity — Scope of Art. 258 — Notifications under Ss. 4 and 6, Land Acquisition Act issued by State Government — Validity — Land Acquisition Act (1894), Ss. 3 (ee), 4 and 6.**

Held, on facts (i) that the delegation made by the Central Government by its Notification, dated 24-3-52 was not invalid. In view of the said delegation the Central Government would include the State Government in the matters of acquisition of land within the State of Assam by virtue of S. 3 (8) (b) of the General Clauses Act. In this view, the notifications under Ss. 4 and 6 of the Land Acquisition Act, could not be challenged as not by appropriate Government.

(ii) The fact that the land was acquired by the State Government for enabling the Central Government to erect a food-grains godown did not necessarily mean that the acquisition was for the Union purpose and that the purpose ceased to be a State purpose: AIR 1955 SC 810, Rel. on. By the amendment of the Constitution in 1956, the distinction between the Union purpose and the State purpose has in effect been abolished. A power has been given to the State Government to acquire land for any purpose which may be regarded as a public purpose so long as the property is within its territorial jurisdiction and the State Government will in such cases also be the appropriate Government within the meaning of S. 3 (ee) of the Land Acquisition Act. The executive power of the Union under Art. 258 extends to acquisition, whether voluntary or in the exercise of its right of eminent domain. It is not limited to acquisition under a contract. It may be that a particular building may be constructed by the Central Government and the food-grains may be stocked by the Central Government, but nonetheless if the food-grains are to be distributed among the inhabitants of the State, it is as much a State purpose as a Union purpose. It is essential for a public benefit in which the State is as much interested as the Central Government. Tinsukia Development Corporation, Ltd. v. State of Assam, **AIR 1961 Assam 133 (136, 137, 138, 139) (Pt A) (Prs 4, 5, 7, 9, 10) (FB).**

——**Art. 258 (1)** — Delegation of executive function by Central Government to State Government — Consent by State Government after applying its mind to facts of the case — Consent is legal and valid — Special provision for delegation in Act not necessary. See Explosive Substances Act (1908), S. 7. **(1963) 2 Cr LJ 258: AIR 1963 Cal 508 (DB).**

——**Arts 258, 73, Sch. VII, List I, Items 17 to 19 — Notification No. 4/3-56 (1) —F. I. dated 19-4-58 entrusting power under S. 3 of Foreigners Act to State Government — Validity of.**

Where the Central Government by notification No. 4/3-56 F. I, dated 19-4-58 entrusted power under S. 3 of Foreigners Act to State Government that power could be validly entrusted and the notification was not invalid. Under Art. 73 the Executive power of the Union extends to matters with respect to which the Parliament has power to make laws, that is to say, matters included in List I, Schedule VII to the Constitution. Items 17 to 19 of List I cover matters relating to aliens, extradition, admission into and emigration and expulsion from India and passport and visas. These being matters over which the executive power of the Union also extends may be entrusted under Art. 258 of the Constitution by the Central Government to the State Government either conditionally or unconditionally.

Where, therefore, a person who had violated an order validly made against him to leave India, he must face the consequences thereof under the Foreigners Act. In such case, High Court could not interfere with criminal prosecution started against him. **67 Cal WN 206: (1963) 2 Cri LJ 9: AIR 1963 Cal 369 (372, 373) (Pt B) (Prs 12, 15).**

——**Art. 258** — Power to order foreigner to leave Indian territory — Delegation — Validity of. See Foreigner's Act (1946), S. 3. **AIR 1958 Cal 565.**

——**Art. 258 (1)** — "Laws in force" — Entrustment of power under Art. 258 (1) — Nature of — Whether executive in nature. See Bombay Reorganisation Act (XI of 1960), S. 87. **AIR 1963 Guj 80 (DB).**

——**Art. 258** — Foreigners Act, S. 12 — Validity — Delegation — Power of. See Foreigners Act (1946), S. 12. **1961 (1) Cr LJ 516: AIR 1961 Madh Pra 110.**

——**Arts. 258, 246, 162, 73 and Sch. VII, List I, Entry 41** — Imports and Exports (Control) Act (1947), S. 3 — Imports and Exports (Control) Order (1955), Clauses 8, 9 and 10 — Import Trade Control Policy for April to September, 1963 — Para. 51 — Other remedy open — Disposal of applications for import licence — State Government constituting committee including State Government Officer who was acting as sponsoring authority under Act — Order constituting committee amounted to encroachment upon exclusive jurisdiction of Union Government and sponsoring authority ought to have exercised its own individual judgment — Applications could not be said to have been finally disposed of and remedy by way of appeal against improper rejection of licenses was not adequate and relief could be granted in writ petition. See Ibid, Art. 226. **AIR 1965 Mys 143 (DB).**

——**Art. 258 (1)** — Firm discontinuing business — Assessment to income-tax made thereafter — Assessment made on firm in status of unregistered firm — Certificate proceedings — Substitution of partners — Liability of partners — Applicability of Art. 258 (1). See Income-tax Act (1922), S. 41. **AIR 1958 Orissa 280 (DB).**

——**Art. 258 (1) — Fixation of minimum wages— Delegation of powers by Central Government to State Government — Validity of.**

Fixation of minimum wages is an executive matter arising in the performance of the executive functions of the State. It is true that a certain procedure is prescribed for fixation of minimum wages. But that in itself does not make the

fixation a quasi-judicial matter, and hence it can be delegated by the Central Government to the Government of a State. **1957 Raj LW 95: ILR (1957) 7 Raj 74: AIR 1957 Raj 35 (36) (Pt B) (Pr 8) (DB).**

ARTICLE 258-A

——**Art. 258-A** — Contract for construction work of Hirakud Dam Project — If disqualification for election to Orissa State Assembly. See Representation of the People Act (1951), S. 7 (d). **AIR 1959 Orissa 58 (DB).**

ARTICLE 259

(Before amendment of 1956)

——**Art. 259 (2) (Before amendment of 1956). Arts. 14 and 16 — Grading of Majors of T. C. State Forces by Indian Army Selection Board does not amount to discrimination.**

Where after coming into force of the Constitution of India, the Armed Forces of the T. C. State became part of the Armed Forces of the Union of India, the Indian Army Selection Board screened the Officers of the T. C. State Forces and the appellant who was holding the rank of Major was formerly graded as "unacceptable" to the Indian Army and thereafter released from the Army under orders of the President; the gradation by the Selection Board was no discrimination on the ground that the Majors of the Indian Army were not subjected to any selective test after they were commissioned once, and the Major cannot claim the benefits as contemplated by the Indian Army Rules; he cannot also claim damages or compensation, since his release was under orders of the President. The Major has not become entitled to the salary, other emoluments and pension of the Indian Army personnel merely because Art. 259 (2) stated that the Armed Forces of the States would form part of the Armed Forces of the Union. The provision in the Article does not ipso facto enable the members of the State Forces to hold the same ranks in the Armed Forces of the Union. They have to be accepted as conforming to Indian Army standards and have to be absorbed and integrated in the Armed Forces of the Union. Therefore the grading by the Selection Board was no discrimination. The discrimination if it could be called discrimination as between those "acceptable" and those "unacceptable" was inevitable in any selection. Hence the gradation of the Major cannot be challenged on the ground of discrimination inasmuch as there was no further selection in case of Officers of Indian Army when once they have been commissioned. **1964 Ker LJ 700: ILR (1964) 2 Ker 389: 1964 Ker LT 406: AIR 1965 Ker 185 (186, 187) (Pt A) (Prs 5, 6, 8) (DB).**

ARTICLE 261

SYNOPSIS

(Constitution of India, Art. 261.)

1. Scope of the article.

2. Clause (2).

3. Clause (3).

(a) Pre-Constitution judgments and decrees.

(b) If retrospective.

See Note 3 (a).

1. Scope of the article.

●——**Art. 261** — After integration of State with Indian Union, question whether Court in Akola is foreign Court in relation with Hyderabad State, does not arise, since all Courts in State are Indian Courts — Insolvency Court in Akola adjudicating debtor insolvent — Receiver taking possession of property in Berar and applying to Aurangabad Court for its aid to enable him to take seisin of property in Hyderabad — Aurangabad Court must give aid. See Civil P. C. (1908), S. 13. **AIR 1952 Hyd 80 (FB).**

●——**Arts. 261, 1, 5 and 367 (3) — Scope — Ex parte decree passed by Palghat Court on 3-1-1951 — Executability in Perumbavoor in Travancore after extension of Civil Procedure Code to Travancore-Cochin by Part B States (Laws) Act, 1951 — Civil Procedure Code (1908), Ss. 2 (15), 13 and 44 — (Travancore Civil Procedure Code (1100 ME) S. 2 (5) — (Part B States (Laws) Act, 1951).**

An ex parte decree passed after the coming into force of the Constitution, by the Palghat Court which was a foreign Court vis-a-vis the State of Travancore by virtue of the definition in S. 2 (5) Travancore Civil Procedure Code (1100 ME), is incapable of execution in a Court at Perumbavoor. The definition of foreign Court in S. 2 (5), Civil Procedure Code as amended by Act II of 1951 which was extended to the Travancore-Cochin State, cannot be availed of to determine the executability of the decree passed prior to 1-4-1951, inasmuch as the material date for determining the question is the date of the decree and not the date on which execution is sought. AIR 1954 Trav-Co 358 (FB), Rel. on. The destruction of the element of foreignness is effected by the amendments to Civil Procedure Code by Act 2 of 1951 read with Part B States (Laws) Act, 1951. AIR 1954 Mad 1051 and AIR 1955 J and K 5 (FB), Dissented from.

The object of Cl. (3) of Art. 261 is also the same as that of S. 44, Civil Procedure Code and the words 'shall be capable of execution' only mean that the expeditious method of execution by application will be available and that there will be no necessity for an action on the judgment of another State.

Article 1 of the Constitution provides that India shall be a Union of States and that the territory of India shall comprise 'the territories of the States' and the other territories specified therein. It is impossible to say that the creation of a Union of States in this fashion will by itself destroy the element of foreignness as between the Courts of the federating States. AIR 1951 Trav-Co 358 (FB), Rel. on. Variathu Augusthi v. Subramonia Iyer Sesha Iyer, **ILR (1957) Kerala 1036: 1957 Ker LT 642: 1957 Ker LJ 633: AIR 1958 Ker 15 (16, 17, 18) (Prs 2, 3, 4, 9, 10, 13, 14, 15, 16, 17, 21) (FB).**

——**Art. 261 — Scope and effect — Efficacy of judgment rendered by Criminal Court in former Indian State.**

Art. 261 deals with the state of affairs which would arise after the commencement of the Constitution. Neither Cl. (1) nor Cl. (2) purports to give any efficacy to a proceeding or judgment rendered in a former Indian State or the present States. They only deal with the question of proof. No doubt Cl. (3) deals with the question of giving effect to the judgments or orders but they are those rendered by civil Court. No reference is even made in the article to judgments or orders of criminal Courts. **ILR (1955) Nag 613: 1955 Nag LJ 498: 1955 Cr LJ 1275: AIR 1955 Nag 236 (237) (Pt A) (Pr 5) (DB).**

——**Art. 261** — Submission to jurisdiction — Intention of defendant — Submission to be prior to decree — Effect of Art. 261 of Constitution. See Civil P. C. (1908), S. 13. **AIR 1955 Nag 103 (DB).**

●——**Art. 261 — Full faith and credit clause— Effect — (Civil Procedure Code (1908), S. 13).**

(Per majority, Gosain, J. Contra) :—

The provisos of Article 261 (1) and (2) are collectively called 'full faith and credit" Clause. Article 261 (1) merely establishes a rule of evidence and does not deal with jurisdiction Sub-clause (2) empowers the Parliament to lay down the rule of evidence and also the effect of the acts, records and judicial proceedings by legislation. This clause authorises the Parliament to legislate on the subject. Section 13 (a), Civil Procedure Code, lays down that a foreign judgment shall be conclusive as to any matter directly decided by it. This provision amply complies with the full faith and credit clause. Section 13 (a), however, further lays down that such a decision shall not be conclusive if the Court rendering the judgment was not competent to do so. The statutory provisions contained in Section 13 (a) of the Code of Civil Procedure as in force, in Pepsu State, in 1951 cannot be said to be in conflict with Article 261 (1) and (2) of the Constitution. Accordingly, it is open to the executing Court to examine under section 13 (a) of the Code of Civil Procedure whether the Courts decreeing the suits were or were not competent to pronounce the judgments in 1951. Gauri Lal Gurdev Das v. Jugal Kishore Sharma, **ILR (1958) Punj 1211 : 61 Pun LR 418: AIR 1959 Punj 265 (270, 271, 272) (Pt E) (Prs 17, 18) (FB).**

●——**Art. 261** — It is prospective and does not apply to decrees passed before 26-1-1950. Laxmichand v. Mst. Tipuri, **1956 Raj LW 129 : ILR (1956) 6 Raj 236 : AIR 1956 Raj 81 (84) (Pt C) (Pr 18) (FB).**

——**Art. 261 (1) — Applicability.**

Article 261 (1) applies only to acts which are valid and good and not to those that are void. Thus, where a permit issued to ply a motor vehicle on a public route is really not a permit at all. As its grant was ultra vires its grantor its issue cannot be "an act" within the meaning of Article 261 of the Constitution. **AIR 1953 TC 392 (394) (Pt C) (Pr 10).**

2. Clause (2).

●——**Arts. 261, 246 and Sch. 7, List 2, Item 3, List 3, Items 12, 13 — Foreign Judgments — (Civil P. C. (1908), S. 13).**

It is open to a State legislature to define "foreign judgments" and how they are to be enforced within its State subject to any legislation by the Parliament. Art. 261 (2) empowers only the Parliament to determine the manner in which judicial proceedings whether of the Union or of a State are to be proved and are to be made effective while items 12 and 13 of the Concurrent list give similar power to the States. Gauri Lal Firm v. Jugal Kishore, **ILR (1958) Punj 1211 : 61 Pun LR 418 : AIR 1959 Punj 265 (269) (Pt B) (Prs 11; 14) (FB).**

3. Clause (3).

(a) Pre-Constitution judgments and decrees.

(b) If retrospective.

See Note 3 (a).

3. Clause (3).

——**Art. 261 (3)** — Civil P. C. (1908), Ss. 10, 151 — Agreement to litigate in particular Court — Injunction restraining earlier suit filed in another Court can be granted — Injunction can be enforced against party disobeying though residing outside the State. See Civil P. C. (1908), S. 10. **1962 All LJ 464.**

——**Art. 261 (3) — 'Final judgment'.**

Obiter.— It is not easy, to explain the omission of the word 'decree' from Clause 3 of the Article particularly when it has been used in the earlier Arts. 132, 133 and 136. It can however be said that the definition of the word 'judgment' really means a decree as defined by the Civil Procedure Code. It is therefore, possible that the term 'final judgment' was used in Art. 261 (3) to include decrees. Ordinarily, only decrees are capable of execution, not judgments as defined in the Civil Procedure Code. The word 'decree' was probably used in Arts. 132, 133 and 136 only as a matter of abundant caution. **AIR 1958 All 775 (786) (Pt G) (Pr 54) (DB).**

——**Arts. 261 and 1 (3) — Territory of India.**

The 'territory of India' as defined in Art. 1 (3) of the Constitution came into existence for the first time on 26-1-1950. Before that date there was nothing which could be considered 'the territory of India' in the sense in which the term has been used in the Constitution. A decree passed before the coming into force of the Constitution, by the Gwalior State Court, cannot therefore, be considered to be a decree passed by a Court situate within the territory of India. **AIR 1958 All 775 (786) (Pt H) (Pr 54) (DB).**

——**Art. 261 (3) — Ex parte decrees by Courts of native State against non-resident foreigners — Execution of — If in accordance with law.**

Even under Art. 261 (3) the decrees mentioned therein can be executed only in accordance with law. The law in respect of ex parte decrees passed against non-resident foreigners is that such decrees are to be treated as nullities by the Court of every nation except (when authorised by local special legislation) in the country of the forum from which it was pronounced. If, therefore, an ex parte decree against a non-resident foreigner passed by the Gwalior Court is allowed to be executed at Allahabad, when such objection to its competency is taken, it will obviously be not in accordance with law. **AIR 1958 All 775 (787) (Pt J) (Pr 56) (DB).**

——**Art. 261 (3)** — Foreign Court — Submission to jurisdiction — Execution of decree in foreign State — Foreign Court, decree by — No submission to jurisdiction — Decree is a nullity and cannot be executed in India — Country of foreign Court (Gwalior) subsequently becoming part of India — Decree cannot still be executed, since it was a nullity when it was passed. See Civil P. C. (1908), S. 2 (5). **AIR 1955 All 490.**

●——**Art. 261 (3)** — Foreigner doing business in territorial jurisdiction of Court through agent— Claim against for breach of contract — Court has jurisdiction to pass ex parte decree against foreigner. See Civil P. C. (1908), S. 20. **AIR 1961 Andh Pra 476 (FB).**

——**Art. 261** — Foreign judgment — Ex parte money decree passed by Madras High Court against resident of Hyderabad State — Decree transferred to Court in Hyderabad now merged in Andhra Pradesh — Decree cannot be executed. See Civil P. C. (1908), S. 13. **AIR 1958 Andh Pra 407.**

——**Art. 261** — Ss. 13 and 38, Civil P. C. — Foreign decree — Its executability — Character and validity of decree how determined — Immunity under Law how far saved by S. 20 of Act, 2 of 1951 — (Civil P. C. (Amendment) Act (2 of 1951), S. 20). See Civil P. C. (1908), S. 13. **AIR 1958 Andh Pra 407.**

——**Art. 261 (3)** — Foreign judgment and decree — Judgment of Khosla, J., in AIR 1956 Punj 193 (FB), Dissented from. See Civil P. C. (1908). S. 13. **AIR 1958 AP 407.**

——**Art. 261** — Consent decree creating charge on property situate outside territorial jurisdiction of Court — Decree is lawful — Court has jurisdiction to appoint receiver of such property — Art. 261 under which decrees and orders of Courts of one State are capable of being executed in another State is a complete answer to question of effectiveness of the decree passed. See Civil P. C. (1908), S. 51. **AIR 1961 Cal 422.**

——**Art. 261 (3)** — Ex parte decree passed by Bombay High Court against resident of former Hyderabad State — Execution in Hyderabad — Decree can now be executed in Hyderabad — Civil P. C. (1908), S. 2 (5). **ILR (1952) Hyd 1030: AIR 1953 Hyd 19 (19, 20) (Prs 4, 5, 6) (DB).**

●——**Art. 261 (3)** — Definition of 'foreign Court' — Repugnancy to Arts. 5 and 261 (3) of Constitution — Ex parte decree passed by Amritsar Court against a State subject on 4th June, 1951 — Decree if executable in State. See Jammu and Kashmir Civil P. C. (10 of 1977, SMT.). (Before Amendment of 2011), S. 44. **AIR 1955 J and K 5 (FB).**

●——**Art. 261 (3)** — Decree passed by Court in British India — Decree passed against person not submitting to Court's jurisdiction — Decree can be executed in Courts of Madhya Bharat after 26th January, 1950. See Civil P. C. (1908), S. 2 (5). **AIR 1955 Madh B 1 (FB).**

——**Arts. 261, 1 and 5** — Decree of foreign Court —Ex parte decree in Mysore on 27-7-1950 can be executed in Part A State. See Civil P. C. (1908), S. 2 (5). **AIR 1954 Mad 1051.**

——Art. 261 (3) — Decree passed after Constitution but in suit instituted before — If executable.

A decree passed subsequent to coming into force of the Constitution, in a suit instituted prior to the date of the Constitution is executable in Courts in India previously considered as foreign. **36 Mys LJ 479: ILR (1958) Mys 273: AIR 1959 Mys 34 (35) (Pr 3).**

——**Art. 261** — Executable order under S. 488, Criminal Procedure Code, in existence — Second application for maintenance — Maintainability See Criminal P. C. (1898), S. 488. **1958 Cr LJ 1437: AIR 1958 Punj 431.**

●——**Art. 261 (3) — Effect of — Decree of Bombay High Court — Executability in Saurashtra — Procedure.**

Though by reason of Art. 261 (3) of the Constitution, a decree of the Bombay High Court becomes executable in Saurashtra State, it could be executed only in the manner and according to the law in that State where the procedure is by way of suit. Art. 261 (3) cannot be relied on to show that it becomes executable by mere application. Dwarkadas Jethabhai v. Gokaldas Naranji, **5 Sau LR 50: AIR 1952 Sau 90 (91, 92) (Prs 4, 5, 7) (FB).**

3 (a). Pre-Constitution judgments and decrees.

●——**Art. 261** — Ex parte decree passed by Gwalior Court on 18-11-1948 against resident of Allahabad — Decree is nullity — Decree transferred to Court at Allahabad on 14-9-1951 —Court held could not do so — Court at Allahabad could not execute decree. See Civil P. C. (1908), S. 13. **AIR 1962 SC 1737.**

——**Art. 261 (3) — Retrospective operation —[Interpretation of Statutes).**

Every legislation is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. This rule of interpretation is applicable for the purpose of interpreting the Constitution also. There is therefore, the initial presumption that Art. 261 (3) has only prospective application. There is nothing in Cl. (3) of the Article either expressly or by necessary implication to show that it was intended to apply to pre-Constitution decrees. **AIR 1958 All 775 (786, 787) (Pt I) (Pr 55) (DB).**

●——**Art. 261, Cl. (3) — Civil P. C. (1908), Ss. 13, 20 — Pre-Constitution personal ex parte judgment by British Indian Court against subject of Hyderabad State — Decree is nullity and not executable after advent of Constitution.**

A pre-Constitution judgment in personam pronounced in absentem by a foreign Court against a person who has not submitted himself to the jurisdiction of that Court and which is incapable of execution outside the territorial limits of that Court, is a nullity and if, at the time it was passed, it had no validity as a foreign judgment, it would not acquire new force after Constitution.

Thus, an ex parte decree passed by the erstwhile British Indian Court against a resident of the then Hyderabad State, who had not submitted to the jurisdiction of that Court cannot be executed by the Courts of the Hyderabad State after 26th January, 1950.

Section 20, C. P. Code enables Courts in British India to pass decrees which are capable of execution as domestic judgments. It deals only with matters of domestic concern and prescribes rules for the assumption of territorial jurisdiction by British Indian Courts in causes within their cognizance. As foreign judgments, they have no validity and they are, as it were, non est so far as the area outside the jurisdiction of the adjudicating Court is concerned, if they do not conform to the principles of Private International Law. Such a judgment is an absolute nullity in the international sense.

The material date with reference to which the validity of the judgment is to be tested is the date of making the judgment and not the date when execution is sought.

The Constitution is prospective and not retrospective. In that view, Cl. (3) of Art. 261 would not govern foreign judgments which were void and incapable of execution in Couts outside the territorial domain of the adjudicating Courts before the Constitution came into force. The position that prevailed before is maintained despite the inclusion of the native States in the territory of India.

Article 372 of the Constitution has preserved all the existing laws in the various States before the commencement of the Constitution, unless altered or repealed or amended by a competent legislature. Under S. 8 of the Hyderabad Civil P. C. the Judgment-debtor had a right to challenge foreign judgment, inter alia, on the ground of its being passed without jurisdiction. The right to resist execution of a foreign judgment is a substantive right and it is specially saved by S. 20 of Act 2 of 1951 (Civil Procedure Amendment Act). AIR 1952 Hyd 196 (FB); AIR 1958 Hyd 19; AIR 1953 Hyd 184; AIR 1951 Bom 125 (FB); AIR 1955 MB 1 (FB) and (1959) 2 Mad LJ 822, Dissent from; AIR 1952 Mys 69; AIR 1960 Mys 1; AIR 1954 TC 358; AIR 1955 All 490; AIR 1955 Nag 103; AIR 1954 Cal 67 and AIR 1956 Raj 81

(FB), Foll. Krishna Murthy v. Venkata Rao, **ILR (1962) Andh Pra 781: (1962) 1 An WR 272: (1962) 1 Andh LT 399: AIR 1962 Andh Pra 400 (403, 404, 405, 406) (Prs 22, 23, 25, 26, 27, 30, 45) (FB).**

——Art. 261 (3) — Scope and effect of.

Clause (3) of Art. 261 of the Constitution provides that final judgments or orders delivered or passed by the Civil Courts in any part of India shall be capable of execution within the territory but notwithstanding this provision the execution of final judgments and orders of the Civil Courts depended upon the provisions of the Civil Procedure Code in force in the respective territories. This is so because the provisions of Clause (3) of Art. 261 are not only prospective, but also specifically make execution of Civil Court decrees and orders subject to the law in force in that territory. AIR 1951 SC 217 and AIR 1951 SC 128, Rel. on. **(1958) 2 Andh WR 35: 1958 Andh LT 394: ILR (1958) Andh Pra 891: AIR 1958 Andh Pra 407 (409 to 412) (Pt E) (Pr 3) (DB).**

——Art. 261 (3) — Retrospective effect —Decree of former Indian State Court — Executability in India.

The decrees which were inexecutable as being those of a Court in a foreign State according to the law then in force up to the date of the Constitution, have not ceased to be so on account of the changes introduced by the Constitution or by reason of the constitutional definition of "the territory of India." There is no such retrospective effect in any Article of the Constitution including the definition of the "Territory of India" which has the effect of converting what was a foreign judgment before the Constitution into a domestic judgment after the Constitution.

The question is not to be determined by applying the test whether at the time of execution any of the sections of the Civil P. Code applies, but must be determined by the test whether such decrees by their nature of being foreign Court judgments are at all executable and this goes to the very root of their validity and enforceability. The principle that the executing Court does not go behind the decree has always been understood subject to the overriding question of whether the decree is a nullity or not. It is settled law that an executing Court can always refuse to execute a decree which is a nullity.

Held, that the Okhamandal Court in Baroda State when it passed the decree had no jurisdiction against what was then a foreign State of the Dominion of India and as such its decree against the Dominion of India which was a nullity being in breach of the international law, could not be executed in India. AIR 1952 Mys 69, Rel. on. AIR 1951 Bom 190 and AIR 1951 Bom 125, (FB), Disting. Case law referred. **ILR (1955) 1 Cal 251: 92 Cal LJ 24: AIR 1954 Cal 67 (71, 72) (Pt D) (Prs 15, 17, 18).**

——Art. 261 (3) — Ex parte personal decree by a Court in C. P. against resident of Hyderabad in respect of cause of action arising within jurisdiction — Validity — Decree if can be executed in Hyderabad after coming into force of Constitution. See Civil P. C. (1908), S. 13. **AIR 1955 Hyd 184 (DB).**

——Art. 261 (3) — Execution of decree passed by Court in Part A State by Court in Part B State.

Article 261 (3) cannot be availed of for the purpose of pressing an application of execution in the territory now forming part of Part B State where the final judgment of which the execution is sought was given by a Court in the territory now forming part of Part A State prior to 26-1-1950. AIR 1951 SC 124, Foll.

Even apart from the provisions of Art. 261 (3) such decrees have not become executable in Courts in Part B States by reason of change in the status of the judgment-debtor from that of a foreigner to that of national of India. AIR 1951 Bom 190, Foll. **ILR (1953) MB 312: AIR 1953 Madh B 225 (228, 229) (Pt B) (Prs 44, 56) (DB).**

——Art. 261 (3) — Ex parte decree of Bombay High Court in 1946 against resident of former Gwalior State — Execution of decree taken to Gwalior Court after Constitution of India —Decree being a nullity its execution held not maintainable. See Civil P. C. (1908), S. 13. **AIR 1962 Madh Pra 276.**

——Art. 261 — Ex parte personal decree passed by Calcutta High Court against resident of Mysore State prior to Constitution — Decree is not executable in Mysore State after Constitution. See Civil P. C. (1908), S. 13. **AIR 1960 Mys 1 (DB).**

——Art. 261 (3) — Scope — If retrospective — Mys. C. P. Code, S. 13 — Decree in Court of Madras against resident of Mysore ex parte before accession of Mysore to Indian Union— Execution in Mysore after the coming into force of Constitution of India — Permissibility.

Execution of a decree for payment of money passed ex parte before the Mysore State acceded to the Indian Union by a Court situated outside that State against a resident of the Mysore State who did not submit to the jurisdiction of the foreign Court can be resisted when such execution is applied for in a Mysore Court after the accession of Mysore to the Indian State and the coming into force of the Constitution of India on 26-11-1950. Art. 261 (3) of the Constitution of India is not retrospective and cannot be given retrospective effect. Art. 261 (3) can relate only to those decrees which are passed after the Constitution came into force. Decrees passed in the Madras Presidency or the Mysore State Courts before these two became parts of the territory of India, as defined in Art. 261 (3) of the Constitution cannot be said, with retrospective effect, to be those of Civil Court in the territory of India.

A decree was passed by a Court in Coimbatore (Madras) ex parte on 28-3-1949, against a person resident in the Mysore State who did not appear and did not submit to its jurisdiction. The decree was subsequently transferred for execution to the Sub-Court at Hassan in the State of Mysore and the execution application was filed on 19-3-1950.

Held, that the status of the defendant to be taken into consideration for deciding the question of executability was at the time of the decree sought to be executed and not at the time of the execution thereof and the decree which was inexecutable in Mysore as that of a Court in a foreign State according to the law in force at the time did not cease to be inexecutable or become executable on account of the changes introduced by the Constitution with respect to status or in the definition of foreign State or of territory of India. AIR 1951 Bom 190; AIR 1951 Bom 125 (FB); AIR 1952 TC 89, Diss.; 19 All 450; 56 All 828; 25 Bom 528, 40 Bom 551; 45 Bom 1228; 22 Cal 222; 9 Lah 455, 26 Mad 544, 17 MLJ 585; 1950 PC 64; AIR 1951 SC 217; AIR 1951 SC 128; 20 Mys CCR 214; 22 Mys CCR 188; 23 Mys CCR 299: 25 Mys CCR 269; 29 Mys CCR 143; 34 Mys

CCR 205; AIR 1941 Mad 688, Ref. **ILR (1952) Mys 201 : 30 Mys LJ 69 : AIR 1952 Mys 69 (72 to 75) (Prs 10, 14, 17, 18, 21, 23) (DB).**

——**Art. 261 (3)** — Pre-Constitution decree of native State — Executability. See Civil P. C. (1908), S. 13. **AIR 1956 Nag 273.**

——**Art. 261 (3)** — Civil P. C., Preamble, Ss. 2 (5), (6), 43, 44 (before amendments in 1951) — 'Ex parte' decree by Indore Court passed on 17-2-1948 — Execution of decree in Punjab in 1951 — (Interpretation of Statutes — Retrospective effect)— (International Law (Private) — Judgment of foreign Courts. See Civil P. C. (1908), Pre. **AIR 1956 Punj 193.**

——**Art. 261 (3)** — Article 261 (3) has no retrospective operation. **ILR (1953) 3 Raj 505 : 1953 Raj LW 429 : AIR 1954 Raj 4 (9, 10) (Pt F) (Pr 25) (DB).**

●——**Art. 261 (3)** — Scope — Decree of Bombay High Court passed prior to Constitution — Executability in Saurashtra State after Constitution. See Ibid, Art. 1 (3). **AIR 1954 Sau 123 (FB).**

●——**Art. 261** — Applicability to judgment and orders made before 26-1-1950. See Civil P. C. (1908), S. 13. **AIR 1954 Trav-Co 358 (FB).**

3 (b). If retrospective.

See Note 3 (a).

ARTICLE 264

——**Arts. 264, 295 and Sch. 7, List 2, Item 18**— Jagir grants — Variation by executives—Legality — Effect of Constitution on Nizam's Prerogatives. See Ibid, Art. 295. **AIR 1956 Hyd 164 (DB).**

——**Art. 264 (b)** (before Constitution (Seventh Amendment) Act of 1956) — Interpretation — Word 'State' used in Art. 286 must be read otherwise than as limited by Art. 264 (b) — Article 286 applies to Part C States also. See Art. 286. **AIR 1965 Madh Pra 11 (DB).**

ARTICLE 265

SYNOPSIS

(Constitution of India, Art. 265.)

1. Scope.
2. Tax.
(a) Tax and fee — Distinction.
(b) Levy of fee — Validity.
(c) Court-fee.
(d) Licence-fee.
(e) Registration-fee.
(f) Cess and fee.
(g) Toll tax.
3. Authority of law.
(a) Interpretation of taxing statutes.
4. Taxation power and fundamental rights.
(a) Taxation laws not subject to Art. 31.
(b) "Law" means valid law.
(c) Applicability of Art. 19.
(d) Freedom of inter-State trade.
5. Taxation and equality before law.
6. Retrospective taxing law.
7. Double taxation.
8. Remedies for illegal taxation.
9. "Levied or collected."
10. Taxation — Exemption from.
11. Taxation laws—Validity.

1. Scope.

——**Art. 265** — Scope and object — S. 22, Madras General Sales Tax Act is in pari materia — Explanation to section if can be read as explanation to definition of sale — Effect of S. 2 — Sales Tax Laws Validation Act. See Sales Tax—Madras General Sales Tax Act (9 of 1939), S. 2 (h). **AIR 1958 Andh Pra 109 (DB).**

——**Art. 265 — Scope and effect of — Power to impose or collect tax — Limits.**

Aticle 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. The words 'levy' and 'collection" are used in the article in a comprehensive manner and they are intended to include and cover the entire process of taxation commencing from the taxing statute to the taking of the money from the citizen. The Article enjoins that every stage in this entire process must be authorised by law.

The mere fact that an assessment has been made and the aggrieved party has not pursued his remedies under the taxing statute does not by itself make the assessment lawful if the assessment itself is made in pursuance of an ultra vires provision. There is no question of such assessments becoming final under the taxing statute. Where there is a total want of jurisdiction, a mere attempt to usurp jurisdiction can be restrained. **1959 Mad WN 325 : (1959) 2 MLJ 97: (1959) 10 STC 345: 72 Mad LW 446: ILR (1959) Mad 750 : AIR 1959 Mad 382 (386) (Pt A) (Pr 30) (DB).**

——**Art. 265** — Scope — Madras Act (19 of 1951), S. 76 (5). See Madras Hindu Religious and Charitable Endowments Act (19 of 1951), (as amended by Madras Act (27 of 1954), S. 76 (5). **AIR 1960 Mys 18 (DB).**

2. Tax.

(a) Tax and fee — Distinction.
(b) Levy of fee — Validity.
(c) Court-fee.
(d) Licence-fee.
(e) Registration-fee.
(f) Cess and fee.
(g) Toll tax.

2. Tax.

●——**Art. 265** — Raising of revenue for State and for maintenance of roads and waterways—Whether sufficient — Levy of flat rate of taxation — Not unreasonable restriction. See Assam Taxation (On Goods Carried By Road or On Inland Waterways) Act (10 of 1961), S. 3. **AIR 1964 SC 925.**

——**Art. 265** — State Legislation enacted under S. 79 (1), Government of India Act, 1915 — Constitutionality if can be challenged on ground of want of power under Constitution of India, Competency of State legislature to enact law for levy of fee for water supply by municipality—Tax and fee — Distinction. See Ibid, Art. 372. **AIR 1961 All 583.**

——**Art. 265** — Scope — Contribution payable by employer under Employees' Provident Funds Act — Validity. See Employees' Provident Funds Act (1952), S. 8. **1958 All WR (HC) 501.**

——**Arts. 265, 245, 246 and 248 — Sch. 7 'Fees' and 'Tax' — Legislative competence — Residuary power with regard to taxation in Union — Levy of tax as ancillary or incidental to subjects specified in the Lists of Sch. 7.**

The power to enact a law with respect to a tax on a subject must, to be intra vires, be one relating in fact to that subject. Entry 96 of List 1, Entry 66 of List 2 and Entry 47 of List 3 (Concurrent List) specifically provide for the imposition of fees in respect of any of the mat-

ters enumerated in the three lists. The absence of a similar provision in regard to the levy of taxes in respect of any of the matters enumerated in the Lists gives a strong indication that the levy of tax was not meant to be exercised as an ancillary or incidental power. The subjects dealt with in Lists I and II are meant to be exclusive, and all residuary power with regard to taxation is vested in the Union under Entry 97. Where the power of taxation is intended to be conferred on the Union or State, the Lists specify the subjects with regard to which that power can be exercised. **(1959) 1 Andh WR 285 : ILR (1959) AP 648 : AIR 1959 Andh Pra 398 (401) (Pt B) (Prs 15, 18, 19) (DB).**

——**Arts. 265 and 19** — Madras District Municipalities Act (5 of 1920), S. 270 — Tax on persons vending articles on road margins — It is a fee and not tax — Fee held unreasonable and void. See Municipalities — Madras District Municipalities Act (5 of 1920), S. 270. **AIR 1957 Andh Pra 103.**

●——**Arts. 265 and 27 and Sch. 7, List 2, Entry 45 — Assam Land Revenue Regulation (1 of 1886), Chaps. 2 and 3 — Land Revenue is tax and not rent.**

Per Ram Labhaya, J. :— There is now a general consensus of opinion that land revenue should be regarded as a tax and not a rent. It is merely a portion of the profits of agriculture compulsorily appropriated by the State without any consideration. It is a tax which is no more than a compulsory exaction of money by the State in the exercise of its sovereign power for public purposes.

All bits of income or profit taken by the State in the exercise of its sovereign powers are in reality taxes, no matter under what name they appear. AIR 1955 SC 298, Rel. on. Girijananda v. State of Assam, **AIR 1956 Assam 33 (43, 44) (Pt G) (Prs 35, 36) (SB).**

——**Art. 265** — Tax — Nature of — Test —Tax on trade — Municipal tax on cotton manufacture levied per bale pressed — Nature of tax. See Ibid, Art. 276. **AIR 1958 Bom 487 (DB).**

——**Art. 265 — Citizen's right to be heard before being taxed — (Municipalities — Bombay Municipal Corporation Act (3 of 1888), S. 169).**

It may seem rather ironical, but it is still true, that there is one matter in which every citizen is vitally affected where he is not allowed to be heard, and that is when the Legislature or any duly constituted authority decides to levy tax upon him. Perhaps it is not ironic because the reason is obvious. Although the citizen is not heard directly in his own defence or is not allowed directly to show cause on questions of taxation, the policy underlying taxation is decided by an authority which represents him and therefore he is heard through that representative authority. If the Legislature taxes it is his representatives that are taxing him. If the Municipality taxes again it is his representatives who are taxing him. This may be the philosophic basis of the citizen not being heard. But as far as the law is concerned, it is clear that order to tax under S. 169 being an executive and administrative order there is no right in the petitioners being heard or being allowed to show cause and no rules of natural justice have been violated. **56 Bom LR 1035: AIR 1955 Bom 185 (192) (Pt G) (Pr 12) (DB).**

——**Art. 265** — Regulation of mines and minerals development — Powers of Union and State — Power of taxation. See Ibid, Sch. 7, List 1 Entry 54. **AIR 1959 Cal 222 (DB).**

——**Art. 265** — Tax includes fees — Scope of Art. 265 — Rule 55 of C. P. and Berar Motor Vehicles Rules — Rule imposing fee in respect of grant and renewal of permit is ultra vires after amendment of S. 68 (2) (g) of Motor Vehicles Act by Amendment Act C of 1956. See C. P. and Berar Motor Vehicles Rules (1940), R. 55. **AIR 1965 Madh Pra 232 (DB).**

——**Art. 265** — Royalty — Payment — Basis and extent of. See Madhya Pradesh Land Revenue Code (2 of 1955), S. 143. **AIR 1960 Madh Pra 129 (DB).**

——**Arts. 265 and 266** — Power of State Legislature. See Ibid, Art. 246 (3). **AIR 1960 Mad 160.**

——**Art. 265 — Power to levy tax — Extent of.**

The power to levy a tax extends to the enactment of all incidental provisions for ensuring the collection or preventing the evasion of the tax, or in the case of an indirect tax for facilitating the passing on of the tax to purchasers of goods. **70 Mad LW 770: (1957) 8 STC 690: (1957) 2 Mad LJ 469: ILR (1958) Mad 35: AIR 1958 Mad 158 (168; 169) (Pt E) (Pr 42) (DB).**

——**Art. 265, Sch. 7, List 1, Item 96, List 2, Item 66, List 3, Item 47 — Levy of fee in course of levy of taxes.**

In each of the three lists in Sch. 7, the entry relating to the levy of fees, in List 1, item 96, List 2, item 66 and List 3, Item 47, is to be read as an adjunct to every legislative power including the entries conferring the power to levy particular taxes. This is an indication that the Constitution-makers conceived of fees being leviable in the course of the levy or collection of taxes, and this would include fees for licences. **70 Mad LW 770: (1957) 8 STC 690: (1957) 2 Mad LJ 469: ILR (1958) Mad 35: AIR 1958 Mad 158 (169) (Pt F) (Pr 43) (DB).**

——**Arts. 265, 14 and Sch. 7, List 2, Entry 54** — Power of Legislature to decide basis of taxation. See Ibid, Art. 14. **AIR 1956 Mad 298 (DB).**

——**Art. 265** — Scope of —Custom requiring one day's free labour to be given to village headman— Validity. See Ibid, Art. 23 (1). **AIR 1961 Manipur 1.**

——**Art. 265** — Amendment converting into tax what is not really tax — Amendment held unconstitutional. See Sales Tax — Mysore Sales Tax Act (25 of 1957), S. 18 (3) (as amended in 1964). **AIR 1965 Mys 120 (DB).**

——**Art. 265** — 'Tax' or 'levy' — Agency Tracts of Ganjam — 'Mamul' — Nature of. See Custom. **AIR 1958 Orissa 15 (DB).**

——**Art. 265** — Royalty on minerals under Bihar Minor Mineral Concession Rules, 1964 — Royalty is not fee but tax within Art. 366 (28). See Ibid, Art. 366 (28). **AIR 1965 Pat 491 (DB).**

——**Art. 265, Sch. 7, List 1, item 54 and Sch. 7, List 2, item 23** — Mines and Minerals (Regulation and Development) Act (1957), Ss. 14, 15 and 13 (1) — Scope of — Rule making power of State Govt. under S. 15 (1) — State Government has authority to impose royalty in respect of minor minerals. **AIR 1965 Pat 491 (495; 496) (Pt B) (Pr 8) (DB).**

——**Arts. 265 and 245** — Tax — Exemption from. See Ibid, Art. 245. **AIR 1964 Raj 205 (DB).**

——**Art. 265** — Exemption from Sales-tax — Cancellation of — Validity. See Sales Tax — (Travancore Cochin) General Sales Tax Act (11 of 1125), S. 6 (1). **AIR 1957 Trav-Co. 314 (DB).**

2 (a). Tax and fee — Distinction.

●——**Art. 265** — Entry 66 — Whether particular levy is tax or fee — Matters to be considered. See Municipalities — Calcutta Municipal Act (33 of 1951), S. 548. **AIR 1965 SC 1107.**

●——**Art. 265 — Fees and tax — Nature and incidence of fee.**

A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amount collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax. It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said it is of the nature of a tax. A fee being a levy in consideration of rendering service of a particular type co-relation between the expenditure incurred by the Government and the levy must undoubtedly exist, but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may. Sudhindra Tirtha Swamiar v. Commissioner, Hindu Religious and Charitable Endowments, Mysore. **1963 Supp (2) SCR 302 : (1963) 2 SCA 340 : AIR 1963 SC 966 (974, 975) (Pt F) (Pr 8).**

●——**Art. 265 — Tax and fee — Distinction — Cess levied for specific services to specified area or class of persons — Nature of — Orissa Mining Areas Development Fund Act (1952), S. 4.**

It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them, cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. There is, however, an element of compulsion in the imposition of both tax and fee. Whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case. AIR 1954 SC 282; AIR 1954 SC 400 and AIR 1954 SC 388, Rel. on.

When the Legislature levies a fee for rendering specific services such services may indirectly form part of services to the public in general. If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area, the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Hingirrampur Coal Co., Ltd. v. State of Orissa, **(1961) 2 SCR 537 : (1961) 1 SCA 210 : AIR 1961 SC 459 (464, 465, 466) (Pt A) (Prs 9, 13).**

●——**Art. 265** — Tax and fee — Distinction. See Ibid, Art. 27. **AIR 1954 SC 400.**

●——**Art. 265** — Distinction between tax and fee. See Ibid, Art. 27. **AIR 1954 SC 388.**

●——**Art. 265** — Distinction between tax and fee. See Ibid, Art. 27. **AIR 1954 SC 282.**

——**Art. 265 — Municipalities — U. P. Municipalities Act, 1916 — (U. P. Act II of 1916), Section 129 — Tax — Difference between tax and fee — Water-tax imposed by Municipality — Restriction on its expenditure — It is still a tax and not fee.**

'Tax' means burden of charges imposed by the legislative power of a State on person or property to raise money for public purpose. The expression 'fee' connotes recompense for services rendered. There is an element of quid pro quo in the case of fee. It is not so in the case of tax.

Section 129 (b) of the U. P. Municipalities Act mentions the object of the tax. The element of quid pro quo is absent from this levy. Thus water tax is a tax and not a fee. **1961 All LJ 976: AIR 1962 All 83 (85) (Pt A) (Prs 5, 6) (DB).**

——**Art. 265 — Tax and fee — Distinction.**

A fee is generally defined to be a charge for special service rendered to individuals by some governmental agency. A tax is in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law, without reference to any special advantage to be conferred upon the payers of the tax.

On the other hand, two elements are essential in order, that a payment may be regarded as a fee. In the first place it must be levied in consideration of certain services and, in the second place, the amount collected must be ear-marked to meet the expenses of rendering these services and must not go to the general revenue of the state to be spent for general public purposes. AIR 1954 SC 282 and AIR 1954 SC 388, Foll. **1958 All Cri R 113: 1958 All LJ 56: 1958 All WR (HC) 131: AIR 1958 All 360 (361) (Pt C) (Prs 11, 12).**

——**Art. 265, Sch. 7, List 2, Entries 49, 17 and 66 — Municipalities — Hyderabad District Municipalities Act (18 of 1956), Sections 97 (1) (b), 101 and 230 (2) — Levy of general water tax under Section 97 (1) (b) — Difference between tax and fee — Levy is tax not fee, and is valid — Entry 49 applies, not Entries 17 and 66 — Levy of general water-tax — Constitutional validity.**

In order to decide whether a particular levy is tax or fee what matters is not the nomenclature given to a particular levy but the purpose for which it is made which is a real test as to the category in which the levy falls.

A general water tax provided for under Section 97 (1) (b) of the Hyderabad District Municipalities Act is designated and classified by the Act as a 'tax' on buildings and lands and as property tax and distinguished from water-fee charged under Section 230 of the said Act, which is designated and classified as fee. The quantum of general water tax is levied on the basis of rateable value of the building or land concerned and not on the basis of the quantity of water supplied and consumed. Section 101 (2) specifically provides that where the water fee payable under Section 230 (2) is not equal to the general water tax, the person concerned can pay the higher of the two. This provision in Section 101 (2) only provides for contingency arising out of the amount of general water tax being different from water fee in quantum but leaves unaffected their individual qualities by way of being property tax (general), water tax or water fee, their basis of valuation and the distinction between the two levies. Such levy under Section 97 (1) (b) is a water tax on lands and buildings and comes under

Entry 49 and does not come under Entry 17 and Entry 66 of List 2, Sch. 7, Constitution of India. **(1964) Andh LR 402: AIR 1965 Andh Pra 91 (92, 94, 95) (Pt A) (Prs 10, 12, 19) (DB).**

——**Art. 265** — Distinction between fees and taxes. See Madras Commercial Crops Markets Act (20 of 1933), Section 11. **AIR 1959 Andh Pra 398 (DB).**

——**Art. 265 — Tax and fee — Distinction.**

Though both a tax and a fee are different forms in which the taxing power of a State manifests itself, there is a clear distinction between the two and that distinction is maintained by the Constitution. A fee must be levied in consideration of certain services and that it should be set apart or specially appropriated for that purpose, whereas a tax is a common burden for public purposes. A similar levy may be imposed either as a tax or as a fee and it takes the character of a fee or a tax-depending upon the purpose for which it is levied and the manner in which the collections are appropriated. AIR 1952 Mad 764, Rel. on. **ILR (1956) Andh Pra 622: 1956 Andhra LT 605: 1956 Andhra WR 616: AIR 1957 Andhra Pra 103 (106) (Pt B) (Pr 17) (DB).**

——**Art. 265** — Tax or fees — Criterion to decide. See Sales Tax — Assam Sales Tax Rules (1947), Rule 74. **AIR 1959 Assam 216 (DB).**

——**Art. 265 — Tax and fee — Distinction.**

The distinction between a tax and a fee is well-known namely, that the tax is levied as part of a common burden and the fee is the payment for a special benefit or privilege. **ILR (1959) 1 Cal 140: 62 Cal WN 278: AIR 1958 Cal 203 (208) (Pt I) (Pr 22).**

——**Art. 265 — Tax and fee — Distinction.**

Some of the salient features which are relevant for distinguishing a tax from a fee are:

(1) A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not in payment for services rendered. (2) The levy of tax is for the purpose of general revenue. (3) There is no element of quid pro quo between the tax-payer and the public authority. (4) A 'fee' however, is a charge for a special service rendered. (5) The quantum of a tax generally depends upon the tax-payer's capacity to pay, but fees are generally uniform and have no relation to the paying capacity of the licence holder. (6) While there is no limit to the quantum of a tax that can be levied there is limit to the amount of a licence-fee that can be imposed. 59 Cal WN 872, Rel. on. **AIR 1959 Cal 45 (48, 49) (Pt A) (Pr 11).**

[**Overruled** on another point in AIR 1963 SC 1811.]

——**Art. 265** — Tax and fee. See Sales-tax — Madras General Sales-tax Rules (1939), Rule 6 (4) (a). **1963 Ker LJ 356.**

——**Art. 265** — Tax and fee — Distinction. See Panchayats — C. P. and Berar Panchayats Act (1 of 1947), Section 42 (1) (c). **AIR 1962 Madh Pra 177 (DB).**

——**Art. 265** — Fees and tax — Distinction. See Pondicherry (Administration) Act (1962), Section 4. **1965 Mad WN 328: ILR (1966) 1 Mad 93.**

——**Art. 265** — Fee or tax — G. O. 2044 Rev., D/- 30-6-1955 — Validity. See SalesTax — Madras General Sales Tax Rules (1939), Rule 6. **AIR 1958 Mad 158.**

——**Art. 265** — Tax and fee — Distinction. See Municipalities — Madras District Municipalities Act (5 of 1920), Section 321 (2). **AIR 1957 Orissa 285 (DB).**

2 (b). Levy of fee — Validity.

——**Art. 265** — Madras Commercial Crops Market Act — Levy of fees under Section 11 of Madras Commercial Crops Market Act — If dependant on establishment of market or on any services to be rendered. See Madras Commercial Crops Market Act (20 of 1933), Section 11. **(1957) 2 Andhra WR 250.**

——**Art. 265** — Scope — Fee payable under Bengal Excise Act and Rules — Nature and Validity of. See Bengal Excise Act (5 of 1909), Section 27. **AIR 1958 Cal 203.**

——**Art. 265 — Tax and fee — Levy of fee — When amounts to tax — Imposition of tax by exercise of Rule-making power — Permissibility.**

In the absence of a quid pro quo a fee should be considered as amounting to a tax and no tax can be introduced by the exercise of a rule-making power. AIR 1961 SC 459, Rel. on. AIR 1958 Mad 158, Dist. **ILR (1962) 2 Ker 437.**

●——**Art. 265** — Tax and fee — Distinction — Cattle sale registration fee — Imposition of, not on basis of services rendered but on basis of purchase price of animal — No co-relation between fee collected and services rendered — Imposition in substance not fee but tax — Imposition is ultra vires powers of Janapad Sabha under Section 89 (d) of C. P. and Berar Local Government Act (38 of 1948). See C. P. and Berar Local Government Act (38 of 1948), Section 89 (d). **AIR 1965 Madh Pra 219 (FB).**

——**Art. 265** — Fees on sale of cattle is tax — Procedure for impost of fees not applicable — Levy of fees is illegal — Right to collect fees transferred — Agreement is illegal and cannot be enforced — Return of benefit — No specific plea — Effect — Benefit received under illegal impost — Party is not estopped. See Municipalities — C. P. and Berar Municipalities Act (2 of 1922), Section 66 (1). **AIR 1963 Madh Pra 240 (DB).**

——**Art. 265** — Scope — Forest road — Restriction on use — Levy of fee —Legality. See Forest Act (1927), Section 25. **AIR 1959 Madh Pra 224 (DB).**

——**Art. 265** — Contribution collected as fees under provision of enactment — Tests to be satisfied. See Ibid, Art. 27. **AIR 1956 Mad 491 (DB).**

——**Art. 265 and Sch. 7, List 2, Entry 66 — Registration Act (1908), Sections 78 and 79 — Punjab Notification No. F. 12 (20)/52 — G. A. R. dated 15-12-1952 — Registration fee — Debenture trust deed — Properties of value of Rs. 2,5 crores — Registration fee demanded held was not fee but was tax — Notification was ultra vires.**

Held, on facts, that the fee in the instant case, was not a fee but in its very nature was a tax and the notification was ultra vires and inoperative for the following reasons, namely: (1) that the fee is not deposited in a separate head or account but is merged in the general revenue of the State. It is not solely used for the maintenance of the registration department but goes into a consolidated fund which is utilised for various other governmental functions, (2) that there is no reasonable correlation between the fee levied and the cost of maintenance and administration of the registration department. The Act has no correlation with the capacity of an individual to pay. This is being stated pertinently because certain fees may be justified if their imposition has something to do with the capacity of the individual to pay but all fees cannot be justified on that basis. For that purpose one has to keep in view the purpose and object of the Act. In

the present case the purpose and the object of the Act have no relation to the paying capacity of an individual. **ILR (1964) 2 Punj 681: AIR 1964 Punj 492 (496, 497) (Pt A) (Prs 20, 23) (DB).**

■ ——**Art. 265** — Levy imposed under Section 31 (6) of Punjab District Boards Act by notification D/- 17-9-1954 — Validity — Levy is tax and not fee and is invalid. AIR 1957 Punj 45, **Overruled**. State of Punjab v. M. W. & Silk Mills, **AIR 1962 Punj 267 (272, 273, 274) (Prs 7, 8, 9, 11) (FB).**

——**Art. 265** — Imposition of fees under Punjab Tobacco Vend Fees Act, 1954 — Imposition not in excess of that required for purposes of regulation — Act and rules thereunder not invalid. See Ibid, Art. 19 (6). **AIR 1957 Punj 45 (DB).**

[**Overruled** in AIR 1962 Punj 267 (FB).]

2 (c). Court-fee.

■ ——**Arts. 265, 246 (3), 146 (3), 229 (3), Sch. 7, List 1, Entries 77 and 96 List 2, Entries 3 and 66, List 3, Entry 47** — Court Fees Act (1870), Sec. 4 and Sch II Art. 1 Cl. (e) (U. P. Amendment) — Court-fee imposed by Amendment is not a tax but a fee — Section 4 and Sch. II, Art. 1 (e) as amended by Court-fees (U. P. Amendment) Act (10 of 1959) are within legislative competence of U. P. Legislature — Tax and fee — Distinction. See Ibid, Art. 246 (3). **AIR 1960 All 462 (FB).**

——**Art. 265** — Andhra Court Fees and Suits Valuation Act (7 of 1956), Sch. 2, Art. (3) (iii) (A) (2) (b) — Court-fees not in nature of tax. See Andhra Court-fees And Suits Valuation Act (7 of 1956), Sch. 2, Art. 3 (iii) (A) (2) (b). **1961 Andh LT 650.**

——**Art. 265** — Scope — Act prescribing fee on writ petitions except habeas corpus writ to High Court, validity — Fee whether tax. See Andhra Court Fees and Suits Valuation Act (7 of 1956), Sch. 2, Art. 11 (1). **AIR 1957 Andhra Pra 123 (DB).**

——**Art. 265** — Scope — Court-fee of Rs. 100 prescribed for writ petitions — Whether void for being framed on power. See Andhra Court-fees and Suits Valuation Act (7 of 1956), Sch. 2, Art. 2 (8). **AIR 1957 Andhra Pra 123 (DB).**

2 (d). Licence fee.

■ ——**Art. 265** — Licence fee under Sections 298 (2) and 294 of U. P. Municipalities Act on owners and drivers of rickshaws — Nature of — Imposition is not tax but fee, involving element of quid pro quo — Proof of service rendered — Mode of — Annexure filed with written statement not admissible — Major portion of fee collected spent in discharge of statutory duties — Fee fixed held disproportionate to service rendered and was ultra vires. See Municipalities — U. P. Municipalities Act (2 of 1916), Section 294. **AIR 1962 All 277 (FB).**

——**Art. 265** — Bye-law 6, under Section 174 (2), (k), U. P. District Boards Act imposing license fee for working factory for crushing sugar-cane or flour mills, sawing machines, etc., is ultra vires — Fees and taxes, distinction. See U. P. District Boards Act (10 of 1922), Section 174 (2) (k). **AIR 1954 All 675.**

——**Art. 265** — Licence fee, nature of — Levy of license fee for revenue purposes — Validity — Principles to determine whether licence fee is unreasonable — Levy of licence fee for running hotels — Rental basis changed to turnover basis — Levy whether unreasonable and arbitrary — Unreasonable levy of licence fee — Power of Civil Court to interfere — Unreasonable fee paid under protest — Right of licensee to refund of excess amount paid. See Municipalities — Madras District Municipalities Act (V of 1920), Section 321 (2). **AIR 1961 Andh Pra 328.**

——**Art. 265** — Trusts Act (1882), Sections 88 and 94 — Persons bound in a fiduciary capacity — Licensees appointed under Madras Food Procurement Order — (Madras Food Procurement Order 1946) — (Contract Act (1872), Sections 69 and 70). See Trusts Act (1882), Section 88. **AIR 1959 Andh Pra 352.**

[**Reversed** in AIR 1965 SC 1773]

——**Art. 265** — Tax — Licence fee for running cinema house — Whether fee or tax — Validity. See Municipalities — Calcutta Municipal Act (33 of 1951), Section 443. **AIR 1959 Cal 45.**

[**Overruled** on another point in AIR 1963 SC 1811.]

——**Art. 265** — Tax or fee — Licence fee for cinema house — Imposition if taken as fee is valid but if taken as tax is invalid on ground of excessive delegation. See Municipalities — Calcutta Municipal Act (33 of 1951), Section 548 (2). **AIR 1959 Cal 45.**

[**Overruled** on another point in AIR 1963 SC 1811.]

——**Art. 265** — License fee under S. 229, Calcutta Municipal Act — Tax and fee — If tax — Powers of delegation — Constitutionality of Section 229, Calcutta Act and rules thereunder. See Municipalities — Calcutta Municipal Act (33 of 1951), Section 229. **AIR 1959 Cal 36.**

——**Art. 265** — Travancore District Municipalities Act (1116), Section 326 — Bye-law under Section 326 fixing licence fee for use of places for certain purposes, lawfully framed — Onus to show that licence fee is tax and unconstitutional is upon person who challenges it. See Municipalities — Kerala Municipalities Act (14 of 1961), Section 2, Proviso. **AIR 1965 Ker 216.**

——**Art. 265** — License fee and tax — Distinction — 'Quid pro quo' is essential element in license fees — Such element absent — Failure to pay amount and obtain license is not offence. See Panchayats — Cochin Panchayat Act (2 of 1950), Section 56 (2). **1962 Ker LJ 1223: ILR (1962) 2 Ker 599.**

——**Art. 265** — Panchayats — Madras Panchayats Act (35 of 1958), Section 100 (4) — Enhancement in licence fee on face of statutory provision should be on correlation and quid pro quo basis — 'Tax' and 'fee' distinguished — 'Tax' is intended to meet expenses of Government — 'Fee' is meant to compensate Government for expenses incurred in rendering service to persons from whom fee is collected. See Panchayats — Madras Panchayats Act (35 of 1958), S. 100 (4). **AIR 1965 Mad 289.**

——**Art. 265** — Fee and tax — Distinction — Licence fee levied under S. 49-G, Orissa Gram Panchayat Act, on owners of brick Kiln — **Held,** to be tax and levy declared invalid. See Panchayats — Orissa Gram Panchayat Act (15 of 1948), Section 49-G. **AIR 1960 Orissa 43 (DB).**

——**Art. 265** — Orissa Municipal Act (23 of 1950), Sections 131 (1) (i) and 290 (7) — Different rates of fees for stocking and selling different varieties of commodities — Graded fees fixed in respect of different trades are not ultra vires — License or tax — Court has no power to substitute its own ideas as to what fees should be levied — It can however test reasonableness of the levy — Restrictions on power of licensing authority to impose conditions on grant of license stated. See Municipalities — Orissa Municipal Act (23 of 1950), S. 131 (1) (i). **AIR 1955 Orissa 175.**

——**Art. 265** — Tax or fees — Income from licence fees imposed under Punjab Tobacco Vend Fees Act of 1954 received in treasury — Income not earmarked for administration of Act — Imposition does not cease to be fee. See Ibid, Art. 19 (6). **AIR 1957 Punj 45 (DB).**

——**Arts. 265, 276, 19 (1) (g) and (6), Sch. 7, List 3, Item 36 — Tax and fees, distinction pointed out — Licence fees levied by Rajasthan State under Factories Act, S. 6 read with S. 112 are fees strictly so called and have authority of law—Levy is not tax on profession or trade, within meaning of Art. 276 —Effect of agreement between former Marwar State and applicant on power of Rajasthan State to levy renewal fees — Levy is not unreasonable and is not void under Art. 19 (1) (g) read with Cl. (6) — Fees are justified under Item 36, List 3 of Sch. 7 — Fees held are commensurate with expenses of Factory Inspectorate — Factories Act (1948), Sections 6 and 112 — Rules under by Rajasthan prescribing license fees — Validity.**

Authorities on public finance recognize the distinction between a tax and a fee. Generally speaking a tax is an impost levied by the State for purposes of raising revenue. The person who has to pay the tax, as no option but to do so provided the tax is validly imposed, and cannot object to it on the ground that the State does not render him any particular service in lieu of the tax. A fee, on the other hand, is not generally meant to augment general revenue. It is levied for some service renderd by the State to the particular person concerned, and the levy generally takes place when the particular person asks for permission to do something for which regulations exist. As the levy is not meant to augment the general revenue of the State, it is fixed generally at such a level as to meet the expenses of the services rendered by the State in connection with the matters for which the fee is levied.

This distinction, however, is not always kept in mind rigorously in legislative enactments, and many a time what is called a fee is really a tax meant for raising revenues. Further, constitutionally speaking a fee is also a tax for the purposes of Art. 265 of the Constitution, for no fee can be levied without the authority of law.

In order to see whether the licence fees levied under the Factories Act are a tax or fees strictly so called, and if the latter whether the State of Rajasthan is entitled to make a charge according to the schedule prescribed in the rules, it has to be seen whether the law, under which the fees are charged, is not a law for raising revenue primarily. The Indian Factories Act under Section 6 of which these fees are charged, is not a law primarily for raising revenue. It is a law for regulation of factories, and incidentally it mentions levy of fees for purposes of licensing and registration and renewal of licences. Considering the Act as a whole, the intention of the framers of the Act was to levy certain fees under Sec. 6 in order to meet the expenses of supervision, which became necessary in view of the various regulatory provisions of the Act, and the Rules framed thereunder.

License fees for factories levied under sliding scale, according to horse power and men employed, by the Rajasthan State under Rajasthan Factory Rules made under Section 6 read with Section 112 of the Factories Act, whether the levy is a tax or a fee strictly so called has an authority of law behind it and the condition required by Art. 265 is satisfied.

There is a reasonable basis for classification of factories according to horse power, and the maximum number of persons employed during the year.

This levy cannot be called a tax on professions, trades, callings and employments, within the meaning of Art. 276 for the intention was not to levy any tax on the trade. If the intention was to levy a tax on the trade carried on in a factory, the horse power installed in that factory and the number of persons employed therein would have no relevance to the fixation of the tax. The levy may have amounted to a tax on the trade, if the levy was on the quantum of production. It is a tax on all factories, whatever may be their trade, for purposes of licence and registration with a view to regulating the factories. Therefore, Art. 276 (2) does not hit this levy. AIR 1949 Nag 215, Rel. on.

It was open to the State to pass a law regulating all factories, and an agreement entered into between the applicant and the former State of Marwar cannot take away the power of the State to do so. As soon as the Indian Factories Act was extended to Rajasthan, and the rules were framed thereunder prescribing fees for renewal of licence the law would apply to the applicant irrespective of any agreement that might have been entered into between him and the former State of Marwar. The applicant, therefore, cannot avoid paying renewal fees on the basis of any agreement.

The levy of this fee is not an unreasonable restriction on the trade of manufacturing cloth and yarn, and therefore, is not void under Art. 19 (1) (g) read with Cl (6) of the Constitution. The Indian Factories Act, and the rules framed thereunder, particularly the rule as to registration and taking out of licences, impose a reasonable restriction on the right of carrying on the trade of manufacturing as is necessary in the interests of the general public. The payment of fees for this purpose is also justified as State has to maintain an establishment for purposes of supervision, and the expenses of that establishment have to be met, and this is only a method of meeting those expenses.

In the case of this levy, it is obvious that it is being collected for service rendered by the State, namely, inspection of factories to see that regulations are carried out, and comes into force only when some one applies for permission to start factory or keep it running year by year.

Taking a comprehensive view and keeping in mind future years, it cannot be said with any degree of force that the income derived from the fees is not reasonably commensurate with the expenditure of the Inspectorate of Factories, and that the fee have been pitched high in order to augment general revenues. The charges in the schedule to be found in Rule 5 of the Rajasthan Factories Rules, 1951 are reasonable as fees, and are not meant for purposes of augmenting general revenues. **ILR (1954) 4 Raj 982: 1955 RLW 238: AIR 1954 Raj 178 (179, 180, 181, 182) (Prs 4, 5, 7, 8, 9, 10, 12, 13, 14, 15) (DB).**

——**Art. 265** — Licence fee — Validity — Determination of — Question whether levy is reasonable — Cannot be gone into in writ petition. See Ibid, Art. 226. **(1956) 9 Sau LR 159.**

——**Arts. 265 and 27 — Imposition of tax.**

A legislature entitled to impose a tax either directly or by delegated legislation may impose it by whatever name it may be called. The circumstances that a particular impost is called a licence fee will not conclude the matter. If the impost is authorised the nomenclature given to it as a licence fee will not affect its validity. **ILR**

(1954) TC 806 : AIR 1954 Trav-C 504 (507) (Pt B) (Pr 5) (DB).

2 (e). Registration-fee.

——**Arts. 265, 246 and 276 (1)** — City of Nagpur Corporation Act (2 of 1950), S. 114 (2) (d) — Registration fee on heads of cattle sold in corporation area — Whether in nature of tax or fee — Distinction between tax and fee — Imposition is ultra vires and is not saved by Art. 276 (1) — (Government of India Act (1935) S. 142-A (1)). See Municipalities — City of Nagpur Corporation Act (2 of 1950), S. 114 (2) (d). **AIR 1956 Nag 152.**

——**Art. 265** — Tax or fee — Registration fee under Ajmer Act (4 of 1956) — Not tax. See Ajmer Shops and Establishments Act (4 of 1956), S. 4. **AIR 1959 Raj 257 (DB).**

2 (f). Cess and fee.

——**Arts. 265, Sch. 7, List 1, Entry 84, List II, Entries 23, and 66** — Orissa Mining Areas Development Fund Act (27 of 1952), S. 4 — Cess levied under, is neither a tax nor a duty of excise but is a fee. See Orissa Mining Areas Development Fund Act (27 of 1952), S. 4. **AIR 1961 SC 459.**

——**Art. 265 and Sch. 7, List 2, Entries 45, 49 and 66 — Cess levied under S. 4, Saurashtra Local Development Fund Act — Validity— Tax or fee — (Saurtshtra Local Development Fund Act (26 of 1956), S. 4).**

The cess of three annas per rupee of the assessment levied by S. 4 of the Saurashtra Local Development Fund Act on every occupant of land was not outside the competence of the Saurashtra State Legislature on the ground that it was not a tax leviable by the legislature.

In the case of Mulgirasia who has been granted an occupancy certificate under S. 39 of the Saurashtra Land Reforms Act the cess is levied on him by way of a tax upon the lands held by him and is covered by Entry 49 of List 2. The assessment itself is levied on him because of the certificate of occupancy granted to him and, therefore, it would be covered by Entry 45 of that List. As there is no question of rendering any services to the Mulgirasia who has been made liable to pay cess the cess payable by the Mulgirasia cannot be called a fee falling within Entry 66 of List 2. Nor can the cess be said to be not a tax because the proceeds thereof would go to local fund and not to the general revenue. **60 Bom LR 1191 : ILR (1958) Bom 41 : AIR 1959 Bom 43 (45, 46) (Pt B) (Pr 7) (DB).**

——**Art. 265** — Cess and tax — Cess levied for particular purpose but not earmarked for that purpose. See Ibid, Art. 14. **AIR 1954 Madh B 196 (DB).**

——**Art. 265** — Coal Production Fund (Repealing) Ordinance (6 of 1947) — Cess collected thereafter — Validity. See Coal Production Fund Ordinance (39 of 1944). **AIR 1958 Madh Pra 425 (DB).**

——**Art. 265** — Imposition of cess under S. 13, Madras Agricultural Produce Act (23 of 1959) — Levy is not unconstitutional. See Ibid, Art. 19 (1) (g). **AIR 1964 Mad 458.**

——**Art. 265 and Art. 277 — 'Cess' — Tax or fee.** The word 'cess' has a definite legal connotation indicating tax allocated to a particular thing, not forming part of the general fund. Article 277 of the Constitution refers to 'cess' as a special category of the taxes. According to its import, the word 'cess' is only tax and not a mere fee. It is, therefore, not necessary for the purpose of levy of cess that there should be quid pro quo between the service actually rendered and the amount of tax levied. **1960 Mad WN 734 : (1960) 1 Mad LJ 298 : 72 Mad LW 752 : ILR (1960) Mad 171 : AIR 1960 Mad 160 (163, 164) (Pt B) (Pr 10).**

——**Art. 265** — Water rate — Nature of. See Bengal Irrigation Act (3 of 1876), S. 78. **AIR 1956 Pat 482.**

2 (g). Toll tax.

——**Art 265** — Power to impose toll tax — Basis of imposition of toll-tax — Imposition of toll-tax on railway wagon laden with goods brought in Municipal boundary — Validity. See Municipalities Act — U. P. Municipalities Act (2 of 1916), S. 128 (1) (vii). **AIR 1957 All 155.**

——**Art. 265**— Tolls — Toll imposed by Municipal Committee on vehicles entering its Municipal limits, covered by the term "toll" — "Stand-tax" already being charged for parking vehicles at stand — No double taxation — Toll being on vehicles and not on goods, no infringement of Art. 301 — Toll imposed held not unconstitutional. See Ibid, Sch. 7, List 2, Entry 59. **AIR 1964 Punj 506.**

——**Arts. 265 — Toll levied by Government on passing and repassing of motor vehicles over Frazer Bridge near Tonk City — If tax — Art. 366 (28) Rajasthan Motor Vehicles Taxation Act (11 of 1951), S. 20.**

The demand of annas 12 by way of toll by the Government for each passing and repassing of motor vehicles over the Frazer Bridge near Tonk City is an imposition, and is tax within the wide definition of Art. 366 of the Constitution. Therefore, Art. 265 is applicable. This demand of toll cannot be supported under S. 20, Rajasthan Motor Vehicles Taxation Act. **1957 Raj LW 541 : ILR (1957) 7 Raj 850 : AIR 1958 Raj 138 (139, 140) (Pt B) (Prs 5, 7, 9, 10).**

3. Authority of law.

(a). Interpretation of taxing Statutes.

3. Authority of law.

●——**Art. 265** — Imposition of tax by statutory authority — Presumption that it has followed prescribed procedure can be raised — Presumption not weakened by long acquiescence in imposition — Imposition of tax not in accordance with law — Effect of. See Ibid, Art. 19 (1) (f). **AIR 1964 SC 370.**

●——**Art. 265 — Excise duty on export of charcoal — Sirohi Customs Act (1944), Ss. 14 and 15 — Customs duties to be levied on goods mentioned in Sirohi Customs Tariff at time of import or export of goods into or out of Sirohi State — Import of charcoal in State mentioned in tariff — Export of charcoal not so mentioned — Order purporting to impose excise duty on export of charcoal out of State held not validly made.**

Section 14 of the Sirohi Customs Act, 1944, provides that customs shall be levied on the goods mentioned in the tariff at the rates prescribed by it. Charcoal is included in the list of commodities, the import of which is liable to pay the customs duty. Cases relating to the topic of any new taxation or alteration, or abolition of taxation were referred to the Council of State brought into existence in 1940 by the Ruler of Sirohi State. Even though it was within the competence of the Council to consider the proposal for any new taxation or alteration or abolition yet it was for the Ruler to pass final orders in the

light of the decision by the Council on that point.

The Maharao of Sirohi was a minor in 1947. The constitutional position in 1948 was that the governance of the State was entrusted to the Board of Regency; and under the Board of Regency was functioning the State Council which had been constituted by the previous Ruler in 1940.

Held, on facts (1) that since the Board of Regency alone was clothed with the necessary legislative authority and unless the Board passed the resolution, it could not take effect as a law in the State of Sirohi, the approval of the Raj Mata to the resolution passed by the State Council could not cure the infirmity arising from the fact that the State Council had no legislative power, (2) that there was no substance in the contention that the Raj Mata alone without the concurrence of the Board could have validly given sanction to the passing of the impugned order and (3) that the impugned order had not been validly passed and no levy of customs duty could be legally imposed on the appellant in regard to the charcoal which it had exported out of the State of Sirohi. Firm Gulam Hussain Haji Yakoob and Sons v. State of Rajasthan, **(1963) 2 SCR 255 : (1963) 2 SCA 234 : AIR 1963 SC 379 (382, 383, 384) (Pt A) (Prs 4, 5, 6, 8, 11, 12).**

——Art. 265 — Scope — Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 37 — U. P. Panchayat Raj Rules (1947), Rules 220 and 221 — Validity — Power to levy taxes on income or on trade of motor vehicles.

There is no provision in the Panchayat Raj Act for imposing a tax on a trade of motor vehicles or in the nature of income-tax at the rate of one anna per rupee. The maximum tax that can be imposed on any trade or calling is Rs. 6 per annum.

Even if R. 220 or 221, U. P. Panchayat Raj Rules had permitted imposition of such tax and the prescribed authority had approved of it, that tax would be ultra vires the Panchayat Raj Act, because a tax can only be imposed under Constitution by some enactment. There has been no authority of law as is clear from S. 37 which is the only authorising section. The rules could not create any tax. **1956 All LJ 930 : 1956 All WR (HC) 861 : AIR 1957 All 282 (282, 283) (Prs 5, 6).**

——Arts. 265 and 372— Continuance of law in force is subject to other provisions of Constitution — Authority of law in Art. 265 means statute law — Law which is not statute law is not saved by Art. 372. See Ibid, Art. 372. **(1965) 2 Andh LT 297.**

——Art. 265 — Andhra Pradesh Land Revenue (Additional Assessment and Cess Revision) Act (22 of 1962), Ss. 3 and 4 (As amended by Act 23 of 1962) — Sections assume that land revenue assessment upon which increase is levied was payable for fasli year — Legislature assumed that there is an assessment payable under authority of law for purposes of additional assessment and did not intend to levy that assessment as if it had no force prior to Act — Act should be struck down so far as lands situate in ryotwari areas are concerned on ground that there is no statute law within meaning of Art. 265 of the Constitution. See Andhra Pradesh Land Revenue (Additional Assessment and Cess Revision) Act (22 of 1962), S. 3. **(1965) 2 Andh LT 297.**

——Art. 265 — 'Authority of law' — Law and executive order — Gwalior Darbar Order, dated 27th July, 1946, whether law. See Ibid, Art. 14. **AIR 1954 Madh B 196 (DB).**

——Arts. 265 and 372 — Authority of "law" — Assessment and levy of land revenue — Legality of — (Madras Revenue Board's Standing Orders, O. 1,R. 4) —(Madras Revenue Recovery Act (2 of 1864), S. 3).

The levy, assessment and collection of land revenue are not rendered illegal by reason of Art. 265 as such levy, assessment and collection were valid prior to the Constitution and they are continued by the force of Art. 372.

As stated in the Revenue Board's Standing Orders, O. 1, R. 4, the assessment represents the commuted share of the cultivation. The assessment is by virtue of the prerogative right of the Government which under the law obtaining in this country it always possessed.

The levy of assessment on lands has been made by the sanction of the legislature and statutorily affirmed by the Appropriation Acts.

The law in force referred to in Art. 372 (1) is common law as well as statute law. In the Constitution the word 'law', has been used simply or in phrases such as 'according to law', 'by authority of law', etc. In the absence of any express definition, the context determines whether 'law' denotes only statute law or something wider. As regards Art. 265, it is clear that the reference is not to statute law alone. AIR 1953 TC 146 and AIR 1954 Raj 283, Dissented from.

Even if a different interpretation is to be given to Art. 265, the Revenue Recovery Act (II of 1864), in section 3, provides the necessary statutory authority and therefore, the levy, assessment and collection of land revenue are not illegal. **1958 Mad WN 458 : (1958) 2 Mad LJ 117 : 71 Mad LW 672 : ILR (1958) Mad 798 : AIR 1958 Mad 539 (540 to 543) (Pt A) (Prs 3, 5, 7, 9, 10, 13 to 15, 17, 18) (DB).**

——Art. 265 —Doctrine of due process — Applicability.

Independent of the authority of law which Art. 265 of the Constitution requires, there is no scope for the application of the doctrine of due process as it is understood in America. **69 Mad LW 957 : (1956) 2 Mad LJ 518 : (1957) 31 ITR 107 : (1957) 27 Com Cas 15 : ILR (1957) Mad 251 : AIR 1957 Mad 133 (142) (Pt C) (Pr 58) (DB).**

——Art. 265 — River bed owned by State — Right of public to pass over it acquired by immemorial usage — Right not affected by State ownership— Toll tax imposed without statutory authority — Held, not valid. See Tolls Act (1851), S. 2. **AIR 1961 Pat 442 (DB).**

——Art. 265 — Authority of law — Levy of Kharota lag in Marwar.

The authority of law envisaged in Art. 265 is authority of statute law, and only such taxes can be realized as are authorised by such law.

There is no authority of law whatsoever either of the former State of Marwar or of the State of Rajasthan for the levy of kharota lag which is customary tax and being an unauthorised levy it cannot be realised. **ILR (1954) 4 Raj 846 : 1955 Raj LW 203 : AIR 1954 Raj 283 (284) (Pt A) (Pr 5).**

——Art. 265 — Collection of municipal tax without authority of law (Municipalities — Rajasthan Town Municipalities Act (23 of 1951), S. 59).

The order of the former Ruler of Jodhpur contained in Resolution No. 14 of 1948 purports to be and is in reality and substance an executive act and not a legislative measure. This Resolution approving the levy of the Municipal taxes in

the town of Bhinmal is not law and cannot be accorded the status of law within the meaning of Art. 265 of the Constitution. AIR 1951 SC 467, Ref.; (1946) MLR 36; AIR 1953 Raj 73; AIR 1953 Pepsu 1, Disting.

Further, before the schedule of taxes sanctioned under the Resolution of 1948 can receive legal recognition or operation, the limits of the Bhinmal Municipality must have been defined by or under competent authority. As this is not done, the levy or collection of taxes mentioned in the schedule is impossible, and therefore, the realisation of the taxes is illegal. **ILR (1953) 3 Raj 664 : 1954 Raj LW 23 : AIR 1954 Raj 162 (164, 165) (Pt A) (Prs 8, 9, 11) (DB).**

——Art. 265 — Existence of tax before Constitution.

From Art. 265, it is clear that if there was any tax in existence before the Constitution came into force, its continued collection depends upon the authoriy showing that it was levied by authority of some law. **ILR (1953) 3 Raj 52 : 1953 Raj LW 335 : AIR 1953 Raj 180 (181) (Pt A) (Pr 3) (DB).**

3 (a). Interpretation of taxing Statutes.

——Arts. 265, 226 — Taxing statutes — Point of hardship —Consideration of.

The point whether a particular tax is burdensome and whether it would cause hardship to the tax-payer cannot be decided by Court, if the taxing Statute is constitutional and its legality cannot be questioned. **1962 1 Andh WR 56 : AIR 1962 Andh Pra 415 (416) (Pt B) (Pr 15) (DB).**

——Art. 265 — Taxing statute — Statement as to public purpose is not necessary.

There is nothing in law that in a taxing statute a public purpose has to be stated. All that is required is what is stated in Art. 265 of the Constitution of India. So no statements of any public purpose in a fiscal Statute is necessary. **65 Pun LR 197 : ILR (1963) 1 Punj 477 : AIR 1963 Punj 354 (358) (Pt H) (Pr 21) (DB).**

4. Taxation power and fundamental rights.

(a) Taxation laws not subject to Art. 31.

(b) "Law" means valid law.

(c) Applicability of Art. 19.

(d) Freedom of inter-State trade.

4. Taxation power and fundamental rights.

——Art. 265, Part III (Gen.) — Taxing statute can be challenged on ground that it violates fundamental rights.

Since a taxing statute is a law, it is a law for the purpose of Art. 13 and so, the validity of the legislation imposing a tax can be challenged not only on the ground of lack or absence of legislative competence, but also on the ground that the impugned legislation violates the fundamental rights guaranteed by Part III of the Constitution. AIR 1952 SC 115, AIR 1953 SC 252, AIR 1955 SC 661, AIR 1956 SC 676 and AIR 1962 SC 123, Foll.; Observations to the contrary in: AIR 1951 SC 97 and AIR 1955 SC 3, held no longer good law. Raja Jagannath Baksh Singh v. State of Uttar Pradesh. **(1963) 1 SCR 220 : 1962 All WR (HC) 649 : (1962) 2 SCA 679 : (1962) 46 ITR 169 : 1962 All LJ 799 : AIR 1962 SC 1563 (1569, 1570) (Pt F) (Pr 5).**

——Arts. 265, 276 (2), 286 and Part III —Tax laws — Principles for determining its validity — Scope of Art. 265 — Tax laws are not outside Part III of Constitution.

Article 265 merely enacts that all taxation—the imposition, levy and collection shall be by law; the Article beyond excluding purely executive action does not by itself lay down any criterion for determining the validity of such a law to justify any contention that the criteria laid down exclude others to be found elsewhere in the Constitution for laws in general. If by reason of Art. 265 every tax has to be imposed by "law" it would appear to follow that it could only be imposed by a law which is valid by conformity to the criteria laid down in the relevant Articles of the Constitution. These are that the law should be (1) within the legislative competence of the legislature being covered by the legislative entries in Schedule 7 of the Constitution; (2) the law should not be prohibited by any particular provision of the Constitution such as for example, Arts. 276 (2), 286 etc, and (3) the law or the relevant portion thereof should not be invalid under Art. 13 for repugnancy to those freedoms which are guaranteed by Part III of the Constitution which are relevant to the subject-matter of the law. It is true that a tax law need not satisfy the tests of Art. 31 (2) but it does not follow that every other Article of Part III is inapplicable. Chhotabhai Jethabhai Patel and Co. v. Union of India, **1962 Supp (2) SCR 1 : (1962) 2 SCA 522 : AIR 1962 SC 1006 (1019 to 1021) (Pt C) (Prs 32, 33, 36, 37, 38).**

——Art. 265 — Taxation power of State and fundamental rights. See Ibid, Art. 19. **AIR 1958 SC 296.**

——Art. 265— Taxing measure — Construction of — Question of reasonableness.

In construing a taxing measure, for determining its constitutional validity, the question of reasonableness cannot enter a judicial mind. The only consideration which is germane is whether the legislation challenged is permitted by the Constitution. The reasonableness or otherwise of legislative measure is a matter of legislative policy and it is not for the Courts to adjudicate upon. **ILR (1959) Andh Pra 34 : (1959) 1 Andh WR 347 : 1959 Andh IT 419 : AIR 1959 Andh Pra 461 (465) (Pt C) (Pr 18) (DB).**

——Art. 265 — Taxation powers of State and fundamental rights. See Ibid, Art. 19 (1) (g). **AIR 1956 Assam 177 (DB).**

[**Reversed** on another poin in AIR 1962 SC 107.]

——Arts. 265 and 14 — Classification while levying tax.

So far as taxation is concerned, classification is always permissible. Not only does the Constitution permit taxation being related to the capacity to pay, but it is obvious that it is always desirable that it should be so related. Hence, the contention that taxes levied on a cinema show are ultra vires, on the ground that they offend against Art. 14 of the Constitution cannot be accepted. **56 Bom LR 45 : ILR (1954) Bom 647 : AIR 1954 Bom 261 (265) (Pt C) (Pr 14) (DB).**

——Art. 265 — Taxation laws and fundamental rights. See Municipalities — Calcutta Municipal Act (33 of 1951), S. 548 (2). **AIR 1959 Cal 45.**

——Art. 265 — Power of taxation and fundamental rights. See Ibid, Art. 19 (1) (g). **AIR 1958 Mad 158 (DB).**

4 (a). Taxation laws not subject to Art. 31.

——Art. 265 — Bombay Agricultural Produce Markets Act (XXII of 1939), S. 29-B — Validity

— S. 29-B in so far as it prevents refund of licence fee collected before Ordinance I of 1961 came into force is not bad by reason of Art. 31. See Bombay Agricultural Produce Markets Act (22 of 1939), S. 29-B. **AIR 1962 SC 1517.**

●——**Art. 265** — Deprivation of property for recovery of tax — Art. 31 (1) does not apply —No remedy under Art. 32. See Ibid, Art. 31 (1). **AIR 1955 SC 3.**

●——**Arts. 265, 31 (1), 32** — Imposition of taxes. See Ibid, Art. 31. **AIR 1951 SC 97.**

4 (b). "Law" means valid law.

●——**Art. 265** — Law — Meaning of — Means valid law. See Municipalities — C P. Municipalities Act (2 of 1922), S. 48. **(1965) 2 SCJ 741 : (1965) 2 ITJ 657 : AIR 1966 SC 249.**

——**Art. 265 — 'Law' — Meaning of.**

Article 265 embodies the principles of 'no taxation without representation'. "The law" under this Article is statute law, i.e, an Act of the Legislature. A law authorising the levy of a tax must be made by the legislature and cannot be made by the executive action. (1922) 91 LJKB 897, Rel. on.

The order of His Highness the Raj Pramukh, dated 14th July 1950, is only an executive order and not 'law' under Art. 265. That order cannot justify the impost of a commission on sales by the petitioner. The order imposing a commission of 20 per cent. on the sales made by the petitioner in excess of the quota is therefore uitra vires and void. **ILR (1952) Trav -Co. 960: AIR 1953 Trav- Co. 146 (155, 156, 157) (Pt F) (Prs 26, 33) (DB).**

4 (c). Applicability of Art. 19.

●——**Art. 265** — Income-tax Act (1922), S. 16 (3) (a) (i) and (ii) — Validity — Test of reasonableness of restriction — S. 16 (3) amounts to reasonable restriction on rights under Art. 19 (1) (f) and 19 (g). See Income-tax Act (1922), S. 16 (3) (a) (i). **AIR 1962 SC 123.**

——**Arts. 265, 19** — Taxing measure — Art. 265, and not Art. 19 applies — (Madras Sales of Motor Spirit Taxation Act (6 of 1939). See Ibid, Art. 19. **AIR 1960 Andh Pra 246 (DB).**

——**Arts. 265, 19(1) (f), 31** — Validity of taxing statute cannot be tested under Art. 19 — Taxing power of State, scope of, indicated — Section 46 (5A) of Income-tax Act results in total deprivation of property — Article 19 does not apply — (Income-tax Act (1922), S. 46 (5A)). See Ibid, Art. 19 (1) (f). **AIR 1960 Assam 76 (DB).**

——**Arts. 265 and 19 (1) (g)** — Reasonable restrictions — Taxation — Oppressiveness — Reasonable safeguards. See Ibid, Art. 19 (1) (g). **AIR 1956 Cal 596.**

——**Art. 265** — Madras Agricultural Income-tax Act — Validity — Does not contravene Art. 19 (1) (f). See Ibid, Art. 19 (1) (f). **AIR 1964 Mad 556 (DB).**

4 (d). Freedom of inter-State trade.

●——**Arts. 265, 301, 304 (b), 255** — Freedom of trade — Scope and effect of Part XIII — Tax laws not excluded from operation of Part XIII — Tax laws when amount to restrictions on freedom of trade — Test — Assam Taxation (on Goods Carried by Roads or on Inland Waterways) Act (13 of 1954) — Validity — State tax law in effect placing restrictions on movement of goods and traffic in State Act violates freedom of trade and is void — AIR 1955 Assam 249 (SB), **Reversed.** See Ibid, Art. 301. **AIR 1961 SC 232.**

——**Art. 265** — Sales Tax Continuance Order, 1950 — Order cannot authorise levy of tax on inter-State sales after repeal of provision. See Sales Tax — Orissa Sales Tax Act (14 of 1947), S. 2 (g), Proviso 2. **ILR (1961) Cut 493.**

5. Taxation and equality before law.

●——**Art. 265** — Assam Taxation (on Goods carried by Road or on Inland Waterways) Act (X of 1961), S. 3 — Tax under, imposed only on tea and jute — Tax not unconstitutional. See Assam Taxation (on Goods carried by Road or Inland Waterways) Act (10 of 1961), S. 3. **AIR 1964 SC 925.**

●——**Arts. 265, 13 (2) and 14 — Scope and effect of — Taxing statute — Attack on ground of violation of Art. 14 — Arts. 13 and 14.**

Per Majority:— Art. 265 imposes a limitation on the taxing power of the State in so far as it provides that the State shall not levy or collect a tax, except by authority of law. The tax proposed to be levied must be within the legislative competence of the Legislature imposing a tax and authorising the collection thereof and, secondly the tax must be subject to the conditions laid down in Art. 13 of the Constitution.

A taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14. If the legislature has classified persons or properties into different categories which are subjected to different rates of taxation with reference to income or property such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Art. 14 will not be in the way of such classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. Kunnathat Thathunni Moopil Nair, etc. v. State of Kerala, **(1961) 3 SCR 77: (1961) 2 SCA 125: (1961) 2 SCJ 269: 1961 Ker LT (SC) 11: 1961 Ker LJ 143: AIR 1961 SC 552 (557, 558) (Pt A) (Pr 7).**

——**Art. 265** — Employees' State Insurance Act (1948), Ss. 1 (3), 73-A —Validity — Power of Central Government to bring parts of the Act into force in different areas on different dates — No violation of Art. 14 — Levy of special contribution under S. 73-A before benefit sections are brought into force — Not an unreasonable restriction on right of employers — No violation of Art. 19. See Ibid, Art. 14. **AIR 1962 Assam 120 (DB).**

6. Retrospective taxing law.

●——**Art. 265** — Assam Taxation (on Goods carried by Road or on Inland Waterways) Act (X of 1961), Ss. 3, 1 (3) — Acts enacted under Art. 304 (b) with retrospective effect — Validity. See Assam Taxation (on Goods Carried by Road or on Inland Waterways) Act (10 of 1961), S. 3. **AIR 1964 SC 925.**

●——**Arts. 265 and 245** — Constitutional limitations — Retrospective validation taxing laws — Constitutionality — State Act imposing cess, declared void ab initio by Supreme Court on ground of incompetency of State Legislature — Power of Parliament to enact retrospective validation taxing laws — Parliament passing Act merely declaring action taken under State law as valid, without

furnishing authority of law required for it — Act invalid on ground of incompetency — U. P. Sugarcane Cess (Validation) Act (Central Act 4 of 1961) — Unconstitutional. See Ibid, Art. 245. **AIR 1965 All 420 (FB).**

——**Art. 265** — Taxing statutes and rules — Retrospective operation. See Interpretation of Statutes. **AIR 1958 Mad 249.**

7. Double taxation.

——**Art. 265 — Double taxation.**

The burden of several kinds of taxes and levies on a particular commodity may be heavy but that does not mean that they are subjected to double taxation. Where the joint operation of different statutes result in liability to two different taxes it would not amount to double taxation. **(1958) 2 An WR 100: (1958) 9 STC 723: AIR 1958 Andh Pra 558 (565) (Pt E) (Pr 7) (DB).**

——**Art. 265 — Double taxation not prohibited.**

There is nothing in the Constitution which prevents double taxation being levied. Instances are not wanting in this country in which taxes are levied twice upon the same thing, one for the benefit of the State Government and in the second instance for the benefit of the Local Self-Government bodies, for example, the District Local Board or the Municipality. AIR 1945 Nag 171, Rel. on. **56 Bom LR 45: ILR (1954) Bom 647: AIR 1954 Bom 261 (265) (Pt B) (Pr 13) (DB).**

——**Art. 265 — Double taxation — Charge and levy of property tax by State Government under S. 3, Punjab Act (17 of 1940) and by Municipality under S. 61 (1) (a) of Punjab Act (III of 1911) — Not unconstitutional as offending Art. 265.**

The charge and levy of property tax once by the State Government under S. 3 of the Punjab Urban Immovable Property Tax Act (XVII of 1940) and second time by the Local authority under S. 61 (1) (a) of the Punjab Municipal Act (III of 1911) is not unconstitutional on ground that it is not permitted by law. Art. 265 of the Constituton merely says that 'no tax shall be levied or collected except by authority of law' and in this article there is no limitation that tax cannot be charged twice on the same property. In fact and in substance it is one tax on building and lands which is divided between the local authority and the State Government, though this is brought about not by one statute but by two separate statutes. AIR 1954 Bom 261, Rel. on. **65 Pun LR 197: ILR (1963) 1 Punj 477: AIR 1963 Punj 354 (357, 358) (Pt D) (Pr 16) (DB).**

——**Art. 265** — Municipalities — Punjab Municipal Act (III of 1911), S. 61 (1) (a) — Property already taxed under Punjab Urban Immovable Property Tax Act (17 of 1940) — Same property taxed again under S. 61 (1) (a) — There is no invalidity. **AIR 1955 NUC (Punj) 3446.**

8. Remedies for illegal taxation.

●——**Art. 265 — Acquiescence in illegal tax — Effect.**

Acquiescence in all illegal tax for a long time is not a ground for denying the petitioners relief. Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara. **(1962) 1 SCJ 445: (1962) 1 SCR 1: AIR 1961 SC 964 (965) (Pt B) (Pr 2).**

——**Art. 265** — Illegal imposition of tax — Jurisdiction of Civil Court to challenge. See Civil P. C. (1908), S. 9. **AIR 1960 Madh Pra 223 (DB).**

——**Art. 265** — Remedies for illegal taxation — Suit for refund — Assessment of sales tax on turnover of works contract made under provision of Madras General Sales Tax Act 9 of 1939 subsequently held to be ultra vires — Suit for refund held barred by S. 18-A Madras General Sales Tax Act (9 of 1939). **(1961) 12 STC 138: (1961) 1 Mad LJ 163: AIR 1961 Mad 322 (323) (Pt B) (Pr 6) (DB).**

——**Art. 265** — Scope — Assessing officer acting outside jurisdiction in imposing tax — Authority seeking to collect such tax — Citizen's remedy See Ibid, Art. 226. **AIR 1959 Mad 382 (DB).**

——**Arts. 265 and 226** — Relief against illegal taxation — Assessment of double sales tax on same transaction. See Ibid, Art. 226. **AIR 1955 Mad 363.**

——**Arts. 265, 286 and 226** —Constitutional remedies for illegal taxation. See Ibid, Art. 226. **AIR 1956 Punj 177 (DB).**

——**Arts. 265 and 226** — Delay in making application against illegal levy of tax. See Ibid, Art. 226. **AIR 1953 Raj 180 (DB).**

——**Arts. 265 and 226** — Who can apply against illegal levy of tax. See Ibid, Art. 226. **AIR 1953 Raj 180 (DB).**

——**Arts. 265 and 226** — Another remedy open against illegal levy of tax. See Ibid, Art. 226. **AIR 1953 Raj 180 (DB).**

——**Art. 265** — Remedy for illegal levy or collection of tax. See Ibid, Art. 226. **AIR 1953 Trav-Co 146.**

9. "Levied or collected."

■——**Art. 265** — Scope — Procedure for imposing liability to pay tax not strictly followed — Liability to pay tax is not according to law. Municipal Council, Khurai v. Kamal Kumar. **1965 MPLJ 233: 1965 Jab LJ 237: 1965 Mah LJ 225: (1965) 1 SCWR 632: AIR 1965 SC 1321 (1324, 1325) (Pt B) (Pr 9).**

●——**Art. 265** — Power to levy tax — Includes all subsidiary powers. See Ibid, Art. 246. **AIR 1964 SC 925.**

——**Arts. 265 and 226** — Property attached for default in payment of certain taxes, takabi and other dues — Property auctioned by Tehsildar before receipt of stay order issued by Board of Revenue— **Held,** realisation and recovery of tax having been stayed, any recovery made after stay order would not be in accordance with law and would contravene provisions of Art. 265 — Hence it would be fit case for the exercise of writ jurisdiction. AIR 1953 Raj 180, Rel. on. **1965 All LJ 277.**

——**Art. 265** — Article expressly prohibits collection of tax without authority of law. See Excess Profits Tax Act (1949), S. 21. **(1965) 1 ITJ 192: ILR (1965) 1 All 193: (1965) 58 ITR 777.**

——**Art. 265** — Rectification of assessment made after repeal of Income-tax Act (1922) — S. 297 (2) of new Act of 1961 saves proceedings for assessment year for which returns filed prior to new enactment — Rectification is valid — Art. 265 of Constitution also did not bar levy of additional tax. See Income-tax Act (1922), S. 35. **(1964) 2 ITJ 364 (All).**

——**Art. 265** — Scope — State Government passing order imposing tax — Prescribed procedure under Ss. 131 to 135, U. P. Municipalities Act not followed — Tax is rendered illegal. **1959 All LJ 501.**

——**Art. 265** — Panchayats — U. P. Panchayat Raj Act, Rules under R. 221 (2) — Levy of tax on income — Validity. See Panchayats — U. P. Panchayat Raj Act (26 of 1947), S. 110 (19). **1957 All LJ 903.**

——**Arts. 265, 300 and 31 (1) — Illegal seizure of goods in execution of certificate under S. 46 (2), Income-tax Act — It is wrongful deprivation of property — Action of attaching Officer not empowered by law within meaning of expression "levy and collection" in Art. 265 — Immunity of Government for acts of subordinates in exercise of sovereign powers is not a dogma and has to be considered on facts of each case.**

Where in execution of a certificate under S. 46 (2) Income tax Act, goods of the assessee in possession of a pledgee are attached by Revenue Officer under Ss. 150 and 154 of the Bombay Land Revenue Code, the Revenue Officer acts in excess of his authority and the attachment is illegal and not merely irregular.

When the goods are damaged while in the custody of the Government and the pledgee files a suit against the revenue officers in their official as well as private capacities, for recovery of amount due from the pledgor which he could not recover due to illegal action of the officers, the gravamen of the charge is illegal action of the defendants and not negligence by them. Cause of action is not supplied by decay caused to goods when in Government custody but upon illegal seizure. In such a case question of special authorisation to Revenue Officer or subsequent ratification by higher officers would not arise, because the revenue officers had acted for the benefit of Government.

When the conduct of Government servants in the discharge of governmental functions was questionable, the Government could not be held liable unless it was established that those acts had been done under the orders of the Government or had been subsequently adopted and ratified by it. The question of ratification arises only when Government is sought to be held liable for tort committed by its servants in the discharge of sovereign functions. If the act is ratified, the Government becomes liable notwithstanding that the act was in the discharge of sovereign functions. AIR 1962 All 233, Ref. AIR 1915 Mad 434 and AIR 1944 FC 41, Distinguished.

The action taken by the Revenue Officer in seizing the goods was not empowered by law within the meaning of the expression "levy and collection" in Art. 265. It is on that ground also that the act was illegal. At the same time, in view of the fact that the Revenue Officer was exercising delegated authority, he cannot be taken to be doing an act in the discharge of his statutory duties. ILR 28 Bom 314 and AIR 1950 All 206 and AIR 1956 All 75 and AIR 1961 Madh Pra 316, Distinguished.

The acts of levying of a tax and its recovery are acts done in the exercise of sovereign functions. At the same time, the provisions of Art. 265 of the Constitution of India which lays down that no tax shall be levied or collected except by authority of law or the provisions of Art. 31 (1) which lays down that no person shall be deprived of his property save by the authority of law cannot be ignored. But in the present case, the Revenue Officer has proceeded to levy and recover the tax without any authority and, in fact, beyond the authority. The immunity of the State in respect of acts done by its subordinates in the exercise of sovereign powers cannot be considered as a dogma or a mantra and will have to be considered on the facts of each case. The act is purported to be done under the authority of Sections 150 and 154 of the Land Revenue Code, but it is found that the act is not only illegal but unconstitutional. ILR 5 Mad 273, Relied on; (Suit decreed against the Union of India and the Collector, Mamlatdar and the Circle Officer in their official capacity and not in their private capacity). **(1965) 67 Bom LR 824: AIR 1966 Bom 134 (140, 141, 142, 143, 145) (Pt A)(Prs 8, 9, 10, 14).**

——**Art. 265** — Court must look to Section 19 of Bombay Abkari Act to determine power of Government to enforce excise duty — Section 15-A is not charging section. See Bombay Abkari Act (5 of 1878), Section 19. **AIR 1955 NUC (Bom) 1788.**

——**Art. 265** — Certiorari — Invalid order of assessment — Infirmities — Failure of tax payer to point out infirmities to Revenue Authorities in time — No ground to refuse writ. See Ibid, Art. 226. **(1962) 66 Cal WN 474.**

——**Arts. 265 and 226** — Error on face of record — Assessment of tax made on wrong basis — Writ application will lie. See Ibid, Art. 226. **AIR 1961 Cal 649.**

——**Art. 265 —Assessment of income-tax on disclosed income—Validity of the system—(Income-tax Act (1922), Section 34).**

Art. 265 of the Constitution lays down that no tax is to be levied or collected except by authority of law. That of course is a fundamental thing which cannot be allowed to be infringed but the question is where what has been done in levying the income-tax on disclosed income is contrary to law and whether any attempt is being made to levy or collect a tax except by authority of law.

It is settled that the liability to pay income-tax depends upon the charging sections and not upon those parts of the Income-tax Act which relate to the machinery of realising the tax and so far as the machinery portion is concerned it is open to the subject to waive the same. AIR 1947 FC 32, Rel. on.

Since the citizen has an existing liability to pay taxes there seems to be no law preventing him from paying taxes on an agreed basis, and for this purpose the existence of an assessment order is not essential. (1930) 16 Tax Cas 1, Rel. on.

There is therefore, nothing illegal in the proceedings introduced by the Government of India variously known as 'Concessional Scheme' or 'Disclosure Proceeding.' The difficulties inherent in following concealed income in this country are well known. If at any given point of time the authorities tempt the assessee with concessions and induce him to come out with a voluntary disclosure of concealed income and agree to pay the proper taxes upon them, such proceedings cannot be said to be contrary to law or that they offend any provision of law. **AIR 1954 Cal 271 (274, 275, 276) (Pt A) (Prs 14, 16, 19, 20).**

——**Arts. 265 and 245** — T. C. Vehicles Taxation Act (14 of 1950), Section 18 (1) — Notification under, enhancing maxima specified in Schs. I and II — Validity — Delegation of legislative functions — Principles — Notification held ultra vires. See T. C. Vehicles Taxation Act (14 of 1950), Section 18 (1). **AIR 1960 Ker 58.**

——**Arts. 265 and 277 — "Levy" and "imposition" — Distinction.**

Per Dixit J. :— There is a distinction between "imposition" and "the levy", i.e., "assessment and collection" of a tax. The imposition of a tax is by an Act of the competent Legislature and is purely a legislative act. The levy and the collection of a tax is a process subsequent to the imposition of the tax by the statute. A tax cannot be levied or collected before it is actually imposed by an Act of the competent Legislature. This is

clear from Art. 265. Article 277, no-where speaks of the imposition of a tax. The Article assumes the existence immediately before the commencement of the Constitution of a valid law imposing a tax and permits the Government of the State to assess the persons liable to pay the tax and collect it from them, after the coming into force of the Constitution. It is the tax that was actually being levied immediately before the commencement of the Constitution that is saved by Art. 277 and it makes no difference whether the tax levied was in the case of a tax, one imposed on income or profits accruing in a period immediately before the commencement of the Constitution or a period anterior to it. **AIR 1953 Madh Bha 20 (25) (Pt F) (Pr 19) (DB).**

——**Art. 265** — Coal Production Fund Ordinance (39 of 1944) — Repeal by Coal Production Fund (Repealing) Ordinance (6 of 1947) — Fund abolished — Cess collected thereafter—Validity. See Coal Production Fund Ordinance (39 of 1944), Section 5. **AIR 1958 Madh Pra 425.**

[**Reversed** on another point in AIR 1962 SC 1281.]

——**Arts. 265, 245 — Delegation of powers by legislature to executive — Levy of tax and fixation of rate of tax is legislative function — Travancore-Cochin Electricity Duty Act (4 of 1950), Sections 3 (1) and (2), 9 (2) (a) and (b) — Constitutional validity of.**

The Legislature is certainly entitled to delegate its power to the executive and its officers but this it can do only subject to certain conditions, limitations and restrictions. Under the Constitution it cannot totally abdicate its legislative functions in favour of the Executive. The Indian Constitution is based on separation of powers as between the Judiciary, the Legislature and the Executive. Each is entrusted with specific powers for their exclusive exercise. None of them is free to abdicate its powers in favour of the others. But it cannot be said that the Legislature cannot delegate its powers at all. When the policy is indicated and the principles for carrying it out are laid down by the legislature, the Executive may be left to fill up the details, fashion and bring into existence the machinery essential to effectuate the purpose of the Legislation. Discretion may be properly left to the Executive to achieve this purpose, to make rules. The discretion so left, should however, be such as is guided, controlled and limited by the legislature.

To levy a tax is a matter of policy and peculiarly a legislative function. So too is the fixation of the rate or quantum of tax to be levied and the subject of taxation. The quantum or rate of tax is necessarily connected with the levy of tax. It is the function of the Legislature to legislate in respect of both of them and neither of them can be left to the Executive for their determination. But once the Legislature provides for levy of tax and itself prescribes the rate or quantum of tax or the limits within which the quantum of tax or duty may vary in the light of the principles indicated by the Legislature, no objection can be taken to the Legislature leaving it to the executive, the manner of levy and collection, and the machinery for collection by making suitable rules therefor. Consequently sub-ss. (1) and (2) of S. 3 and S. 9 (a) and (b) of Travancore-Cochin Electricity Duty Act constitute excessive delegation of legislative power, in so far as they left to the State Government the determination of the quantum or the rate of duty and the limit of exemption from duty without indicating any policy, limit or principle and were, therefore, unconstitutional. **(1965) 2 Mad LJ 254: 78 Mad LW 662: ILR (1966) 1 Mad 404: AIR 1966 Mad 220 (222, 223) (Pt A) (Prs 5, 6, 8).**

——**Arts. 265 and 226** — Finality of assessment whether conclusive of legality of assessment — Assessing officer acting outside his jurisdiction in imposing tax — Authority seeking to collect such tax — Citizen whether can call in aid Art. 265 and seek assistance of High Court — (Sales Tax — Madras General Sales Tax Act (9 of 1939), Section 3). See Ibid, Art. 226. **AIR 1959 Mad 382 (DB).**

——**Arts. 265 and 20** — Conviction under Section 15 (b), Madras General Sales Tax Act — Amendment providing a new mode of recovery of sales-tax "as if it were a fine" does not offend the rule against ex post facto laws in Art. 20. See Ibid, Art. 20. **1953 Cri LJ 625: AIR 1953 Mad 337.**

——**Arts. 265 and 245** —Power of Legislature to impose tax —Delegation of, to Municipal Corporation — Corporation cannot exceed delegated power. See Ibid, Art. 245. **AIR 1956 Nag 152 (DB).**

——**Art. 265** — Finance Act (1951), Section 7 (2) — Though levy of duty is valid, it must be collected by authority of law and in manner prescribed by rules — No rules prescribed for collection of duty on excisable goods which have already been removed from warehouse — Duty cannot be collected — (Central Excises and Salt Act (1944), Section 3 (1), Rules under Section 37, Rules 10 and 160). See Finance Act (1951), Section 7 (2). **AIR 1952 Nag 139 (DB).**

——**Arts. 265, 162, 346 (3) and Sch. 7, List 2, Entry 51** — Bihar and Orissa Excise Act (2 of 1915) (as adapted), Sections 27 and 28 — Notification No. 14223-IIJ/Ex. 1/61 R. D./-1-4-1961 levying increased duty on imported liquor — Not unconstitutional. See Ibid, Art. 162. **(1963) 29 Cut LT 76.**

——**Art. 265** — Scope — Appointment of Tahsildar to exercise powers of Panchayat pending re-election — Validity — Recovery of tax by Tahsildar — Legality and refund of. See Panchayats — Orissa Gram Panchayat Act (15 of 1948) (as Amended in 1951), Section 98 (1) (f). **AIR 1957 Orissa 258 (DB).**

——**Art. 265** — Recovery of property tax as arrears of land revenue under Punjab Land Revenue Act — Not repugnant to provisions of Constitution. See Punjab Urban Immovable Property Tax Act (17 of 1940). **AIR 1963 Punj 354 (DB).**

——**Art. 265** — Punjab Gram Panchayat Act (4 of 1953), Section 82 (1) (d) — Tax on truck owners using road within Panchayat's jurisdiction — Gram Panchayat is competent to levy tax — Levy of tax not hit by Arts. 276, 265 or 14 of the Constitution. See Panchayat — Punjab Gram Panchayat Act (4 of 1953), Section 82 (1) (d). **ILR (1963) 1 Pun 243.**

——**Art. 265 — Finance Act (1950), Section 13 (1) — Income-tax Act (1922), Section 23 — "Levy, assessment and collection" — Meaning of.**

To "levy a tax", means to impose or assess or to impose, or collect under the authority of law. It is a unilateral act of superior legislative power to declare the subjects and rates of taxation and to authorise the Collector to proceed to collect the tax. "Assessment" is the official determination of liability of a person to pay a particular tax. "Collection" is the power to gather in money for taxes by enforced payment if necessary. The levy of taxes is generally a legislative function; assessment is a quasi-judicial function and collection

an executive function. These three expressions "levy", "assessment" and "collection' embrace in their broad sweep all the proceedings which can possibly be imagined for raising money by the exercise of the power of taxation. **58 Punj LR 499: (1956) 30 ITR 500: ILR (1957) Punj 577: AIR 1957 Punj 5 (10) (Pt F) (Pr 15) (DB).**

——**Art. 265** — Rajasthan Panchayat Act (21 of 1953), Section 64 (1) — Rajasthan Panchayat (General) Rules (1954), Rule 24 — Imposition of tax — Previous sanction of State Government — Proclamation should mention this fact. See Panchayats — Rajasthan Panchayat Act (21 of 1953), S. 64 (1). **AIR 1959 Raj 73.**

——**Art. 265 — Talwarbandi dues — Recovery — Legality — (Rajasthan Jagir Decisions and Proceedings (Validation) Act (18 of 1955), S. 3).**

Talwarbandi is a sort of a due which is connected with the recognition of the succession of a Jagirdar to a jagir. This was required to be paid by a jagirdar to the ruler at the time of his succession to the jagir held by his ancestor.

So far as the succession of Jagirdar to Jagir was concerned the right to recognise it was vested exclusively in the Raj Pramukh and this right was to be exercised according to law and custom. In other words customary dues, if any, connected with the recognition of succession were clearly preserved.

Thus the order of the Rajpramukh recognising the succession of the petitioner on payment of Talwarbandi or Ked Nazarana was an order which had the authority of law (which included custom) behind it and could not be characterised as lacking the essential foundation by virtue of the Rajasthan Jagir Decisions Proceedings Validation Act, and consequently this levy could not be struck down under Art. 265 of the Constitution. AIR 1955 SC 50, Foll. **ILR (1957) 7 Raj 601: AIR 1957 Raj 151 (152, 153) (Pt A) (Prs 3, 4, 5, 6) (DB).**

10. Taxation — Exemption from.

●——**Arts. 265 and 285 (1)** — Immunity of property and income of States from Union taxation — Scope and extent of levy of customs duties (export or import) and excise duties by Union on property of State — Levy not covered by exemption and can be validly imposed. See Ibid, Art. 289 (1). **AIR 1963 SC 1760.**

——**Art. 265** — Taxation laws — Delegation to municipal corporation of power to fix rate of tax, to select cases for exemption and to determine manner of calculation — Validity. See Ibid, Art. 110 (2). **AIR 1959 Cal 704 (DB).**

——**Art. 265** — Orissa Sales Tax Act (14 of 1947); Section 7 — Sales Tax — Exemption — Government has power to exempt — But it can be used only where dealer is liable to tax and not otherwise. See Sales Tax — Orissa Sales Tax Act (XIV of 1947), Section 7. **AIR 1965 Orissa 190 (DB).**

11. Taxation laws — Validity.

●——**Art. 265** — Assam Taxation (on Goods Carried by Road or on Inland Waterways) Act (10 of 1961), Section 3 — Validity — Burden of proof — Presumption of constitutionality. See Assam Taxation (on Goods Carried by Road or on Inland Waterways) Act (10 of 1961), Section 3. **AIR 1964 SC 925.**

●——**Art. 265** — Assam Act, 10 of 1961, taxing tea carried in the State — Object of tax covered by Central Act — Validity of Assam Act not affected. Khyerbari Tea Co. Ltd. v. State of Assam, **(1964) 2 SCA 319: AIR 1964 SC 925 (943) (Pt K) (Pr 50).**

●——**Arts. 265, 14 and 19** — Sea Customs Act (1878) (as amended in 1955), Sections 202 (2), 9 — Rules under, Custom House Agents Licensing Rules (1960) — Validity — Whether offend against Arts. 14 and 19 of the Constitution or go beyond rule-making power under Section 202 (2). See Sea Customs Act (1878), (as Amended in 1955), S. 202 (2). **AIR 1962 SC 204.**

●——**Art. 265** — Taxation law — Ground of challenge. See Ibid, Art. 19 (1) (g). **AIR 1962 SC 148.**

●——**Art. 265 and Sch. 7, List 3, Entries 28 and 47** — Madras Hindu Religious and Charitable Endowments Act (19 of 1951) (as amended by Andhra Act 13 of 1955), Section 76 (1) — Validity — Contribution levied under Section 76 (1) is fee and not tax — Section is intra vires. Gopalaswami Vari Temple v. Commissioner, Hindu Religious Endowments, Andh Pra., **(1960) 2 Andh WR 347: 1960 Andh LT 658: AIR 1961 Andh Pra 216 (218) (Pt A) (Pr 9) (FB).**

——**Art. 265** — Markets — Legislation on tolls and fees — Validity of Section 140, Assam Municipal Act. See Ibid, Art. 246. **AIR 1958 Assam 156 (DB).**

——**Art. 265** — Validity of the Assam Sales Tax Act. See Sales Tax — Assam Sales Tax Act (17 of 1947), Section 1. **AIR 1955 Assam 113 (DB).**

——**Art. 265** — Gujarat Denatured Spirituous Preparations Rules (1962), Rule 37 — Validity — Rule 37 is invalid under Arts. 301, 304 and 19. See Ibid, Art. 301. **AIR 1964 Guj 59 (DB).**

——**Art. 265** — Kerala Luxury Tax on Tobacco (Validation) Act, 1964 does not lack legislative competence. See Kerala Luxury Tax on Tobacco (Validation) Act (9 of 1964), Preamble. **1965 Ker LJ 337: 1965 Ker LT 418: AIR 1966 Ker 46.**

——**Art. 265** — (Kerala) General Sales-tax Act (Amendment) Act (14 of 1959) — Validity. See Sales Tax — (Kerala) General Sales Tax Act (11 of 1125), Section 3 (1) (b). **AIR 1961 Ker 36 (DB).**

●——**Art. 265 and Sch. 7, List 2, Entry 5** — C. P. and Berar Local Government Act, 1948 (C. P. and Berar Act 38 of 1948), S. 90—Sec. 90 is valid law within Art. 265 and Sch.7, List 2, Entry 5 of the Constitution. AIR 1962 SC 1073 and (1883) 9 AC 117, Rel. on. Achchelal v. Janpad Sabha, Sihora. **ILR (1963) Madh Pra 777: 1963 Jab LJ 5: 1963 MPLJ 93: AIR 1963 Madh Pra 74 (79 to 85) (Pt A) (Prs 11,13, 15, 17, 18, 20) (FB).**

——**Art. 265** — Coal Production Fund Ordinance (39 of 1944), Section 5 — Rules under for collection of tax — Validity — Incidence of tax if changed. See Coal Production Fund Ordinance (39 of 1944), Section 5. **AIR 1958 Madh Pra 425.**

[**Reversed** on another point in AIR 1962 SC 1281.]

——**Art. 265** — Madras General Sales Tax Act (9 of 1939) Preamble and Section 5 (vi) — Validity of Act and Rules framed thereunder — (Sales Tax — Madras Turnover and Assessment Rules (1939), Rules 4 and 16). See Sales Tax — Madras General Sales Tax Act (9 of 1939), Preamble. **AIR 1953 Mad 105.**

——**Art. 265** — Validity of Section 13, Finance Act, 1950 — Contravention of Agreement between the President and the Raj Pramukh. See Finance Act (1950), S. 13. **AIR 1955 Mys 49 (DB).**

——**Art. 265** — Bihar Minor Mineral Concession Rules (1964), Rules 20, 30 and Schedule II—Rules provide procedure for assessment of royalty — Imposition of royalty is valid. See Bihar Minor Mineral Concession Rules (1964), Rule 20. **AIR 1965 Pat 491 (DB).**

——**Art. 265** — Works contracts — Assessment to sales tax — Section 2 (h) (ii), M. P. Sales Tax Act, (1947) and Rule 7, V. P. Sales Tax Rules (1954) are invalid. See Ibid, Sch. 7, List 2, Entry 54. **AIR 1956 Vin-Pra 41.**

ARTICLE 266

●——**Art. 266 (3)** — Scope of executive power — Executive power not confined to carrying out of same — Power of executive Government to carry on trade or business without specific legislation exercising such course. See Ibid, Art. 102. **AIR 1955 SC 549.**

●——**Art. 266 (3) — Appropriation.**

It is appropriation that has to be in accordance with law and nothing more, such as head of expenditure.

The phrase "in accordance with law" does not necessarily mean in pursuance of an Act of the Legislature. Those words, in the context in which they are found, mean "lawfully".

Per Sapru J. :— Appropriation Act merely authorises expenditure but cannot sanction the activity itself.

Per Agarwala J.:— It is doubtful if a mere Appropriation Act without specific legislation would justify expenditure on an activity which is carried on from year to year and is not extraordinary or temporary. It may, therefore, be improper for the Government to incur expenditure without the authority of specific legislation for the purposes of trade. But it cannot be held that the expenditure incurred would be unauthorised 'by law'. The Appropriation Act is 'the law' within the meaning of Article 266 (3). It, therefore, justified expenditure by Government on its motor buses. It cannot, however justify the trade activity itself. Moti Lal v. Government of Uttar Pradesh. **ILR (1951) 1 All 269: AIR 1951 All 257 (266, 281, 282, 312, 331) (Pt E) (Prs 45, 112, 281, 446) (FB).**

——**Art. 266** — Section 6 of Court Fees Act (1870) Government of India Act (1935), Sections 292 and 100 (3) and Sch. 7, List 2, Entry 1 — Constitution of India, Arts. 372 (1), 246 (3) and 266 and Sch. VII, List 2, Entry 3 — Effect of constitutional provisions is that Court-fees Act, though originally a Central Act, is now Act of State Legislature. See Court Fees Act (1870), Section 6. **AIR 1960 Bom 96.**

——**Art. 266 — No bar to recovery of revenue illegally collected.**

The collection of revenue must be under a due legal process. If collection is made in accordance with any provision of an Act, there cannot be any question of recovery of the same. If collection is made illegally and contrary to the statute, then it cannot be said to be a collection of revenue and thus a part of the revenue or the consolidated fund. Hence in such a case of illegal collection Art. 266 cannot be a bar to the recovery of the money collected illegally. **(1961) 65 Cal WN 1206.**

——**Arts. 266, 246 (3), 265** — Power exists in State Legislature to enact measure to enable local authority to raise funds for its activity by taxation — Such tax does not go into consolidated Fund of State — (Madras Commercial Crops Markets Act (20 of 1933) (as amended by Madras Act 33 of 1955), Sections 11 (1) and 13). See Ibid, Art. 246 (3). **AIR 1960 Mad 160.**

——**Art. 266** — Land Revenue forms part of the consolidated Fund and moneys out of this fund can be appropriated in the manner provided in the Constitution. See Ibid, Art. 202. **AIR 1958 Mad 539.**

——**Art. 266** — Union territory of Manipur — Timber removed from Government forests — Collection of royalty as fixed by the Chief Commissioner is not invalid. See Forests Act (1927), S. 39. **AIR 1964 Manipur 46.**

——**Art. 266** — "Revenue" — Meaning of — Licence fee if forms part of Consolidated Fund. See Ibid, Art. 19 (6). **AIR 1957 Punj 45 (DB).**

[**Overruled** in AIR 1962 Punj 267 (FB).]

ARTICLE 269

●——**Art. 269 (1) (g) and Sch. 7, List 1, Entry 92-A; List 2, Entry 54** — Sales effected between 11th September 1956 and 4th January, 1956 in which goods moved from outside into Mysore State — **Held** were inter-State sales as understood in its ordinary natural sense unaided by any other statutory provision — State of Mysore had no power to tax such sales in view of Art. 269 (1) (g) read with Sch. 7, List I, Item 92-A and List II, Item 54. AIR 1963 SC 980, Relon. State Trading Corporation of India, Ltd. v. State of Mysore, **(1963) 14 STC 416 (SC).**

——**Arts. 269, 286 and Sch. 7, List 1, Entry 92-A** — Inter-State trade or commerce — Meaning — Test to determine — Power of State to tax — Central Sales Tax Act (1956), Sections 3 and 4 — Bengal Finance (Sales Tax) Act (6 of 1941), Section 5 (2) (a) (v). See Ibid, Art. 286. **AIR 1963 Cal 442.**

ARTICLE 271

——**Art. 271** — Finance Act (1963) — Validity — Act does not contravene Art. 14 on the ground that salaried class has been excluded from levy of surcharge. See Ibid, Art. 14. **AIR 1965 All 37.**

——**Art. 271 — Scope — Surcharge can be levied any number of times.**

Article 271 undoubtedly gave Parliament the right to levy a surcharge from time to time and merely because Parliament had imposed surcharge in one shape, it is not prevented from imposing surcharge in another form to cope with varying circumstances. The surcharge, as provided in Art. 271, is nothing but additional tax or duty which Arts. 269 and 270 empower Parliament to impose. Article 271, therefore, gave the Parliament power to levy additional tax as it deems fit to be known as surcharge and income-tax. If under Art. 271, Parliament can 'at any time' increase the tax already levied it necessarily follows that in the same Finance Act surcharge designated as 'special' and 'additional' could also be levied. Parliament in this respect is paramount and the Finance Act is passed by Parliament and, therefore, surcharge whether it takes the shape of 'additional surcharge' or 'special surcharge' on income cannot be said to be violative of Art. 271 of the Constitution. **(1965) 1 ITJ 63: (1965) 57 ITR 749: AIR 1965 All 37 (37, 38) (Pt A) (Prs 4, 5).**

——**Art. 271 — Andhra Pradesh Urban Areas Surcharge on Property Tax Act (13 of 1958), Section 3 — Character of levy of tax under Section 3 — Surcharge imposed by Act is additional tax on buildings — It is not tax on tax.**

The Andhra Pradesh Urban Areas Surcharge on Property Tax Act (13 of 1958), is made with a view to provide for levy of surcharge on property tax on certain buildings in the major Municipalities in the State of Andhra Pradesh. The surcharge is only an additional tax on the buildings. It partakes of the same character as the property tax to which the building is subject. The Act only permits an increase in the property tax at the rate specified. The subject-matter of the

tax remains the building itself. That it is nothing but an increase in the rate of property tax on the buildings can be gathered from Art. 271 of the Constitution. Though that article is inapplicable still it clearly establishes that surcharge is only an increase in the duties or taxes leviable under a particular enactment i.e., it is an extra charge or tax. There is no doubt that the pith and substance of the Andhra Pradesh Urban Areas Surcharge on Property Tax Act (13 of 1958) relates to the subject of taxes on buildings within the contemplation of Entry 49 of List II in Sch. VII of the Constitution. Therefore, the argument that the surcharge envisaged by this enactment is a tax on tax is baseless: AIR 1960 Mad 543, Rel. on. **(1963) 1 Andhra WR 267 : AIR 1963 Andh Pra 379 (380) (Pt B) (Pr 5).**

ARTICLE 272

——**Art. 272** — Coal Mines (Conservation and Safety) Act (12 of 1952) — Provision empowering Coal Board to collect duty — Constitutional validity. See Coal Mines (Conservation and Safety) Act (1952). **AIR 1959 Cal 222.**

ARTICLE 276

SYNOPSIS

(Constitution of India (1950), Art. 276)

1. Scope and applicability.
2. Taxes in respect of professions, trades, callings or employments.
3. Maximum limit of profession tax—Cl. (2).
4. "Any person".

1. Scope and applicability.

●——**Art. 276 (1)** — Scope — For applicability of Section 142-A (1) of Government of India Act (1935), tax must be one on profession, etc—Section 142-A corresponds to Art. 276 (1) of Constitution. See Government of India Act (1935), Section 142-A (1). **AIR 1964 SC 1172.**

●——**Art. 276 and Sch. VII, List II, Entries 52 and 60** — Applicability — Art. 276 has no effect on Entry 52 of List II — AIR 1958 Bom 487 and AIR 1958 Bom 378 and AIR 1949 Nag 215, Dist. Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Bangalore v. Corporation of the City of Bangalore, **39 Mys LJ 736: (1962) 1 SCA 358: (1961) 3 SCR 707: (1962) 1 SCJ 214: AIR 1962 SC 562 (565) (Pt B) (Pr 6).**

——**Art. 276** — Section 4-A, Madras Entertainments Tax Act, not ultra vires the power of provincial legislature — Tax levied by Section 4-A is a tax on each show and not on calling of exhibitor —Tax falls within purview of Entry 62 of List 2 — Art. 276 is not attracted. See Madras Entertainments Tax Act (X of 1939), Section 4-A. **AIR 1959 Andh Pra 461 (DB).**

——**Art. 276 (1)** — Assessment of tax by Panchayat on basis of income from trade or business carried on within its jurisdiction — Provisions, although relate to tax on income, are saved by Art. 276 (1), Constitution of India. See Panchayats — West Bengal Panchayat Act (II of 1957), Section 57 (1). **AIR 1964 Cal 590.**

——**Art. 276 and Proviso to Art. 276 (2) — Applicability to tax under Gwalior War Profits Tax Ordinance — (Gwalior War Profits Tax Ordinance (2001)).**

Art. 276 is not applicable to the War Profits Tax under the Ordinance as it is purely a tax on income. The Proviso to Art. 276 (2) is also not applicable as the War Profits Tax was not in force in the financial year immediately preceding the commencement of the Constitution. **AIR 1953 Madh Bha 20 (21, 24) (Pt A) (Prs 2, 17) (DB).**

——**Arts. 276 (1), 265 and 246** — City of Nagpur Corporation Act (2 of 1950), Section 114 (2) (d)— Registration fee on heads of cattle sold in corporation area — Whether in nature of tax or fee — Distinction between tax and fee — Imposition is ultra vires and is not saved by Art. 276 (1)— (Government of India Act (1935), S. 142-A (1)). See Municipalities — City of Nagpur Corporation Act (2 of 1950), S. 114 (2) (d). **AIR 1956 Nag 152.**

——**Art. 276** — Panchayat — Punjab Gram Panchayat Act (4 of 1953), Section 82 (1) (d) — Tax on truck owners using road within Panchayat's jurisdiction — Gram Panchayat is competent to levy tax — Levy of tax not hit by Arts. 276, 265 or 14 of the Constitution. See Panchayat — Punjab Gram Panchayat Act (4 of 1953), Section 82 (1) (d). **ILR (1963) 1 Punj 243.**

2. Taxes in respect of professions, trades, callings or employments.

●——**Art. 276 (2)** — Tax on entertainments — Levy on each show of film at theatre — If tax on profession. See Cantonments Act (1924), Section 60. **AIR 1959 SC 582.**

●——**Art. 276 (2), Sch. VII, List II, Entries 60, 62** — Applicability — Tax on cinema shows — Not a tax on profession — Limit prescribed under Art. 276 (2) not applicable. See Mysore Cinematograph Show Tax Act (XVI of 1951), Section 3. **AIR 1959 SC 894.**

●——**Arts. 276 (2), 245, 246, Sch. VII, List II, Entries 26, 34, 60 & 62**—Tax imposed by Section 12-A — Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948), is valid under Sch. VII, List II, Entry 62 — (Government of India Act (1935), Sections 99, 100, 142-A, Sch. VII, List II, Entries 27, 36, 46 and 50) — (Interpretation of Statutes) — AIR 1956 Bom 1, **Reversed.** See Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948), Section 12-A. **AIR 1957 SC 699.**

——**Art. 276—U. P. Town Areas Act (1914), Section 39 (2) (II), Rr. 2 and 3.**

Held, on facts that the tax imposed on the applicant was a tax on income other than agricultural income, i.e., income from its trade and business and not a tax of any other kind. AIR 1948 All 382 (FB): (1901) AC 26 and 1955 All LJ 630, Rel. on. But the tax cannot be declared to be ultra vires or illegal because it was saved by Art. 276 of the Constitution. The circumstances and property tax which the State Legislature has authorised a Town Area to impose a tax meant for the benefit of the Town Area. In so far as it is a tax in respect of a trade or calling, as Art. 276 applied, it cannot be held to be invalid simply because it is a tax on income. **AIR 1957 All 433 (435, 436) (Pt A) (Prs 15, 19, 22) (DB).**

——**Art. 276 — Tax on profession, trades, etc., and on income accruing from or arising out of professions, trades, etc. — Distinction — (Municipalities — U. P. Town Areas Act (II of 1914), Section 14 (1) (d) and (f)).**

An obvious distinction exists between a tax on trades, callings or professions and a tax on income arising from a trade, calling or profession. If a tax is imposed on a trade, calling or profession, it will have to be paid by any person practising that trade, calling or profession, whether he derives any income from it or not.

The State Government is entitled to impose tax on professions, trades, callings and employments under item No. 60 of the second list of the 7th Schedule of the Constitution. No recourse to Art. 276 of the Constitution is, therefore, necessary for the validation of such a tax.

A tax if it is based on the income derived by the assessee from trade, etc., can be questioned on the ground that it being an income-tax could not be imposed by the State Government. It is to save such a tax that Art. 276 of the Constitution appears to have been enacted. **AIR 1957 All 433 (436) (Pt C) (Pr 20) (DB).**

——**Art. 276 — 'Trade' — Meaning of.**

Undoubtedly in its primary sense the word 'trade means exchange of goods for goods or goods for money. But in a secondary sense it includes any business carried on with a view to profit, whether manual or mercantile as distinguished from the liberal arts or learned profession. Pursuit of a skilled employment with a view to earn profit not being of the nature of a learned profession or agriculture must be regarded as engaging in 'trade' within the meaning of Art. 276 of the Constitution. A skilled occupation which involves the application of a manufacturing process to a commodity submitted to the person carrying on the occupation must, therefore, be regarded as trade. **60 Bom LR 48: ILR (1958) Bom 483: AIR 1958 Bom 487 (489) (Pt B) (Pr 9) (DB).**

[**Overruled** on another point in AIR 1966 SC 249.]

——**Arts. 276 and 265—Tax—Nature of—Test — Tax on trade — Municipal tax on cotton manufacturing levied per bale pressed — Nature of the tax — (Municipalities — Bombay District Municipal Act (III of 1901), S. 59).**

In considering the question as to the nature of a tax, the Court must have regard to the nature, the pith and substance, of the tax, and not merely to the form in which it may have been imposed. Whether the liability to pay the 'cotton manufacturing tax' is placed by the charging rule on the manager of a factory and the quantum of tax is computed with reference to the number of bales pressed by him within the municipal limits it is on the trading activities of the manager that the liability is imposed. Therefore, it cannot be considered to be a tax on commodity which is not subject to maximum limit prescribed by Art. 276. It being a tax imposed upon the manager of the pressing factory and being in respect of a skilled occupation which is not of the learned occupation must be regarded as a tax on trade. **60 Bom LR 48: ILR (1958) Bom 483: AIR 1958 Bom 487 (490) (Pt C) (Pr 11) (DB).**

[**Overruled** on another point in AIR 1966 SC 249.]

——**Arts. 276 (2) and 304 (b) and Sch. VII, List II, Entries 60 and 62** — Scope — Bombay Lotteries and Prize Competition Control and Tax Act, 1948, Section 12-A — Tax under — Nature and Validity of. See Bombay Lotteries and Prize Competition Control and Tax Act, Section 12-A. **AIR 1956 Bom 1 (DB).**

[**Reversed** in AIR 1957 SC 699.]

——**Art. 276 (2)** — Show tax imposed on owner of cinema concern — Validity. See Municipalities — Punjab Municipal Act (III of 1911) (as applied to Himachal Pradesh), Section 62 (6-a). **AIR 1959 Him Pra 17.**

——**Art. 276 (2), Sch. VII, List II, Entry 60 — Municipalities — Kerala Municipalities Act (XIV of 1961), Section 126 — Tax on advertisements — Tax is not tax on profession or calling.**

A tax on advertisements levied under Section 126 of Kerala Municipalities Act on the petitioner who is engaged in the business of exhibiting cinematographic films is not a tax on the profession or calling of the petitioner within meaning of Art. 276 (2). The fact that the petitioner may not exhibit a particular film after having advertised it, would not make the tax on the advertisement a tax on its calling or trade. Although advertisement is necessary for the successful carrying on of the petitioner's business it does not follow that a tax on advertisement is a tax on the calling or trade of the petitioner: AIR 1955 Sau 90, Dist.; AIR 1959 Him Pra 17, Diss. from; AIR 1959 SC 582, Foll. **1965 Ker LT 288: 1965 Ker LJ 351: (1965) 1 Ker LR 188: AIR 1965 Ker 237 (238) (Pt B) (Pr 6).**

●——**Arts. 276 (2) and 277** — Scope — Travancore Tobacco Act — Licence-fee — Levy not a tax on profession, trade, calling or employment. See Travancore Tobacco Act (1 of 1087), Section 31. **AIR 1958 Ker 129 (FB).**

●——**Art. 276 (2) and Sch. 7, List 2, Entries 60 and 62** — Licence fee levied under Section 31, Travancore Tobacco Act (1 of 1087) — Levy not a tax on profession, trade, calling or employment. See Travancore Tobacco Act (1 of 1087), S. 31. **AIR 1958 Ker 129 (FB).**

[**Reversed** on another point in AIR 1962 SC 922.]

——**Art. 276** — Vindhya Pradesh Gram Panchayat Ordinance (1949), Section 37 (d) — Imposition of tax on bidi manufacturers — Levy made with reference to number of bidis manufactured — Tax is in pith and substance an excise duty and not a tax on trade, profession or calling — Hence levy is beyond the competence of the Gram Panchayat. AIR 1945 PC 98, Rel. on; AIR 1961 SC 459; AIR 1949 Nag 190; AIR 1949 Nag 215 and AIR 1958 Bom 487, Disting. **ILR (1962) Madh Pra 666: 1961 MPC 802: 1961 Jab LJ 1479: 1962 MPLJ 222: AIR 1962 Madh Pra 136 (138) (Prs 5, 6, 7) (DB).**

——**Art. 276** — Bihar and Orissa Municipal Act (7 of 1922), Section 82 (1) (ff) and Sch. IV — Constitutional validity — Professional tax — Imposition of — Provision not ultra vires State Legislature — Falls under Item 60 of List II and not under Item 86 of List 1 of Sch. VII of the Constitution. See Municipalities — Bihar and Orissa Municipalities Act (VII of 1922), Section 82 (1) (ff). **AIR 1962 Pat 465 (DB).**

——**Art. 276 and Sch. 7, List 2, Entries 62 and 60** —Tax on cinematograph shows — It is entertainment tax and not professional tax — AIR 1953 Madh Bha 145, Diss. from. See Ibid, Sch. VII, List 2, Entry 62. **AIR 1956 Punj 203.**

——**Art. 276 (2)** — Rajasthan Entertainment Tax Act (24 of 1957), Section 6-A (as amended by Act 8 of 1960) — Entertainment tax under — Not a tax on calling or trade of proprietor — Article 276 (2) of Constitution not attracted. See Rajasthan Entertainment Tax Act (24 of 1957) (as amended by Act (8 of 1960), Section 6-A. **AIR 1964 Raj 106.**

——**Art. 276** — Imposition of tax on certain business on basis of income — Validity. See Rajasthan Panchayat Samitis and Zilla Parishads Act (XXXVII of 1959), Section 33 (2) (i). **1963 Raj LW 633.**

——**Art. 276** — Licence fee levied by Rajasthan State under Factories Act, Sec. 6 read with Section 112 are fees strictly so called and has authority of law — Levy is not tax on profession or trade, within meaning of Art. 276. See Ibid, Art. 265. **AIR 1954 Raj 178 (DB).**

——**Art. 276 (2) and Sch. VII, List II, Items 60 and 62 — Test to determine whether tax is tax on 'calling' or tax on 'entertainments' — Theatre tax on cinema show is not hit by Art. 276 (2).**

The true test for determining whether a particular tax is a tax on "calling" referred to in Art. 276 or the tax on "entertainments" under Item 62 of the State list is to ascertain the incidence of the tax. If the incidence falls on the person because he is engaged in the business of providing the entertainment for profit it is a tax on his calling; but if the incidence of the tax falls on the particular entertainment, irrespective of whether the person providing the entertainment follows that calling or not, then it is a tax on the entertainment and falls within item No. 62 of the State list and as such will not be hit by Art. 276. If for instance the tax is to be paid on a cinema show irrespective of whether it is given by a professional exhibitor or by one following a different calling, e.g., by a charitable society to raise funds for a charity, it is obvious that the tax can only be regarded as a tax on entertainment and not a a tax on calling for what is taxed is not the calling of the person providing the entertainment but the entertainment itself.

Hence a notification by a Municipality imposing theatre tax on cinema shows at certain rate per show is not hit by Art. 276 (2) as the tax is on entertainment and not a tax on calling. AIR 1953 Madh Bha 145, Diss. from. AIR 1954 Bom 261, Approved. **8 Sau LR 120: AIR 1955 Sau 90 (91) (Prs 3, 4) (DB).**

3. Maximum limit of profession-tax — Cl. (2).

●——**Art. 276** — Scope — Art. 276 of the Constitution extends not only to recoveries but to assessment also — Recovery of tax in excess of constitutional limits — Suit for refund of excess cannot be held to be in respect of matter purported to be done under C. P. Municipalities Act (2 of 1928). See Municipalities — C. P. Municipalities Act (II of 1928), Section 48. **AIR 1966 SC 249.**

●——**Art. 276 (2)** — Tax laws — Principles for determining its validity — Scope of Art. 265 — Law should not be prohibited by any particular provision of Constitution such as for example, Arts. 276 (2), 286 etc. — Tax laws are not outside Part III of Constitution. See Ibid, Art. 265. **AIR 1962 SC 1006.**

——**Art. 276 (2)** — Municipalities — C. P. and Berar Municipalities Act (II of 1922), Sections 48, 66 (1) (b) — Suit for refund of excess tax on ground that enhancement of rate exceeded constitutional limits — Bills served in respect of tax duly imposed under Act — Recovery must be regarded as purporting to have been done under Act — Recovery is not ultra vires but merely wrongful — Section 48 is applicable to such cases. See Municipalities — C. P. and Berar Municipalities Act (II of 1922), Section 48. **AIR 1963 Bom 225 (DB).**

[**Reversed** in AIR 1966 SC 249.]

——**Art. 276** — Notification by Municipality imposing enhanced bales and bojas tax in supersession of tax imposed by previous notification, coming into force after 31-3-39 — Imposition of tax held illegal as infringing sub-section (2) of Section 142-A — Clause 2 of Art. 276 of Constitution held not attracted — Tax could not be justified under Professions Tax Limitation Act. See Government of India Act (1935), Section 142-A, Sub-s. (2). **AIR 1963 Bom 3 (DB).**

——Art. 276 (2) — Scope — Contravention — Boja tax in excess of Rs. 250 — Tax ultra vires — Suit for refund — Notice under Section 48 — Necessity — (Municipalities — C. P. and Berar Municipalities Act (II of 1922), Sections 66 and 48).

Held, on facts that tax was in contravention of Art. 276 (2), Constitution of India and was ultra vires of the powers of the Municipal Committee as tax was in excess of Rs. 250 and that no notice under Section 48, C. P. and Berar Municipalities Act was necessary. M. P. No. 389/54, dated 12-4-55 (Nagpur), Foll. **1959 Nag LJ (Notes) 1.**

[**Overruled** in AIR 1963 Bom 225, which itself is **Reversed** in AIR 1966 SC 249.]

——**Art. 276 (2), Seventh Schedule, List II, Entry 60** — Levy under List II, Entry 60 far in excess of amount specified in Art. 276 (2) — Levy to be struck down. **1964 Ker LT 189: 1964 Ker LJ 413: (1964) 1 Ker LR 294: AIR 1965 Ker 8 (10) (Pt A) (Pr 12).**

——**Art 276 (2)** — Taxation and Finance Rules, Rule 21 (2), Proviso — Proviso to sub- rule (2) offends Art. 276 (2) of Constitution and must be struck down. See Municipalities — Kerala Municipalities Act, 1960 (XIV of 1961), Sch. II. **1964 Ker LJ 450.**

——**Art. 276 (2)** — Kerala Surcharge on Taxes Act (XI of 1957), Section 4 — Section offends Art. 276 (2) of Constitution and is void. See Kerala Surcharge on Taxes Act (XI of 1957), Section 4. **(1964) Ker LJ 450.**

——**Art. 276 (2)** — Kerala Surcharge on Taxes Act (XI of 1957), Section 4 — Section is illegal and one passed in violation of Art. 276 (2) of the Constitution. See Kerala Surcharge on Taxes Act (XI of 1957), S. 4. **1964 Ker LJ 389.**

——**Art. 276 (2)** — Kerala Municipalities Act — Does not make any radical change in position in respect of transacting business, as it existed in Travancore or Cochin area. See Kerala Municipalities Act (XIV of 1961), Section 117. **1964 Ker LJ 450.**

——Art. 276 (2) and Sch. VII, List 2, Entry 60 — Profession tax levied by Municipality — Limit imposed on such levy by Art. 276 (2) — State Legislature — Its incompetency to make law transgressing the limit — Kerala Profession Tax (Validation and Reassessment) Act, 1958 is invalid.

After January 26, 1950, there is no enacting power in the State Legislature either to amend the machinery parts of legislation dealing with profession tax, or to fill gaps therein so as to continue the levy under new rules beyond the constitutional limitation imposed by Art. 276 (2) of the Constitution. Hence, the Profession Tax (Validation and Reassessment) Act (Ker. XIV of 1958), is beyond the competence of the State Legislature as it seeks to fill the gaps brought about by the repealment of the Travancore Income-tax Act, and the position is not different so far as the notification of February 15, 1956, purporting to amend Rule 18, is concerned, as the delegated authority under the Act is as well bound by the constitutional limitation. The assessments, therefore, of the writ petitioners to the tax on profession according to the proviso to R. 18 (2) of the Taxation and Finance Rules, framed under the Travancore District Municipalities Act 1116, for the period subsequent to the repealment of the Travancore Income-tax Act, are illegal due to their not being according to law. **1961 Ker LJ 971: ILR (1961) 2 Ker 549: AIR 1962 Ker 185 (190) (Prs 12, 13) (DB).**

——**Art. 276 (2)** — Entertainment tax and performance tax — Notification imposing a performance tax at Rs. 5 per show is invalid as it exceeds limits imposed by Art. 276 (2). See Municipalities — Gwalior Municipalities Act. (S. M. 1993), S. 52 (J). **AIR 1953 M. B. 145 (DB).**

——**Art. 276** — Article not applicable to tax under Gwalior War Profits Tax Ordinance — Liability of assessee cannot be restricted to Rs. 250. See also Gwalior War Profits Tax Ordinance (2001). **AIR 1953 Madh B 20 (DB).**

——**Art. 276 and Sch. VII, List 2, Entry 54 — Government of India Act (1935), S. 142-A and Sch. VII, List 2, Item 48 — Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 3 —Sales tax exceeding limit mentioned in Art. 276 (2) — Nature of sales-tax and its validity.**

The Legislature has specifically conferred on it, a right to levy a tax on trade. It is a tax on a transaction, and that is its pith and substance, and that is not in controversy. A tax on a transaction such as was provided for by Item 48 of the Provincial List in Sch. VII, Government of India Act, 1935, has necessarily to be laid upon some person concerned in the transaction and his feature cannot, therefore, render it other than a tax upon a transaction.

The fact therefore, that the total amount of the tax payable by a dealer on the purchase of groundnuts exceeds the limit fixed by Art. 276 (2) of the Constitution does not render it invalid. AIR 1956 Bom 1, Disting. **70 Mad LW 129: (1957) 8 STC 222: (1957) 1 Mad LJ 281: AIR 1957 Mad 301 (303) (Pt A) (Pr 8) (DB).**

——**Art. 276 (2)** — Charge of fee in excess of the prescribed limit — Validity. See Government of India Act (1935), S. 142-A. **(1961) 27 Cut LT 78.**

——**Art. 276** — Imposition amounting to fee — Conditions precedent — Imposition under S. 131 — Nature of — Held Municipality had no power to demand tax and demand being beyond Art. 276 of Constitution was not valid — Hence accused acquitted of offence under S. 383. See Municipalities — Orissa Municipal Act (23 of 1950), S. 131. **(1960) 2 OJD 100.**

——**Art. 276 (2)** — Licence fee under Bihar and Orissa Local Self-Government Act, S. 100-A (7), is tax and would be hit by Art. 276 (2). See Bihar and Orissa Local Self-Government Act (III of 1885), S. 100-A (7) (Inserted by Orissa Act XXXIV of 1947). **AIR 1955 NUC (Orissa) 1126 (DB).**

——**Art. 276 (2)** — Scope — "Total amount payable in respect of any person to the State or other local authority", meaning of — Each one of the authorities mentioned in the Article can impose a tax upto Rs. 250. **ILR (1964) 1 Punj 787: AIR 1964 Punj 383 (384) (Prs 7, 8) (DB).**

——**Art. 276 (2) — Resolution of Gram Panchayat imposing tax on commission agents at certain percentage — Maximum limit not fixed — Effect on validity.**

A resolution passed by a Gram Panchayat imposing a tax on commission agents at a certain percentage without fixing the maximum limit up to which the tax can be levied, so that, on the basis of the percentage fixed the amount of tax may be far in excess of Rs. 250, the maximum limit fixed by Art. 276, is opposed to Art. 276 and must be held to be wholly unconstitutional and void. AIR 1953 Madh B 145, Rel. on. AIR 1950 SC 124, Applied. **62 Pun LR 170: AIR 1960 Punj 394 (394, 395) (Pr 3).**

Clause (2) — Proviso.

■——**Art. 276** —S. 2, Kerala Act (XIV of 1958)— Violates Art. 276 of the Constitution— Validating Act purported to validate a profession tax to an extent above Rs. 250 subsequent to commencement of Constitution. See Kerala Profession Tax (Validation and Reassessment) Act (XIV of 1958), S. 2. **AIR 1965 SC 1174.**

——**Art. 276 (2), Proviso — Applicability —(U. P. District Boards Act (X of 1922), Ss. 108 and 114).**

The Proviso to Art. 276 (2) applies to tax levied under Ss. 108 and 114 of the U. P. District Boards Act and, therefore, the tax is saved from the bar which is imposed by the main para of the article. **AIR 1957 All 527 (534) (Pt G) (Pr 19) (DB).**

——**Art. 276 (2), Proviso — 'Tax' — Meaning of — Legal levy.**

The word 'tax' as it is used in the proviso to clause (2) of Art. 276 must mean a tax lawfully levied. It cannot, therefore, be held that if the rate at which the tax was actually levied exceeded Rs. 250 per year in the year preceding the commencement of the Constitution, it could be continued to be levied under the proviso to Cl. (2) of Art. 276 unless a provision to the contrary was made by Parliament by law. **60 Bom LR 419: 1958 Nag LJ 326: ILR (1958) Bom 625: AIR 1958 Bom 378 (378, 379) (Pt A) (Prs 2, 3) (DB).**

——**Art. 276 (2), Proviso — 'Rate or maximum rate' — Meaning of— Rate of tax enhanced by municipality — Whether ultra vires — (Government of India Act (1935), S. 142-A (2), Proviso)— (Municipalities — C. P. and Berar Municipalities Act (II of 1922), S. 66 (1) (b)).**

The expression 'the rate or the maximum rate' in the proviso to sub-S. (2) of S. 142-A of the Government of India Act and in the proviso to Cl. (2) of Art. 276 of the Constitution signifies a scale of rate. When the Legislature used the words 'the rate or the maximum rate' in the proviso to sub-S. (2) of S. 142-A of the Government of India Act, and when the learned framers of the Constitution used them in the proviso to Cl. (2) of Art. 276, they intended that the scale of rate, to be a valid scale, should be such that the total amount of tax payable under it in respect of any one person must not exceed Rs. 50 per annum before the coming into force of the Constitution and Rs. 250 per annum after the commencement of the Constitution.

Held, that the enhancement of the rate so as to make the tax leviable exceed Rs. 250 per annum, was ultra vires Art. 276 of the Constitution and was, therefore, illegal. **60 Bom LR 419: 1958 Nag LJ 326: ILR (1958) Bom 625: AIR 1958 Bom 378 (380, 381) (Pt B) (Prs 9, 10, 12) (DB).**

■——**Art. 276 (2), Proviso — Travancore District Municipalities Act (XXIII of 1116), S. 325 — Taxation and Finance Rules in Sch. II, R. 18 — Amendments to, by Notification No. L. S. 11-13975/55-DD, dated 15-2-1956 and validation of amendment by Kerala Act XIV of 1958 — Not authorised by Art. 276 (2), Proviso and cannot be sustained.**

The amendments introduced by the Notification No. LS 11-13975/55-DD, amending R. 18 (1) (a) and R. 18 (2) Proviso of the Taxation Rules in Sch. II to the Travancore District Municipalities Act, 1116 (ME) dated 15-2-1956, in exercise of the powers conferred by S. 325 of that Act, and the validation of that amendment by the Kerala Profession Tax (Validation and Re-assessment) Act, XIV of 1958 are amendments which go beyond the formal alterations necessitated by the replacement of the Travancore Income-tax Act, 1121 (ME), by the Indian Income-tax Act, 1922, with

effect from the 1st April 1950. The alterations do not merely preserve the old tax; they rope in the entire profits of the assessee from the whole of the Indian Union for the purpose of calculation. The substitution of the words 'whole of the Indian Union' for the words 'whole State' can operate to the detriment of the assessee. The amendments are opposed to Art. 276 (2), Proviso and cannot be sustained. AIR 1962 Ker 185, Approved; AIR 1961 SC 1486, Rel. on. Commissioner, Quilon Municipality, Quilon v. Harrisons and Crosfield, Ltd., Quilon, **1963 Ker LT 889 : 1963 Ker LJ 1007 : ILR (1963) 2 Ker 547 : (1963) 2 ITJ 413 : AIR 1964 Ker 25 (28) (Prs 13, 15) (FB).**

——Arts. 276 (2) and 14 — Some Assessees in State to profession tax protected under Cl. (2) of Art. 276 under post-Constitution Act and some falling under Proviso to Cl. (2) under pre-Constitution Act — Whether discriminatory — Municipalities — Kerala Municipalities Act, 1960 (XIV of 1961).

It was contended that as the result of the Kerala Municipal Act, XIV of 1961, which repealed the Cochin Municipal Act and the Travancore District Municipalities Act, there would be two types of assessees to profession tax in the State of Kerala and that there was discrimination namely that, there were assessees who will have to pay only the maximum profession tax of Rs. 250 under the Kerala Municipalities Act, which was a post-Constitution Act as envisaged in Cl. (2) of Art. 276; whereas in all other cases where the proviso to Cl. (2) of Art. 276 applied the assessees will have to pay amounts larger than that by the assessees who were protected by Cl. (2) of Art. 276. This, it was contended, amounted to discrimination, based upon on reasonable classification or differentia, and therefore, violated Art. 14.

Held, that there was no question of violation of Art. 14 coming into the picture, because it was not as if the State had in any manner discriminated as against the assessees. But the differentiation, if any, was really because of the provisions made in the Constitution itself, namely under Art. 276 (2), distinguishing the other kinds of assessments saved under the proviso to Art. 276 (2) as such; and therefore this contention, based upon violation of Art. 14 could not be accepted. **1964 Ker LJ 450.**

——Art. 276 (2), Proviso— Taxation and Finance Rules, R. 19 — Constitution of India, Art. 276 (2), Proviso — Profession tax levied under repealed Act is continued under new Act. See Municipalities — Kerala Municipalities Act (XIV of 1961), S. 2, Sch. II. **1964 Ker LJ 450.**

4. "Any person".

——Art. 276 — Levy of tax on manager of factory — Legality — (Municipalities — Bombay District Municipal Act (III of 1901), S. 59 (1) (b) (xi)).

There is nothing either in the Bomaby District Municipal Act or in the Constitution which prevents the State from levying a tax from a person other than the owner of the commodity which is subjected to a manufacturing process; and if the State is competent to levy a tax from a person other than the owner with the sanction of the State the municipality also is competent by virtue of S. 59 (1) (b) (xi) of the Bombay District Municipalities Act to levy such a tax. A manager of a factory is normally a paid employee and he has no interest either in the factory or the commodity which is subjected to the manufacturing process but the imposition of a liability to pay the tax is not on that account invalid. **60 Bom LR 48 : ILR (1958) Bom 483 : AIR 1958 Bom 487 (489) (Pt A) (Pr 8) (DB).**

[**Overruled** on another point in AIR 1966 SC 249.]

ARTICLE 277

SYNOPSIS

(Constitution of India (1950), Art. 277.)

1. Scope and object of the Article.
2. "Immediately before the commencement of this Constitution."
3. "Continued to be levied".
4. "Until provision to the contrary is made by Parliament by law".
5. "Levy" and "imposition" — Distinction.

1. Scope and object of the Article.

●——**Art. 277** — Corresponding law — Robkar issued by Ijlas-i-khas, Patiala State, on 6-2-1919 is not law corresponding to Central Excises and Salt Act (1944). See Indian Finance Act (1950), S. 13. **AIR 1966 SC 805.**

●——**Arts. 277, 245, 246 and Sch. 7, List II, Entry 5** — State legislature cannot confer higher power on municipal bodies than it has under the Constitution — List II, entry 5 — Interpretation of — Reference to taxation by municipal and other local bodies in Art. 277 — Scope of Art. 277— Reference to legislative practice prevailing before Constitution how far relevant — Rule against excessive delegation of legislative powers equally applies in case of municipal bodies. See Ibid, Art. 245. **AIR 1965 SC 1107.**

●——**Art. 277** —Scope — Art. 372 is subject to Art. 277. See Ibid, Art. 373. **AIR 1964 SC 1172.**

●——**Art. 277 — Taxes — Object of Art. 277— Existing range of taxes are continued — Authority to expand range of taxation is not conferred.**

The sole object sought to be achieved by the provision in Art. 277 for 'continuance' is to avoid dislocation of the finances of the State and local authorities by depriving them of the revenues which they were deriving at the commencement of the Constitution. If so it would mean that the intention was to permit the existing range of the taxes to be continued; it does not mean that the Article conferred on the local bodies authority to expand the range of their taxation by subjecing new items to taxation or by increasing the rates of duties. This consideration apart, it is not possible to read the words 'notwithstanding that the taxes, etc., are mentioned in the Union List' as conferring an unlimited legislative power to impose what in effect would be new taxes though of the same type or nature as existed before the Constitution. AIR 1962 SC 1073, Foll. (1961) Jab LJ 792, Affirmed. Town Municipal Committee, Amraoti Taluq v. Ramchandra Vasudeo Chimote, **(1964) 6 SCR 947 : (1965) 1 SCA 1 : 66 Bom LR 492 : (1964) 1 SCWR 639 : 1964 MPLJ 742 : (1964) 53 ITR 444 : 1964 Mah LJ 609 : 1964 Jab LJ 501 : AIR 1964 SC 1166 (1169, 1170) (Pt A) (Prs 6; 13).**

●——**Arts. 277, 372, 278** — Scope — "Subject to other provisions of the Constitution" — Expression means that if there is conflict between pre-existing law and provision of the Constitution latter will prevail — Art. 372 is subject to Art. 278 — Art. 277 saves existing taxes etc., levied by States, if conditions mentioned therein are complied with — While Art. 372 saves all pre-Constitution valid laws Art. 277 is confined

only to taxes, duties, cesses or fees lawfully levied immediately before Constitution — Art. 372 must be read subject to Art. 277. AIR 1962 Kerala 72 (FB), **Reversed.** See Ibid, Art. 372. **AIR 1964 SC 207.**

● ——**Art. 277** — Scope — Art. 277 is superseded by agreement under Art. 278. See Ibid, Art. 278. **AIR 1964 SC 207.**

● ——**Art. 277** — Proviso to S. 13, Finance Act — Validity — Nothing in Art. 277 to warrant any implication that taxes should continue to be levied, assessed and collected by same State authorities as before Constitution. See Finance Act (1950), S. 13. **AIR 1954 SC 163.**

——**Art. 277 and Schedule VII, List 1, Entry 82 — U. P. Town Areas Act (2 of 1914), S. 14 (1) (f) and Rule 3 framed thereunder — Circumstances and property tax — Nature of — Imposition by Town Area Committee — Validity.**

Circumstances and property tax imposed by the Town Area Committee in pursuance of the power given to it under S. 14 (1) (f) of the U. P. Town Areas Act as amended by Act 23 of 1950 read with R. 3 framed thereunder is purely in the nature of tax on income within the meaning of item 82 of the Union List and as such cannot be imposed by a State or a local body under a State. Since the tax has been imposed after the coming into force of the Constitution it is not protected by Art. 277 of the Constitution. The tax imposed is ultra vires and cannot, therefore, be realised. 1948 ALJ 338 and 1955 ALJ 630, Rel. on. **1961 All LJ 743 : 1961 All WR (HC) 430.**

——**Art. 277** — Savings under — U. P. Act 10 of 1922 which continued to be valid under the Government of India Act, 1935 isvalid even under the present Constitution by virtue of the provisions of Art. 277 and item No. 82 of the Union List. See U. P. District Board Act (X of 1922), S. 108. **AIR 1955 NUC (All) 3522 (DB).**

——**Art. 277 — Applicability — Tax on octroi refunds not transferred from the State List to the Union List — Art. 277 has no bearing on the question of the vires of the tax on octroi refunds.**

Art. 277 of the Constitution saves existing taxes levied by any Municipality on subjects which may have been transferred from the State list to the Union list. In the present case, it is not possible to say that a tax on octroi refunds was transferred from the State list to the Union list. The challenge is that the State Legislature has, under the Act of 1949, restricted the power of the Corporation in a manner which does not permit of any imposition on goods in transit or of the nature of a tax on refunds. S. 5 of the Act of 1925 had the effect of saving that tax on refunds. But the Act of 1949 saved only such taxes as were not inconsistent with the provisions of that Act. Hence, Art. 277 has no bearing on the question of vires. **(1960) 62 Bom LR 71.**

——**Art. 277** — Scope — Taxation laws — Delegation to municipal corporation of power to fix rate of tax, to select cases for exemption and to determine manner of calculation — Validity. See Ibid, Art. 110 (2). **AIR 1959 Cal 704 (DB).**

——**Art. 277 — Scope — (Municipalities — Calcutta Municipal Act (XXXIII of 1951), S. 548 (2) — Imposition under, if saved by Art. 277).**

The scope of Art. 277 is a very limited one. It only deals with situations where under the Constitution a Municipal tax came under the Union List, although at the time of its imposition it was in the Provincial List. If there is no shifting in the allocation between the Union and the State under the Constitution this article has no application.

The protection of Art. 277 cannot extend to a tax which is being levied or sought to be levied under a law which was passed after the Constitution came into force.

Under Art. 277, it is only the provisions of taxation contained in the 1923 Act, which could be saved. The tax imposed by S. 548 (2) of Calcutta Municipal Act, 1951 is not saved by Art. 277. The tax imposed under the 1951 Act may be of the same character as that imposed under the 1923 Act. But they are imposed under different Statutes and must be considered as different impositions altogether. **AIR 1959 Cal 45 (54, 55) (Pt G) (Pr 29).**

[Impliedly **overruled** on another point in AIR 1963 SC 1811.]

● ——**Art. 277 and Sch. 7, List 1, Entry 84** — Travancore Tobacco Act (1 of 1087), S. 31 — Licence fee levied under — Nature of levy — Effect of application of Central Excises and Salt Act to Travancore State from 1-4-1950. See Travancore Tobacco Act, S. 31. **AIR 1958 Ker 129 (FB).**

[**Reversed** on another point in AIR 1962 SC 922.]

——**Art. 277 — Art. 277 is only a saving provision — Terminal tax on goods — Inclusion of new items for levying tax and variation of rate of Tax on other articles — Amounts to imposition of tax covered by List 1 of Seventh Schedule and not saved by article.**

Art. 277 of the Constitution saves existing taxes, duties etc., levied by State or local authorities on subjects which are now included in the Union list and only those taxes, duties etc., have been saved which immediately before 26th January 1950 were being lawfully levied. The Article is a saving provision. It does not give any right to any State or Municipal or other authority to impose a tax, or duty etc., mentioned in the Union list. On this construction of Art. 277 a Municipal Committee cannot claim the power to impose a terminal tax on goods on which no such tax was being levied immediately before the commencement of the Constitution. Similarly, it cannot also vary the rate of tax on goods already subjected to a terminal tax as the rate at which a tax is imposed is an integral part of the imposition of a tax. **1961 Jab LJ 792 : 1961 MPC 378 : 1961 MPLJ 937.**

——**Arts. 277, 245, 246 (3) and Sch. VII, List II, Item 5** — Municipalities — Assam Municipal Act (15 of 1957), S. 68 (1) (a), S. 80 — Validity — Power of fixing percentage of tax — Does not amount to delegation of legislative power — Sections not ultra vires the Constitution — According to wording of Art. 277 local authority can be clothed with power to levy tax which includes power to fix rate of tax or to alter tax. See Municipalities — Assam Municipal Act (1957) S. 68 (1) (a). **AIR 1962 Manipur 28.**

——**Art. 277** — Punjab Municipal Act (3 of 1911), Ss. 61 (2) and 62 (10) (as amended by Government of India Adaptation of Indian Laws Order 1937) — Imposition of terminal tax by Delhi Municipal authorities in 1947, on goods not consumed, used or sold within municipal limits — Not illegal. See Municipalities — Punjab Municipal Act (3 of 1911), S. 61 (2). **AIR 1960 Punj 497.**

● ——**Art. 277 — Effect of—(Finance Act (1950), S. 13) — (Cochin Income-tax Act (1117), S. 44) — (Travancore Income-tax Act (1121), S. 47).**

The combined effect of Art. 277 of the Consti-

tution and S. 13 of the Finance Act, 1950, is to effect a valid continuance of the operation of the Cochin Income-tax Act, 1117 and the Travancore Income-tax Act, 1121 for the purposes of the levy, assessment and collection of income-tax and super-tax in respect of the period indicated in S. 13. A. N. Lekshmana Shenoy v. Income-tax Officer, **ILR (1953) TC 1232 : 1953 Ker LT 725 : AIR 1954 Trav-Co 137 (138) (Pt C) (Pr 9) (FB).**

2. "Immediately before the commencement of this Constitution".

●——**Art. 277 — Travancore-Cochin General Sales Tax Act published in the Gazette of 17-1-1950 but coming into force on 30-5-1950.**

The Travancore-Cochin General Sales Tax Act was published in the Gazette on January, 17, 1950, but was brought into force only on May, 30, 1950, i.e., after the commencement of the Constitution. It follows that the tax under the Act would not be saved, as the necessary condition that the levy should have been lawfully made before the Constitution was not satisfied. South India Corporation (P.) Ltd. v. Secretary, Board of Revenue, Trivandrum, **1963 Ker LJ 937: (1963) 2 Ker LR 312 : (1963) 2 SCWR 401 : (1964) 15 STC 74 : (1964) 2 SCJ 415 : AIR 1964 SC 207 (210) (Pt A) (Pr 9).**

——**Art. 277 — "Levied" — Meaning of —Hundis drawn in former Gwalior State—No Stamp duty payable under Gwalior Stamp Act — Admissibility in evidence — (Indore Stamp Act Adaptation Act (V of 1950), S. 4) — (Indore Stamp Act, Sch. I, Art. II).**

Per Dixit, J.:— There is in the subject of legal taxation a real distinction between the imposition of a tax and the levy or collection thereof. The imposition of a tax which is by an Act of the competent Legislature is an act which is done once for all and is not an act which like the levy is done continuously or periodically. In the context of Art. 277 the word 'levy' can only mean collection. Therefore the only natural and proper construction that can be placed on the expression "which immediately before the commencement of this Constitution were being lawfully levied" is "which immediately before the commencement of the Constitution were being actually collected under some law sanctioning the collection". Therefore, the stamp duty on bills of exchange under Act No. 5 of 1950 which became operative on 29th January, 1950 not being one which was being levied before the commencement of the Constitution is not saved under Art. 277. **1956 Madh BLJ 740 : Madh BLR 1956 Civil 597 : ILR (1956) Madh B 339 : AIR 1956 Madh B 177 (179, 180, 182) (Pt B) (Prs 5, 7, 9, 29, 44) (DB).**

——**Art. 277** — Applicability — Madras Government Notification No. 941, dated 18th November, 1952, imposing duty on medicinal preparations, validity— As neither the Legislature nor Government of Madras had on that day any competence to impose duty on medicinal preparations, imposition under notification is not within saving of Art. 277 and must be held to be ultra vires'. See Ibid, Art. 162. **AIR 1954 Mad 643 (DB).**

3. "Continued to be levied".

●——**Art. 277 — 'Continue to be levied' and 'to be applied to the same purposes'— Interpretation of — 'Levy' does not in the context mean imposition of tax.**

The import of the words 'may continue to be levied' in Art. 277 may be summarised in these terms: (1) the tax must be one which was lawfully levied by a local authority for the purpose of a local area, (2) the identity of the body that collects the tax, the area for whose benefit the tax is to be utilised and the purpose for which the utilization is to take place continue to be the same and (3) the rate of the tax is not enhanced nor its incidence in any manner altered, so that it continues to be the same tax.

From the mere fact that a State enactment, e.g., the C. P. and Berar Municipalities Act, 1922, S. 66 (1) (o) has authorised a municipality to levy a tax it cannot be said that a tax which had never been imposed was 'being lawfully levied' by the municipality. Section 66 merely enabled the Municipal Committee by appropriate procedure to impose the tax. If this power had been availed of and a charge had been imposed it would be a different matter. So long as the Municipal Committee did not pass the necessary resolutions and impose the tax there was no charge levied on the commodity, so that it could not be said that the tax 'was being lawfully levied' before the commencement of the Constitution. The words 'was being lawfully levied' mean 'was actually levied' and it would not be sufficient to satisfy those words that the Municipal authority could lawfully levy the tax, but had not availed itself of that power. The last portion of Art. 277 uses the words 'continue to be levied' and 'to be applied to the same purposes'. By reason of this collection between the concept of the levy and of application of the proceeds of the tax, the Constitution makers intended the word 'levy' to be understood as including the collection of the tax, for it is only when a tax is collected that any question of its application to a particular purpose would arise. It is apparent that if the word 'levied' was understood, in the sense of an imposition, that is charging of a tax, there could be no 'application' of the proceeds of the tax to the same purposes as at the commencement of the Constitution. AIR 1950 Madh B 177, Approved. Town Municipal Committee, Amraoti Taluq v. Ramchandra Vasudeo Chimote, **(1964) 6 SCR 947 : (1965) 1 SCA 1 : 66 Bom LR 492 : (1964) 1 SCWR 639 : 1964 MPLJ 742 : (1964) 53 ITR 444 : 1964 Mah LJ 609 : 1964 Jab LJ 501 : AIR 1964 SC 1166 (1170, 1171) (Pt B) (Prs 8, 9, 10).**

●——**Art. 277** — "Continue to be levied" — Interpretation — Whether confers power on Provincial Legislature to legislate for continuance of tax — Provincial Legislation empowering local authority to levy terminal tax — Repeal after commencement of Government of India Act, 1935— Absence of saving clause in new legislation as to levy of terminal tax — Subsequent amendment conferring such power with retrospective operation from repeal of earlier Act — Validity — Amendment, if saved by S. 143 (2), Government of India Act. See Government of India Act (1935), S. 143 (2). **AIR 1962 SC 1073.**

●——**Art. 277 — Central Provinces Local Self-Government Act (4 of 1920), S. 51** — C. P. and Berar Local Government Act (38 of 1948) — Government of India Act (1915), S. 80-A (3) — Coal tax originally imposed under S. 51 on March 2, 1935 was valid and continued to be valid after Government of India Act, 1935 and the Constitution — Government of India Act (1935), Ss. 143, 292. See Central Provinces Local Self-Government Act (4 of 1920), S. 51. **AIR 1961 SC 964.**

——**Art. 277 and Seventh Schedule List I, Entry 84 and List II, Entry 51 — Bengal Excise Act (5**

of 1909), S. 29-A — Medicinal preparations containing alcohol — Excise duty imposed by State Government before Constitution—Evasion of such duty is punishable under Bengal Excise Act.

Although after the Constitution has come into force no fresh excise duty can be imposed on medicinal preparations containing alcohol by a State Government and this must be done by the Central Government, the excise duty,if any, imposed before the Constitution came into force by the Provincial Government on such medicines, is saved by Art. 277 and S. 29-A of the Bengal Excise Act as amended by the West Bengal Adaptation of Existing Laws Order. Accordingly, if any duty on medicinal preparations was lawfully leviable by the West Bengal Government before the Constitution came into force, it will continue to be leviable and any evasion of such duty will be punishable under the provisions of the Bengal Excise Act. **ILR (1956) 2 Cal 22.**

●——**Art. 277** — Sales Tax — T. C. General Sales Tax Act (XI of 1125), Ss. 2 (e), 2 (f), 2 (k), 2 (1); 3 — T. C. General Sales Tax Rules (1950), R. 4 (3) — Levy of sales tax on works contract — Validity after coming into force of the Constitution — Act and rules held saved by Arts. 372 and 277 — State can claim benefits of the Article and continue the tax. See Sales Tax — T. C. General Sales Tax Act (XI of 1125 M. E.), S. 2 (e). **AIR 1962 Ker 72 (FB).**

[**Reversed** in AIR 1964 SC 207.]

——**Arts. 277, 245 and 246— (Sales Tax—Travancore-Cochin General Sales Tax Act (1125)) — "Continued to be levied" — Levy of sales tax in respect of works contract — Legality.**

Sales tax in respect of works contracts was being levied immediately before the commencement of the Constitution under the provisions of the Cochin General Sales Tax Act XV of 1121, in the Cochin area and under the provisions of the Travancore General Sales Tax Act 1124, in the Travancore area of the Travancore-Cochin State. Those Acts were repealed only by S. 27 of the Travancore-Cochin General Sales Tax Act, 1125, when it came into force on the 30th May, 1950. Such a tax can continue to be levied after the commencement of the Constitution. AIR 1953 Raj 145, Rel. on. **1957 Ker LT 380 : (1957) 8 STC 347 : 1957 Ker LJ 349 : ILR (1957) Kerala 462 : AIR 1957 Kerala 146 (150) (Pt C) (Prs 13, 15) (DB).**

[**Overruled** in AIR 1958 SC 560.]

——**Arts. 277 and 278 (1) (a) — Tax under Gwalior War Profits Tax Ordinance — Levy of — Agreement between President and Rajpramukh — Validity — Gwalior War Profits Tax Ordinance (2001).**

Per Shinde, C. J. :— Article 277 is not relevant in considering whether the War Profits Tax could be assessed and realised for the accounting period that ended on 30-6-46. But the Ordinance is still in force by virtue of Art. 278 (1) (a). The Madhya Bharat authorities for War Profits Tax can assess and realize the War Profits Tax after the 26th of January, 1950 by virtue of Art. 278 (1) (a), and the agreement entered into thereunder. The financial agreement entered into between the President and the Rajpramukh on 25th February, 1950 is valid in law.

Per Dixit, J. :— The tax under the Gwalior War Profits Tax Ordinance is a tax which was being lawfully levied by the Madhya Bharat Government immediately before the comencement of the Constitution and as such in view of Art. 277 the Madhya Bharat Government is entitled to continue to levy and collect it after the commencement of the Constitution from the persons liable to pay the tax under the Ordinance. The tax is not a tax leviable in the sense in which the word "leviable" is used in Art. 278 (1) (a). **AIR 1953 Madh Bha 20 (21, 22, 25, 26) (Pt B) (Prs 3, 6 19, 21) (DB).**

●——**Art. 277** — Central Excises and Salt Act (1944), S. 1 — Act extended to State of Rajasthan from 1-4-1950 — Arrears of cotton excise duties due to State of Rajasthan for period before 1-4-1950 — Arrears cannot be said to be assets or rights under Art. 295 (1) which could be taken over by Union Government. See Ibid, Art. 295 (1). **AIR 1953 Raj 145 (FB).**

[**Reversed** on another point in AIR 1961 SC 683].

4. "Unitil provision to the contrary is made by Parliament by law."

●——**Art. 277** — Medicinal and Toilet Preparations (Excise Duties) Act (1955), S. 21 — Rules under Act, Rules 143, 141 — Hyderabad Abkari Act (I of 1316-F) — Hyderabad Medicinal Preparations and Spirituous Rules (1345-F), R. 36 — Rule 36 is repealed and not saved by proviso to S. 21 — Act came into force from 1-4-57 and is law made otherwise by Parliament within meaning of Art. 277 — Hence duties and other charges levied by State in connection with medicinal preparations could no longer be levied by it. See Medicinal and Toilet Preparations (Excise Duties) Act (1955), S. 21. **AIR 1964 SC 1870.**

●——**Art. 277 and Sch. VII, List I, Entry 84 — Medicinal and Toilet Preparations (Excise Duties) Act (1955), Ss. 2 (g), 3 and 31 and Sch., Item 1 — Ayurvedic preparations — Preparations held to be medicinal preparations within S. 2 (g) of Act — Excise duty levied on such preparations by State Government — Continuity of this power and its termination —On enactment of Act, this power no longer vests in State Governments.**

The duties levied on the medicinal and toilet preparations by the State Governments continued to be levied by the State Governments by virtue of the provisions contained in Art. 277 of the Constitution of India, even though the power to levy such duty, which vested formerly in the States by virtue of Item 40 in List 2 of Sch. VII of the Government of India Act, 1935, has, under Entry 84 in List I of Sch. VII of the Constitution of India, now been vested in the Central Government. Art. 277 also provided that this power of the State continued until provision to the contrary is made by Parliament by law, which it did by enacting the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and bringing it into force on 1st April 1957. The consequence of this enactment is that the power of the States to levy duties any further on medicinal and toilet preparations came to an end in view of Art. 277 of the Constitution. S. 21 of the Act has repealed any State law corresponding to the Central Act. The effect of this repeal is that the Excise Acts of the various States under which duty was being levied on medicinal and toilet preparations containing alcohol must be deemed to have been repealed, in so far as they apply to such medicinal and toilet preparations.

There can thus be no question of medicinal and toilet preparations being liable to duty under the Central Act as well as the various Excise Acts in force in the States.

Held, that the three Ayurvedic preparations, namely, Mritasanjibani, Mritasanjibani Sudha and Mritasanjibani Sura were medicinal preparations

as defined in S. 2 (g) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. They were also capable of being used as ordinary alcoholic beverages. They would, therefore, fall under the Central Act and would be liable to duty under Item 1 of the Schedule to the Central Act. As these preparations are medicinal preparations, they will be governed by the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and the omission of these preparations from the list appended to the Rules framed under the Act will not make any difference to their being medicinal preparations within the meaning of the Act. Adhyaksha Mathur Babu's Sakti Oushadhalaya Dacca (P.) Ltd. v. Union of India. **1963 Mad WN 211: (1963) 3 SCR 957: (1963) SCD 566: (1963) 2 SCJ 491: (1963) 2 An WR (SC) 118: (1963) 2 MLJ (SC) 118: (1963) 2 SCA 359: AIR 1963 SC 622 (625, 626, 627, 628, 629) (Prs 6, 7, 9).**

● ——**Arts. 277, 278 — Arrears of Excise duty and Rajasthan Ordinance (XXV of 1949) — Union of India entitled to levy and recover arrears of Excise duty on cloth held in stock or manufactured before 1st April, 1950 — ILR (1953) 3 Raj 128: AIR 1953 Raj 145 (FB), Reversed.**

Article 277 is in the nature of a saving provision permitting the States to levy a tax or a duty which, after the Constitution, could be levied only by the Centre. But Article 277 must yield to any agreement made between the Government of India and the Government of a State in Part B in respect of such taxes or duties, etc. The provision to the contrary contemplated by Art. 277 was made by the Finance Act, XXV of 1950, Section 11, which extended the Central Excises and Salt Act, 1944, alone with other Acts to the whole of India except the State of Jammu and Kashmir. But that section has effect only from April 1, 1950 and therefore, does not apply to the arrears of duty of excise in controversy. The agreement envisaged by Art. 278 was entered into on February 25, 1950. Union of India v. Maharaja Kishanagarh Mills, Ltd., **(1961) 3 SCR 524 : (1961) 2 SCJ 202: AIR 1961 SC 683 (687, 688) (Pt B) (Pr 6).**

——**Arts. 277 and 372 (1) — Export tax imposed under Bikaner Municipal Act — Validity — (Municipalities — Rajasthan Town Municipalities Act (XXIII of 1951), Ss. 2 (b), 59 — Scope).**

The Constitution had come into force before the Rajasthan Town Municipalities Act of 1951 was passed. After the coming into force of the Constitution, the legislature of Rajasthan could not impose a tax which was not covered by Lists II and III of the Constitution. When Section 2 (b) of the Act lays down that all taxes imposed shall be deemed to have been imposed under this Act, it can only refer to such taxes which can be imposed by the State Legislature under its powers in List II and List III. Residuary clause in Section 59 cannot authorise the imposition of a tax which it was not within the power of the State Legislature to impose at all under Lists II and III. Export tax which was imposed by the Notification of the 29th of July, 1933, cannot be deemed to have been continued by Section 2 (b) of the Act which repealed the Bikaner Municipal Act. It, therefore, follows that even if this export tax could continue under Art. 277 so long as the Bikaner Act was in force by virtue of Art. 372, it must be deemed to have come to an end when the Rajasthan Act was passed in 1951. Hence export taxes levied by the Municipality of Karanpur by virtue of notification, dated the 29th of July, 1933, or any other notification shall no longer be levied and collected. 1954 Raj LW 430, Dist. **1956 Raj LW 214: ILR (1956) 6 Raj 160: AIR 1957 Raj 226 (229, 230) (Pt G) (Prs 14, 15, 17) (DB).**

5. "Levy" and "imposition" — Distinction.

——**Art. 277** — "Levy" and "imposition" — Distinction pointed out. See Ibid, Art. 265. **AIR 1953 Madh Bha 20 (DB).**

ARTICLE 278

●——**Arts. 278, 294 and 295** — Scope — Agreement, dated 7-4-1947 by former Ruler of Gwalior State to grant exemption from payment of tax to certain corporation — Contractual obligation devolving on Part B State of Madhya Bharat due to constitutional changes and ultimately on Government of India by virtue of Art. 295 (1) (b) — Art. 295 (1) (b) does not cast any constitutional obligation on Government of India to fulfil it and it can be affected by law validly passed by Parliament — Agreement, dated 25-2-1950 between President of India and Madhya Bharat with regard to continuance of such privileges and immunities — Effect of — Income Tax Act (1922), Section 60-A — Finance Act (1950), Section 13 — Part B States (Taxation Concessions) Order (1950), Cl. 16 — Effect of, is to supersede agreement, dated 7-4-1947 — Company held not entitled to claim exemption from payment of Income-tax by virtue of that agreement — AIR 1960 Madh Pra 330, **Reversed;** AIR 1963 SC 953 and AIR 1964 SC 1495, Rel. on. Union of India v. Gwalior Rayon Silk Mfg. (Wvg.) Co., Ltd. **(1965) 2 SCJ 41: (1964) 7 SCR 892: (1964) 53 ITR 466: (1964) 9 Fac LR 124: AIR 1964 SC 1903 (1914, 1915, 1916, 1917, 1918, 1919, 1920) (Pt B) (Prs 22, 23, 26, 28, 30, 33).**

●——**Arts. 278, 277 — Scope — Art. 277 is superseded by agreement under Art. 278.**

The effect of the provisions in Art. 278 is that to the extent covered by an agreement the power of the State Government to continue to levy taxes under Art. 277 is superseded. AIR 1961 SC 683. Foll. South India Corporation (P.) Ltd. v. Secretary, Board of Revenue, Trivandrum, **1963 Ker LJ 937: (1963) 2 Ker LR 312: (1963) 2 SCWR 401: (1964) 15 STC 74: (1964) 2 SCJ 415: AIR 1964 SC 207 (210, 211, 212) (Pt B) (Pr 10).**

●——**Art. 278 — Agreement dated 25-2-1950 between President of India and Rajpramukh of the State of Travancore-Cochin — Effect — Agreement did not exclude taxes which State was authorised to levy for temporary period — Constitution (Seventh Amendment) Act (1956) did not affect validity of the agreement.**

The agreement, dated 25-2-1950 entered into between the President of India and the Rajpramukh of the State of Travancore-Cochin incorporated the recommendations made by the Indian State Finance Enquiry Committee with some modifications. The loss arising to the State on account of the federal financial integration in the State was ascertained and a provision was made for subsidizing the State by filling up the said revenue-gap. It would be unreasonable to construe the agreement as to exclude from its operation certain taxes which the State was authorized to levy for a temporary period. Though Art. 278 was omitted by the Constitution (Seventh Amendment) Act, 1956, the agreement entered into in exercise of a power thereunder did not come to an end and thereafter the power of the State to levy the tax did not come in to life again. The validity of an agreement depends upon the existence of power at the time it was entered into. Its duration will be limited by its terms or by the conditions imposed on the power itself. Article 278 conferred a power upon the Union and the B State to enter into an agreement which would continue in force

for a period not exceeding ten years from the commencement of the Constitution. The agreement in question fell squarely within the scope of the power. That agreement therefore, would have its full force unless the Constitution (Seventh Amendment) Act, 1956, in terms avoided it. The said amendment was only prospective in operation and it could not have affected the validity of the agreement. South India Corporation (P), Ltd. v. Secretary, Board of Revenue, Trivandrum, **1963 Ker LJ 937: (1963) 2 Ker LR 312: (1963) 2 SCWR 401: (1964) 15 STC 74: (1964) 2 SCJ 415: AIR 1964 SC 207 (212, 213) (Pt C) (Pr 11).**

●——**Art. 278** — Scope — "Subject to other provisions of the Constitution" — Expression means that if there is conflict between pre-existing law and provision of the Constitution latter will prevail — Art. 372 is subject to Art. 278. See Ibid, Art. 372. **AIR 1964 SC 207.**

●——**Art. 278** — Arrears of Excise duty on cloth recoverable from manufacturer in Rajasthan upto 31-3-50 under Rajasthan Ordinance 25 of 1949— Whether can be recovered by Union Government after 1-4-50 — Article 277 whether bars Union Government's right to realise such arrears—Effect of agreement entered into between President of India and Raj Pramukh of Rajasthan on 25-2-50. AIR 1953 Raj 145 (FB), **Reversed.** See Ibid, Art. 277. **AIR 1961 SC 683.**

●——**Art. 278** — 'Assessment', meaning of — If includes reassessment — Effect of recommendations of Finance Inquiry Committee — Section 13 (1), Finance Act, not void—Recommendations do not bring Section 13 (1) into conflict with Arts. 278 and 295 of the Constitution. See Finance Act (1950), S. 13 (1). **AIR 1958 SC 795.**

——**Arts. 278 and 277** — Tax under Gwalior War Profits Tax Ordinance—Levy of—Agreement between President and Rajpramukh—Validity—Gwalior War Profits Tax Ordinance (2001). See Ibid, Art. 277. **AIR 1953 Madh Bha 20 (DB).**

——**Art. 278** — Validity of Section 13, Finance Act, 1950 — Contravention of Agreement between the President and Raj Pramukh. See Finance Act (1950), Section 13. **AIR 1955 Mys 49 (DB).**

——Arts. 278, 291, 295 and 306 — Report of Indian States Finances Enquiry Committee — If 'law'.

It is erroneous to say that the Report of the Indian States Finances Enquiry Committee acquired the force of law when its recommendations were accepted by the President and the Raj Pramukh under agreement, dated 25-2-1950 in accordance with the provisions contained in Arts. 278, 291, 295 and 306. The Courts will take cognizance of the agreement so far as it relates to matters specified in Arts. 278, 291, 295 and 306 of the Constitution. **ILR (1959) 9 Raj 984: 1960 Raj LW 44 : AIR 1960 Raj 92 (99) (Pt E) (Pr 40) (DB).**

●——**Arts. 278 and 295—Recovery of arrears of cotton excise duty in Rajasthan.**

The Union of India is not entitled to levy and recover arrears of excise duty on cotton cloth, held in stock or manufactured before 1-4-1950, by the mill manufacturing cotton cloth in Rajasthan, by virtue of Arts. 278 and 295 of the Constitution of India, and the agreement entered into between the President of India and the Rajpramukh of Rajasthan on 25-2-1950. Maharaja Kishangarh Mills Ltd. v. Union of India, **ILR (1953) 3 Raj 128: 1953 RLW 381: AIR 1953 Raj 145 (149) (Pt A) (Pr 16) (FB).**

[**Reversed** in AIR 1961 SC 683.]

●——**Art. 278 (1) (a) — "Duty leviable by Government of India."**

In view of Art. 277 cotton excise duty was actually leviable by the State of Rajasthan up to 31-3-1950 because Parliament made the contrary provision only from 1-4-1950 by extending the application of the Central Excises and Salt Act 1944 to Rajasthan. Therefore, for the period before 1-4-1950, cotton excise duty cannot be said to be duty leviable by the Govt. of India within the meaning of Art. 278 (1) (a) so far as the State of Rajasthan is concerned. Hence Art. 278 can have no application with respect to a duty which was leviable by the State of Rajasthan up to 31-3-1950. Maharaja Kishangarh Mills, Ltd. v. Union of India, **ILR (1953) 3 Raj 128: 1953 RLW 381: AIR 1953 Raj 145 (148, 149) (Pt C) (Pr 12) (FB).**

[**Reversed** on another point in AIR 1961 SC 683.]

——**Arts. 278 and 295** — Travancore Income Tax Act (1121), Section 47 — Power to be reassessed is saved by Section 13, Finance Act — (Finance Act (1950), Section 13) — There is nothing in Arts. 278 and 295 or agreement between President of Union and Rajpramukh of Travancore-Cochin which militates against this — (Words and Phrases — "Levy, assessment and collection" includes "reassessment"). See Travancore Income-tax Act (1121), Section 47. **AIR 1957 TC 303.**

ARTICLE 281

——Arts. 281, 123 (2) (a), 151 and 213 (a) — Madras Motor Vehicles Rules (1940), Rule 134-A — Validity of — Non-compliance with Section 133 (3) of Act 4 of 1939 — Effect of — "Shall be laid before the Parliament" — Meaning of — (Interpretation of Statutes) — (Words and Phrases) — (Motor Vehicles Act (1939), Section 133 (3)).

Where the statute makes the laying of the rules before Parliament a condition precedent or the resolution of the Parliament a condition subsequent, there is no difficulty as, in the former case, the rule has no legal force at all till the condition precedent is complied with and in the later case, it ceases to have force from the date of non-compliance with the conditions subsequent. See Madras Motor Vehicles Rules (1940), R. 134-A. **AIR 1956 Andhra 129.**

ARTICLE 282

——Arts. 282 and 226 — Expenditure of public money for defence of Government servants in criminal prosecution — Prohibition of — Issue of writ.

Where the accused, Government servants, are being prosecuted under Section 500/109, Penal Code and the Sessions Judge takes the view that the acts complained of were not committed by the accused in the discharge of their official duties, the accused, not having challenged that view, are bound by it. The Government, however, not being a party to the proceedings in the Court below, cannot be said to be strictly bound by the decision of the Sessions Judge and, therefore, is entitled to give the benefit of Rule 189 to the accused.

Apart from that, a tax payer has no right to challenge expenditure of public monies by Government. Article 282 of the Constitution confers a very wide discretion on a State Government. If the Government purports to spend money for a purpose which it characterises as a public purpose though in point of fact it is not a public purpose the proper place to criticise the action of the Government would be the legislature or the Appropriation Committee. It is not permissible to the High Court to interfere with the powers of the Govern-

ment in this respect under Art. 226 of the Constitution. AIR 1949 Bom 229, Distinguished. (1923) 262 U. S. 447, Rel. on. AIR 1955 SC 549, Followed. **(1960) 1 Fac WR 63 : ILR (1960) Bom 941 : 1960 Nag LJ 538 : 62 Bom LR 880 : AIR 1961 Bom 167 (168, 169) (Prs 4, 5, 7) (DB).**

——**Art. 282** — S. 76 (4), Madras Hindu Religious and Charitable Endowments Act (19 of 1951) for payment of expenses of administration of Religious Endowments by Government does not violate Art. 282 — Hence Act cannot be held void on that ground — (Madras Hindu Religious and Charitable Endowments Act (19 of 1951), Section 76). **66 Mad LW 947 : 1953 Mad WN 807: (1953) 2 Mad LJ 699: ILR (1955) Mad 356: AIR 1954 Mad 385 (391, 393) (Pt B) (Prs 9, 13) (DB).**

ARTICLE 285

●——**Arts. 285 (1), 289 (1), 245, 366 (28), 265, Sch. 7, List I, Items 83, 84, 41 and 42**—Immunity of property and income of States from Union taxation — Scope and extent of — Levy of customs duties (export or import) and excise duties by Union on property of State — Levy not covered by exemption and can be validly imposed. See Ibid, Art. 289 (1). **(1964) 1 ITJ 671 : (1964) 2 SCJ 51: (1964) 2 SCA 97: (1964) 3 SCR 787: AIR 1963 SC 1760.**

——**Art. 285 (2) — Liability of Railway to continue paying taxes levied by Municipality.**

Where the Municipal Board had levied the house-tax and water tax on the property of the Railway long before the commencement of the Constitution and this tax continued to be paid till 31-3-1953, then in the absence of any law since the enforcement of the Constitution providing otherwise, the liability for the payment of the tax by the Railway continues in view of the provisions of Art. 285 (2) of the Constitution. **ILR (1957) 1 All 455: 1957 All LJ 531: 1957 All WR (HC) 601: AIR 1957 All 452 (454) (Pt C) (Pr 6) (DB).**

——**Art. 285 (2) — Scope — Increase in quantum of Municipal tax — Competency.**

Any variation of the quantum of Municipal tax based on an increase in the value of the property or additions made to that property is covered by Cl. (2) of Art. 285 of the Constitution. AIR 1948 Cal 116, Rel. on. **1957 All LJ 531 : 1957 All WR (HC) 601: AIR 1957 All 452 (454) (Pt D) (Pr 10) (DB).**

——**Art. 285** — Taxation of Railway Administration — Procedure. See Municipalities — U. P. Municipalities Act (II of 1916). **1953 All LJ 497: 1953 All WR (HC) 613: AIR 1954 All 56 (DB).**

——**Art. 285 (2) — Construction — Consideration of previous law — (Interpretation of Statutes).**

In view of the clear language of Art. 285 (2), the Article should be construed on its language without reference to any extraneous consideration, such as the history of the legislation. **ILR (1958) 1 Cal 404: AIR 1957 Cal 548 (549) (Pt A) (Pr 4) (DB).**

——**Art. 285 (2) — "Treated as liable" — Meaning of — Central Government property taxed by Municipal Corporation for period immediately before Constitution — Validation of — (Government of India Act (1935), Section 154, Proviso).**

Union property would be liable to a particular local tax under Art. 285 (2) of the Constitution if, at the relevant date namely, immediately before the commencement of the Constitution, it was, in fact, assessed to such tax as Central Government property and the same was being actually paid The phrase "treated as liable" has the same legal meaning in both the proviso to Section 154 of the Government of India Act, 1935 and Cl. (2) of Art. 285 of the Constitution.

Held on the facts that as the properties were actually assessed to municipal tax, and such tax was being paid and realised also, immediately before the commencement of the Constitution and as the Parliament had not otherwise provided under Art. 285 (2), the properties were "treated as liable" to such tax on that date. AIR 1948 Cal 116 (2), Rel. on. **ILR (1958) 1 Cal 404: AIR 1957 Cal 548 (550) (Pt B) (Prs 10, 11) (DB).**

——**Art. 285 — Buildings or land belonging to Union of India — Exemption from local tax — (Government of India Act (1935), Section 154) — (Municipalities — Calcutta Municipal Act (XXXIII of 1951), Section 165).**

The corporation, under the Calcutta Municipal Act, does not value land and building in a premises separately for purposes of assessment of the consolidated rates. But this is only material when considering as to what property was subject to exemption under the relative provisions of the Government of India Act, 1935 (Section 154) and the Constitution of India (Art. 285). Whether it is building or land, the exemption has to operate, if it belongs to the Union. **61 Cal WN 912: AIR 1957 Cal 431 (436) (Pt A) (Pr 19).**

——**Art. 285 — Property of Union of India — (Municipalities — Calcutta Municipal Act (33 of 1951), Section 165).**

What constitutes 'property' of the Union will be a question of fact, and will not depend upon the way in which a municipality may choose to impose its rates and taxes. **61 Cal WN 912: AIR 1957 Cal 431 (437) (Pt B) (Pr 24).**

——**Art. 285 — Taxing property of Union and apportioning payment thereof — Distinction — Lease of Union property — Power of Calcutta Corporation to levy tax on interest of lessee in leased property — (Municipalities — Calcutta Municipal Act (33 of 1951), S. 165).**

There is a distinction between levying a tax on the property of the Union and apportioning the payment between the owner and the occupier, and levying a tax directly on the interest of the lessee or occupier although it is an interest carved out of the property of the Union.

Under the Calcutta Municipal Act, 1951 the property is valued and assessed as a whole irrespective of the fact as to who is the owner or the occupier, and then the liability is apportioned between the owner and the occupier. In effect, it is a tax on the 'property', which must be taken to mean the property of the owner, but part of the tax is realised from the occupier. **61 Cal WN 912: AIR 1957 Cal 431 (437) (Pt C) (Pr 24).**

——**Art. 285 — Power of Calcutta Corporation to levy tax on property of Union of India — (Municipalities — Calcutta Municipal Act (33 of 1951), Section 165).**

The present law does not enable the State Legislature or the Corporation of Calcutta to levy the consolidated rate or any part thereof upon the interest of the lessee in the property belonging to the Union of India. The State Legislature has not yet made an appropriate law enabling the Corporation to levy any part of the consolidated rates directly upon the lessee of a property belonging to the Union. **61 Cal WN 912: AIR 1957 Cal 431 (437) (Pt D) (Pr 25).**

——**Art. 285** — Railways (Local Authorities' Taxation) Act (1941), Sections 4, 3 — Distinction be-

tween — Railway property liable to taxation before 1937 — Section 4 applies — Fresh notification not necessary (Government of India Act (1935), Section 154). See Railways (Local Authorities' Taxation) Act (1941), Section 4. **AIR 1959 Pat 216.**

ARTICLE 286

SYNOPSIS

(Constitution of India (1950), Art. 286)

1. Constitution (Sixth Amendment) Act, 1956 — Object and effect.
2. Scope and object of the Article.
3. Interpretation of the Article.
4. Clause (1).
5. Clause (1) (a).
6. Clause (1) (a), Explanation — Before Constitution (Sixth Amendment) Act, 1956.
7. Sale and purchase in course of import and export — Clause (1) (b).
8. Clause (2) — Inter-State sales — Before Constitution (Sixth Amendment) Act, 1956.
9. Clause (2), Proviso — Before Constitution (Sixth Amendment) Act, 1956.
10. Clause (2) — Inter-State sales — After Constitution (Sixth Amendment) Act, 1956.
11. Clause (3) — Sale of essential commodities.
12. Validity of sales-tax laws — Illustrative cases.

1. Constitution (Sixth Amendment) Act, 1956 — Object and effect.

This article has been radically amended by the Constitution (Sixth Amendment) Act, 1956. The original Art. 286 is reproduced below for convenience of reference:—

"286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation.— For the purposes of sub-cl. (a) a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce:

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

By the above-mentioned amendment, the Explanation to Cl. (1) of the article was omitted, and Cls. (2) & (3) were replaced by new Cls. (2) and (3). The object of the amendment is as follows: There was a conflict of views as regards the interpretation of the article, and this conflict of views existed even in the decisions of the Supreme Court. The conflict related to the question whether a State had the power to impose tax on a sale or purchase of goods in transactions of an inter-State character, when the imposition of such tax was not authorised by law by Parliament. According to the decision of the Supreme Court in the State of Bombay v. United Motors (India) Ltd., AIR 1953 SC 252, a State had the power of imposing such taxes irrespective of any authority from a law made by Parliament, provided that the goods were actually delivered within the State for the purpose of consumption. This view proceeded upon the basis that under Cl. (1) of the article the State within which the sale or purchase took place had the power of imposing a tax on it and under the Explanation to the clause the State within which the goods were actually delivered for consumption was the State within which the sale took place in the case of inter-State sales. This power of the State was not affected by the provision in Cl. (2) that except as might be otherwise provided by law by Parliament, a State has no power to impose a tax on a sale or purchase which took place in the course of inter-State trade or commerce. But this view was overruled by the Supreme Court in Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661, in which it was held that, in the absence of a law by the Parliament under Cl. (2) of the article empowering a State to tax sales and purchases in the course of inter-State trade and commerce, a State could not tax an inter-State sale or purchase merely because under Cl. (1) Explanation, it was the State within which the sale must be deemed to have taken place by reason of the goods having been actually delivered for consumption within its borders. Thus, the position was arrived at that none of the States concerned in an inter-State sale or purchase could tax it in the absence of Parliamentary legislation authorising it to do so. Sales-tax being a State subject, the Centre also could not tax such sales. Thus, inter-State sales escaped althogether all liability for taxation either by the States or the Centre, as a result of the ruling of the Supreme Court in the Bengal Immunity Co.'s case.

The amendments introduced by the Constitution (Sixth Amendment) Act, 1956, now have solved this difficulty by making taxation of sales and purchases in the course of inter-State trade and commerce an exclusively Central subject.

This has been done by inserting Entry 92-A in Schedule VII, List I and amending Schedule VII, List II, Entry 54 by making it subject to the provisions of the new Entry 92-A of List I. Connected changes are also made in Art. 269. Under sub-cl. (g) which has been added to Cl. (1) of that Article, taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce, shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in Cl. (2) of the article. By Cl. (3) of Article 269 which has been newly added to that article by the Constitution (Sixth Amendment) Act, 1956, Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce. In virtue of this power, Parliament has enacted Section 3 of the Central Sales Tax Act, 1956, which lays down the principles for determining when

a sale or purchase takes place in course of inter-State trade and commerce.

It may also be noted that the Constitution (Sixth Amendment) Act, 1956, has omitted Explanation to Cl. (1) which had laid down the principle for determining in what State a sale or purchase should be deemed to have taken place in the case of transactions of an inter-State character. But under the amended Art. 286, the old Cl. (1) except the Exaplanation, which has been deleted, continues in force so that even under the amended article a State has no power to tax a sale or purchase which takes place outside its borders. Hence, even under the amended article, it is necessary to determine when a sale or purchase of goods should be deemed to take place outside the State. With regard to this question, Cl. (2) of the amended article provides that, Parliament may by law formulate the principles for determining when a sale or purchase of goods takes place outside a State. In virtue of this power, Parliament has enacted Sec. 4 of the Central Sales Tax Act, 1956 which lays down the principles for determining when a sale or purchase of goods can be said to take place outside a State. It will be seen that Section 4 is substantially different from the old "Explanation" to Cl. (1) and avoids the overlapping of inter-State and intra-State sales.

As Cl. (1) of Art. 286 is retained except for the omission of the Explanation, even under the amended article a State is prohibited from taxing a sale or purchase taking place in the course of export or import of the goods from or into India. The amendments introduced by the Constitution (Sixth Amendment) Act, 1956, now give the power to Parliament to lay down by law the principles for determining when a sale or purchase of goods takes place in the course of their export or import out of or into India. (See Art. 286, Clause (2)). In virtue of this power, Parliament has enacted Section 5 of the Central Sales Tax Act, 1956, laying down the principles for determining when a sale or purchase takes place in the course of export or import of the goods out of or into India. It will be seen that Section 4 of that Act substantially embodies the principles settled by the decisions of the Supreme Court in State of Travancore-Cochin v. Bombay Co. Ltd. (AIR 1952 SC 366) and State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory, (AIR 1953 SC 333).

As already seen, the Constitution (Sixth Amendment) Act, 1956, has replaced the old Cls. (2) and (3) by new Cls. (2) and (3). The old Cl. (2) provided that except in so far as Parliament might by law otherwise provide, a State could not tax a sale or purchase taking place in the course of inter-State trade or commerce. The changes made in regard to this matter have already been noted above. As regards the old Cl. (3) it has been replaced by the new Cl. (3). There are two important points of difference between the old Cl. (3) and the present Cl. (3):

(i) The old Cl. (3) referred to the sale and purchase of goods declared by Parliament by law to be essential for the life of the community. The present Cl. (3) refers to goods declared by Parliament by law to be of special importance in intra-State trade and commerce;

(ii) The old Cl. (3) provided that any State law imposing a tax on the goods mentioned would not have effect unless it had received the President's assent. Under the present Cl. (3) any State law, imposing a tax on the sale or purchase of goods mentioned, would be subject to the restrictions and conditions that might be imposed by Parliament by law.

The following is the Statement of Objects and Reasons in connection with the amendments above referred to:

Statement of Objects and Reasons.

"While 'taxes on the sale or purchase of goods other than newspapers' is an entry in the State List, Art. 286 of the Constitution subjects the States' power to impose such taxes to four restrictions, of which two are total and two are partial. Under Cl. (1) of the article, a State is debarred from imposing such a tax when the sale or purchase takes place outside the State or in the course of import into, or export from, the country. With regard to the first restriction, namely, the non-taxability of sales outside the State, an explanation is given in the clause that 'a sale or purchase shall be deemed to have taken place in the State in which goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State.' Then, under Cl. (2), a State is debarred from imposing the tax on inter-State sales except in so far as Parliament may otherwise provide. Lastly, under Cl. (3), Parliament is authorised to declare the goods which are essential to the life of the community, and when such a declaration has been made, any law made by a State Legislature imposing a tax on the sale or purchase of those goods has to receive the President's assent in order to be effective.

"High judicial authorities have found the interpretation of the article a difficult task and expressed divergent views as to the scope and effect, in particular, of the Explanation in Cl. (1) and of Cl. (2). The majority view of the Supreme Court in the State of Bombay v. United Motors (India) Ltd., 1953 SCR 1069 : (AIR 1953 SC 252), was that sub-cl. (a) and the Explanation in Cl. (1) prohibited the taxation of a sale involving inter-State elements by all States except the State in which the goods are delivered for the purpose of consumption therein, and furthermore, that Cl. (2) did not affect the power of that State to tax the inter-State sale even though Parliament had not made a law removing the ban imposed by that clause. This resulted in dealers resident in one State being subjected to the sales tax jurisdiction and procedure of several other States with which they had dealings in the normal course of their business. Two and a half years later, the second part of this decision was reversed by the Supreme Court in the Bengal Immunity Co., Ltd. v. State of Bihar, (1955) SCA 1140: (AIR 1955 SC 661), but here too the Court was not unanimous.

"In pursuance of Cl. (3) of the article, Parliament passed an Act in 1952 (The Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952. This Act is now repealed by S. 16 of the Central Sales Tax Act, 1956), declaring a number of goods like foodstuffs of various kinds, cloth, raw cotton, cattle feeds, iron and steel, coal, etc., to be essential to the life of the community. Since this declaration could not affect pre-existing State laws imposing sales tax on these goods, the result was a wide disparity from State to State, not only in the range of exempted goods, but also in the rates applicable to them.

"The Taxation Enquiry Commision, after examining the problem with great care and thoroughness have made certain recommendations which may be summarised as follows. In essence, sales tax must continue to be a State source of revenue and its levy and administration must substantially pertain to the State Governments. The sphere of power and responsibility of the State may, however, be said to end, and that of the Union to begin, when the sales tax of one State impinges,

administratively on the dealers, and fiscally on the consumers, of another State. Broadly, therefore, inter-State sales should be the concern of the Union, but the responsibilities pertaining to the Union could be exercised through the State Governments, and in any case the revenue should appropriately devolve on them. Intra-State sales, on the other hand, should be left to the States, but with one important exception. Where, for instance, raw material produced in a State is important from the point of view of the consumer or the industry of another State certain restrictions have to be placed on the taxing power of the State Government, as otherwise it can effect an increase in the cost of the manufactured article, whether such manufacture takes place in the State which produces the raw material, or in another State which imports the material from that State. In either case, to the extent that the finished goods are consumed in a State other than the one which taxes the raw material, the increase in cost on account of the tax is a matter of direct concern to the consumer of another State. Such cases of intra-State sales should appropriately be brought under the full control of the Union. These recommendations of the Commission have been generally accepted by all the State Governments.

"The object of this Bill is to give effect to the recommendations of the Commission as regards the amendment of the constitutional provisions relating to sales-tax.

"In Cl. 2, it is proposed to add a new Entry 92-A in the Union List placing taxes on inter-State sales and purchases within the exclusive legislative and executive power of the Union, and to make Entry 54 of the State List 'subject to the provisions' of this new entry.

"In Cl. 3, it is proposed to add these taxes to the list given in Cl. (1) of Art. 269, so that, although they will be levied and collected in accordance with an Act of Parliament, they will not form part of the Consolidated Fund of India, but will accrue to the States themselves in accordance with such principles of distribution as may be formulated by Parliament by law. A further provision is proposed in Art. 269 expressly empowering Parliament to formulate by law principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.

"It is proposed in Cl. 4 to omit from Cl. (1) of Art. 286 the Explanation which has given rise to a great deal of legal controversy and practical difficulty. In view of the centralisation of inter-State sale tax proposed in Cl. 2 of this Bill, Cl. (2) of Art. 286 in its present form will cease to be appropriate. In its place it is proposed to insert a provision empowering Parliament to formulate principles for determining when a sale or purchase of goods takes place (a) outside a State, or (b) in the course of import of the goods into the territory of India, or (c) in the course of export of the goods out of the territory of India.

"It is further proposed to replace Cl. (3) of Art. 286 by a new clause on the lines recommended by the Taxation Enquiry Commission. Under this revised clause Parliament will have the power to declare by law the goods which are of special importance in inter-State trade or commerce and also to specify the restrictions and conditions to which any State law (whether made before or after the Parliamentary law) will be subject in regard to the system of levy, rates and other incidents of the tax on the sale or purchase of those goods."

2. Scope and object of the Article.

■ ——**Art. 286** — Marginal note to Art. 286 of Constitution is unlike other Acts. Part of Constitution and furnishes clue to meaning and purpose of Article — (Civil P. C. (1908), Pre.). See Interpretation of Statutes. **AIR 1955 SC 661.**

■ ——**Art. 286 — Scheme of the article.**

There are four separate and independent restrictions placed upon the legislative competency of the State to make a law with respect to matters enumerated in Entry 54 of List II of the 7th Schedule. In order to make the ban effective and to leave no loophole the Constitution-makers have considered the different aspects of sales or purchases of goods and placed checks on the legislative power of the States at different angles. Thus in Cl. (1) (a) of Art. 286 the question of the situs of a sale or purchase engaged their attention and they forged a fetter on the basis of such situs to cure the mischief of multiple taxation by the States on the basis of the nexus theory. In Cl. (1) (b) they considered sales or purchases from the point of view of our foreign trade and placed a ban on the States' taxing power in order to make our foreign trade free from any interference by the States by way of a tax impost. In Cl. (2) they looked at sales or purchases in their inter-State character and imposed another ban in the interest of the freedom of internal trade. Finally, in Cl. (3) the Constitution-makers attention was revetted on the character and quality of the goods themselves and they placed a fourth restriction on the States' power of imposing tax on sales or purchases of goods declared to be essential for the life of the community. These several bans may overlap in some cases but in their respective scope and operation they are separate and independent. They deal with different phases of a sale or purchase but, nevertheless they are distinct and one has nothing to do with and is not dependent on the other or others. The State's legislative power with respect to a sale or purchase may be hit by one or more of these bans. Bengal Immunity Co., Ltd. v. State of Bihar. **(1955) SCJ 672: ILR 34 Pat 905: (1955) 6 STC 446: (1955) 2 SCR 603: 1955 SCA 1140: (1955) 2 MLJ (SC) 16: 1955 Andhra WR (SC) 422: AIR 1955 SC 661 (676, 677) (Pt I) (Pr 24).**

■ ——**Art. 286 — Purpose of.**

The different parts of the Article look upon sales and purchases from different perspectives and place different bans on the taxing power of the States at different angles. The circumstance that the bans may in given cases overlap is no justification for concluding that the subject-matter of the different provisions is the same. It is not correct to say that the only purpose of Art. 286, is to eliminate multiple taxation. Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905: (1955) 6 STC 446: (1955) 2 SCR 603: (1955) SCJ 672: 1955 SCA 1140: (1955) 2 MLJ (SC) 168: 1955 Andhra WR (SC) 422: AIR 1955 SC 661 (686, 708) (Pt S) (Prs 44, 105).**

■ ——**Art. 286 — Tax on purchase.**

A transaction of sale or purchase is not a unilateral transaction but a bilateral one and when it is looked at from the point of view of a sale or purchase it is one transaction which has two facets. From the point of view of a seller it is a sale transaction and from the point of view of a purchaser it is purchase transaction. When therefore, the transaction is one on which a tax on sale or purchase can be levied it does not necessarily mean that only a sales-tax can be levied and not a purchase-tax. The inside dealer may therefore, be taxed on his purchases or if he sells in retail to actual consumers in the State he may be taxed on the sales. Bengal Immunity

Co., Ltd. v. State of Bihar. **ILR 34 Pat 905: (1955) 6 STC 446: (1955) 2 SCR 603: (1955) SCJ 672: 1955 SCA 1140: (1955) 2 MLJ (SC) 168: (1955) Andhra WR (SC) 422: AIR 1955 SC 661 (710) (Pt X) (Pr 110).**

●——**Art. 286 and Sch. VII, List 2, Entry 54 — Tax on sale.**

If a sale or purchase takes place outside a State, the State Legislatures under the State List, have power to make laws with respect to tax on the sale or purchase of goods. On this general power Art. 286 places four restrictions, namely, that no law of a State shall impose or authorise the imposition of tax on the sale or purchase of goods when such sale or purchase takes place (1) oustide the State, (2) in the course of import or export, (3) in the course of inter-State trade and commerce, and (4) in respect of essential commodities. State of Trav-Co. v. S. V. C. Factory, **(1953) SCJ 471: (1953) 2 MLJ 123: 66 Mad LW 611: 1954 SCR 53: ILR (1954) TC 1: 1954 SCA 1059: AIR 1953 SC 333 (352) (Pt E) (Pr 59).**

——**Art. 286 (1) and (2) — Scope and applicability.**

Clauses (1) and (2) of Art. 286 of the Constitution are prohibitory clauses, laying down restrictions on the power of a State Law to impose or authorise the imposition of a tax on sales or purchases of goods. Clause (1) inter alia restricts the power of a State law to impose a tax to such sales or purchases as do not take place outside the State. What are sales outside a State is laid down in the Explanation which forms part of Cl. (1) of Art. 286 of the Constitution. Such a sale or purchase cannot be taxed by another State except the State in which the sale is deemed to have taken place because of the actual delivery of goods for consumption in that State. Clause (2) of Art. 286 deals with another aspect: Under that clause all sales in the course of inter-State trade or commerce are exempt from sales-tax except to the extent that Parliament may by law otherwise provide. This limitation on the power of a State law to impose tax on sales or purchases taking place in the course of inter-State trade or commerce is a separate and distinct ban on imposition of tax apart from the ban imposed by Cl. (1) (a) of that Article.

If either of the two limitations placed by Cl. (1) or Cl. (2) of Art. 286 of the Constitution comes into play, the State Law cannot tax such a sale or purchase.

If the imposition of tax is banned under Cl. (1) (a), it is immaterial whether the imposition of that tax is or is not banned under Cl. (2) of Art. 286. Even Cl. (1) (a) of Art. 286 deals with cases of inter-State trade and commerce and places a ban on taxation by State law of sales or purchases by all States other than the State in which, in such cases, the goods are actually delivered for consumption in that State. If this ban of Cl. (1) comes into operation, the non-applicability of the ban under Cl. (2) of Art. 286 becomes immaterial and the taxation of the sale by the State law must be held to be void. AIR 1953 SC 252. Discussed and Rel. on. **ILR (1956) 1 All 107: 1955 All LJ 19: (1955) 6 STC 77: AIR 1955 All 99 (101, 102) (Pt A) (Prs 3, 4).**

——**Art. 286 — Article applies to laws made subsequent to, as well as to laws existing prior to, commencement of Constitution.**

The language of Art. 286 makes it clear that the ban is imposed on every "law of the State" without making a distinction whether that law existed at the commencement of the Constitution or has been passed since the Constitution came into force. Wherever in the Constitution, it was intended that the ban should be only on future laws, the language used has specifically dealt with the making of a law by a State and the use of the word made in that connection for one form or the other has been brought in to make it clear that such provisions of the Constitution would govern only future laws. Where the words used are 'law of a State' these words are comprehensive enough to cover existing laws as well as laws made after the commencement of the Constitution. **ILR (1956) 1 All 107: 1955 All LJ 19: (1955) 6 STC 77: AIR 1955 All 99 (103, 104) (Pt D) (Pr 7).**

——**Art. 286** — Whole of Art. 286 is imported into Explanation 2 to Section 2 (k), Hyderabad Sales Tax Act. See Sales Tax — Hyderabad General Sales Tax Act (XIV of 1950), Section 2 (k), Explanation 2. **(1960) 1 Andh WR 145.**

——**Art. 286** — Scope — Section 22, Madras General Sales Tax Act — Explanation to section if can be read as explanation to definition of sale — Effect of Section 2 — Sales Tax Laws Validation Act. See Sales Tax — Madras General Sales Tax Act (IX of 1939), Section 2 (h). **AIR 1958 AP 109 (DB).**

——**Art. 286 — Restrictions imposed on States' power to impose tax on sales.**

Article 286 puts various restrictions upon the competence of the State Legislature to impose tax on the sale or purchase of goods. The first restriction is that it cannot tax a sale or purchase which takes place outside the State. It cannot tax a sale or purchase where goods are delivered for consumption outside the State. Further, it cannot tax sales or purchases, even though they may be inside the State, if the sales or purchases are in the course of the import of the goods into, or export of the goods out of, the territory of India. Finally, it cannot tax sales or purchases, even though they may have taken place inside the State, if the sales or purchases are in the course of inter-State trade or commerce. **55 Bom LR 246: 1953-4 STC 10 (DB).**

[**Reversed** on another point in AIR 1953 SC 252 which itself was **Overruled** in AIR 1955 SC 661.]

——**Arts. 286 and 226 — Retrospective effect.**

Article 286 of the Constitution of India cannot affect the levy or collection of tax in respect of the periods before the date on which the Constitution came into force. It is not possible to exercise the powers under Art. 226 to examine the correctness of the orders of assessment in respect of pre-Constitution period. The Press Note issued by the Government of Madras on 9th January, 1954, relates solely to cases of sales-tax in respect of transactions after the date of the Constitution. **1959 Ker LJ 780: (1959) 10 STC 422: 1959 Ker LT 930: 1959 Ker LR 1030: AIR 1960 Ker 138 (139) (Pr 2).**

——**Art. 286** — Article does not mean that the powers of Part C States legislature are left unobstructed. See Ibid, Art. 246 (4). **AIR 1965 Madh Pra 11 (DB).**

——**Arts. 286 and 264 (b)** (before Constitution (Seventh Amendment) Act of 1956) — 'State' — Interpretation — Word 'State' used in Art. 286 must be read otherwise than as limited by Art. 264 (b) — Art. 286 applies to Part C States also. AIR 1951 Vin Pra 8 and 1957 AC 436 and AIR 1920 PC 114 and AIR 1960 SC 971 and AIR 1955 SC 661 and 1940 AC 613 and (1891) 1 QB 143 and (1948) 2 All ER 995, Rel. on. **1965 Jab LJ**

85: 1964 MPLJ 836: (1964) 15 STC 841: AIR 1965 Madh Pra 11 (14) (Pt A) (Prs 9, 10) (DB).

——**Art. 286** — Madras General Sales Tax (Turnover and Assessment) Rules (1939), Rule 16 (1) — Tanners entering into contracts with foreign buyers — Delivering bills of lading to banks — Tax is on last purchaser in the State — Dealer held properly taxed — Article 286 held not applicable. See Sales Tax — Madras General Sales Tax (Turnover and Assessment) Rules (1939), Rule 16 (1). **75 Mad LW 128.**

——**Art. 286 (2)** — Power of Parliament to legislate retrospectively. See Ibid, Art. 245. **AIR 1957 Mad 368 (DB).**

——**Art. 286** — Scope. See Sales-tax — Madras General Sales-tax Act (IX of 1939), Section 12-B. **AIR 1955 NUC (Mad) 1562 (DB).**

——**Art. 286** — Scope and applicability. See Sales-tax — Madras General Sales-tax Act (IX of 1939). **AIR 1954 Mad 1030.**

——**Art. 286 — Retrospective effect.**

Article 286 cannot affect assessments made in respect of period prior to 26-1-1950, i.e., the date of the commencement of the Constitution. **(1955) 6 STC 47: 67 MLW 647: AIR 1954 Mad 1030 (1038) (Pt H) (Pr 29).**

——**Art. 286 (1) (a)** — Sale to foreign purchasers before Constitution — Assessability to tax. See Sales-tax — Madras General Sales-tax Act (XXV of 1947), S. 6. **AIR 1954 Mad 1029 (DB).**

——**Art. 286 (1) (b)** — Retrospective operation. See Ibid, Preamble. **AIR 1955 Nag 99 (DB).**

——**Art. 286** — Orissa Sales Tax Act (XIV of 1947), S. 7 — Sales Tax — Exemption — Government has power to exempt — But it can be used only where dealer is liable to tax and not otherwise. See Sales Tax — Orissa Sales Tax Act (XIV of 1947), S. 7. **AIR 1965 Orissa 190 (DB).**

——**Arts. 286, 246 (3) and Sch. 7, List 2, Entry 54** — Govt. of India Act (1935), S. 100 (3) and Sch. 7 List 2 Entry 48 — "For a province or any part thereof". See Government of India Act (1935), S. 100 (3). **AIR 1956 Patna 92.**

——**Art. 286 — Retrospective effect — (Sales Tax— Bihar Sales Tax Act (XIX of 1947), Ss. 2 (g) and 4).**

Art. 286 of the Constitution has no retrospective force. The Article does not affect transactions which are past and closed. The liability to pay sales tax is created by the charging sections and the assessment order only quantifies the liability which has already been created by the charging sections.

Where the Sales tax officer had made orders of assessment on 22nd July, 1949, and 24th September, 1949, for the two periods in dispute the fact that the Commissioner of Chotanagpur disposed of the appeals preferred by the assessee on 29th April, 1950, after the Constitution had come into force was not a material circumstance. The assessments of sales tax upon the assessee under S. 4 (1) read with S. 2 (g), Bihar Sales Tax Act were legally valid and the Commissioner of Chotanagpur was not bound to decide the appeal according to Art. 286 of the Constitution. AIR 1948 PC 118 and AIR 1947 FC 32, Foll. **(1956) 7 STC 158 : 34 Pat 1183 : AIR 1956 Pat 92 (99, 100) (Pt G) (Pr 17) (DB).**

——**Art. 286 — Applicability to Part C States — Sale outside the State — (Sales Tax — Vindhya Pradesh Sales Tax Ordinance (1949), S. 2 (g), Expl. 2).**

The reasons which impelled the Parliament to enact Art. 286 (1) (a) are equally applicable to Part C States. It must, therefore be held that the context of Art. 286 (1) requires that the word 'State' used in it should include Part C States.

Where sales-tax was assessed on the applicant by the State under the V. P. Sales Tax Ordinance (1949), on sales which had taken place outside the State and the goods were, thereafter exported from the State for consumption in another State:

Held, that the State shall not recover the sales-tax from the applicant on goods sold outside the State within the meaning of Art. 286 (1) (a) of the Constitution. AIR 1955 SC 661, Foll. **AIR 1956 Vin-Pra 46 (48) (Pt C) (Prs 9, 10).**

3. Interpretation of the Article.

●——**Art. 286 (2)** — Hardship — Cardinal rule of mitigating hardship should not be discarded, when Constitution itself has expressly provided for another authority, more competent to evaluate correct position to do the needful — (Civil P. C. (1908), Pre.). See Interpretation of Statutes. **AIR 1955 SC 661.**

——**Art. 286** — C. P. and Berar Sales Tax Act (1947), S. 2 (g), Expl. II, as it stood in post-Constitution period — 'Sale' — Explanation does not conflict with Art. 286 of the Constitution. See Sales-tax — C. P. and Berar Sales Tax Act (21 of 1947), S. 2 (g). **AIR 1962 Madh Pra 225.**

——**Art. 286** — Purchase of old gold ornaments by dealer carrying on sarafa business, for conversion into bullion — Whether 'purchase' within S. 2 (ff) — Conversion, if amounts to 'manufacture' as used in S. 2(ff). See Sales Tax — East Punjab General Sales Tax Act (XLVI of 1948), S. 2 (ff). **AIR 1963 Punj 28 (DB).**

——**Arts. 286 and 308 — 'State' — Meaning of.**

Words 'State' in these articles must be deemed to include Part C State. **AIR 1956 Vin Pra 1 (5) (Pt E) (Pr 13).**

4. Clause (1).

——**Art. 286 (1) — Assam Sales Tax Act — Collection of tax under in conflict with Article — Determination of prior rights and obligations prior to 26-1-1950 — (Sales Tax — Assam Sales Tax Act (XIV of 1947), S. 2 (12), Explanation).**

Where the provisions of the first clause to Art. 286 were in conflict with the scheme under which the sales-taxes were collected under the Assam Sales-tax Act, there can be no doubt that to that extent the clause in the Constitution would prevail as and from the date of the Constitution. But for determination of rights and obligations incurred prior to 26-1-1950, the Explanation to S. 2 (12) will be taken to stand on the statute book and treated as good law. The said Explanation was not void from its very inception. On account of its repugnance to Art. 286 of the Constitution, it has become ineffectual and nugatory with effect from 26-1-1950. **AIR 1956 Assam 66 (70, 71, 72) (Pt B) (Prs 11, 14) (DB).**

——**Art. 286 — Sales — Meaning.**

The term 'Sale' has been used in Art. 286 (1) in the sense of transaction of sale and what is emphasised by Art. 286 (1) is not the aspect of passing of property but the aspect of the transaction of sale which consists of various ingredients. **('53) 55 Bom LR 246: (1953) 4 STC 10 (DB).**

[**Reversed** on another point in AIR 1953 SC 252 which itself was **Overruled** in AIR 1955 SC 661].

——**Art. 286** — Sale of unascertained goods — Title held passed to the buyers at the point of delivery of the goods. See Sale of Goods Act (1930), S. 2 (14). **AIR 1961 Mad 216 (DB).**

5. Clause (1) (a).

●——**Art. 286 (1) (a)** — Outside Sale — Goods within State — Sale by auction outside State — Sale held outside State. See (Kerala) General Sales Tax Act (XI of 1125 ME) (1950), S. 2 (j), Expl. (2). **AIR 1965 SC 161.**

●——**Art. 286 (1) (a) and (b)** — Bengal Motor Spirit Sales Taxation (Second Amendment) Act (32 of 1954), S. 2 (a) (i) — Aviation spirit sold in State to foreign bound aircraft can be taxed— It is 'inside sale' — Article 286 (1) (a) and (b) of the Constitution do not apply. See Sales Tax— Bengal Motor Spirit Sales Taxation (Second Amendment) Act (XXXII of 1954), S. 2 (a). **AIR 1961 SC 315.**

●——**Art. 286 — Goods delivered for consumption outside State — Assessee belonging to erstwhile feudatory State — Notification under S. 4 (1), Bihar Sales Tax Act — Validity — Assessment for pre-Constitution and post-Constitution period — Validity of assessment orders — (Sales Tax — Orissa Sales Tax Act (XIV of 1947), Ss. 4 (1) and (2) and 30 (1) (a) (i)).**

Held, on facts (1) that even on the Bengal Immunity decision, AIR 1955 SC 661, the assessments for the post-Constitution period were hit by Cl. 1 (a) of Art. 286 as also S. 30 (1) (a) (i) of the Sales Tax Act and were rightly held to be without jurisdiction. (2) that the assessment orders for the two pre-Constitution quarters were valid.

Per S. R. Das, C. J. and Venkatarama Aiyar, J.:— By the notification issued under S. 4 (1) of the Sales Tax Act the Government of Orissa properly exercised its powers under sub-S. (i) in so far as it appointed March 31, 1949, as the date, but it exceeded its powers by proceeding to say that all dealers whose gross turnover during the year ending March 31, 1949, exceeded Rs. 5,000 should be liable to pay tax under the Act. This part of the notification clearly ran counter to the sub-section itself, for under that sub-section it is only those dealers whose gross turnover exceeded Rs. 5,000 'during the year immediately preceding the commencement of this Act' that became liable to pay the tax. The notification, in so far as it appointed the date was valid and the rest of the notification was invalid. The result is that dealers can be properly brought to charge under the appropriate part of the charging section.

Per S. K. Das and Bose, JJ.:— For a liability to arise under sub-S. (1) of S. 4, the issue of a notification is an essential prerequisite, and unless the notification complies with the requirements of the sub-section, no liability to tax can arise under it. The invalid part of the notification could not be separated from the valid part and therefore, no dealer was liable to pay tax under S. 4 (1); but all requirements of S. 4 (2) having been fulfilled in the case, the two assessment orders for the pre-Constitution period were validly made under that sub-section. Sales Tax Officer, Cuttack v. M/s. B. C. Patel & Co., **(1958) 9 STC 467: (1958) SCJ 1096: 1959 SCR 520: AIR 1958 SC 643 (645, 646, 647, 649, 650, 653, 655) (Prs 5; 6; 8; 14; 16; 26, 33, 34).**

●——**Arts. 286 (1) (a) and 372** — It continues to be in force to the extent it does not contravene any provision of Constitution — Provision permitting State to tax sales, which under Art. 286 (1) (a) must be deemed to take place outside State, has become void. See Sales Tax — U. P. Sales Tax Act (15 of 1948). **1955 All LJ 19: ILR (1956) 1 All 107: 1955-6 STC 77: AIR 1955 All 99 (103, 104) (Pt F) (Pr 7).**

——**Arts. 286 (1) (a) and 226** — Order imposing sales tax in contravention of Art. 286 (1) (a) — Order quashed under Art. 226. See Ibid, Art. 226. **AIR 1955 All 99.**

●——**Art. 286 (1) (a)** — Practice — Assessees being under misapprehension as to onus under Art. 286 (1) (a) of the Constitution failed to adduce evidence — Fresh opportunity must be given to them. **AIR 1961 A. P. 86 (FB).**

——**Art. 286 (1) (a)** — Sales Tax — Madras General Sales Tax Act (9 of 1939) (as applied to Andhra Pradesh), Ss. 3, 18 — Sale of goods outside State for consumption — Not liable to tax — Tax paid is under mistake of law — Suit against State for its recovery lies under S. 72, Contract Act — Limitation starts from date of final assessment — S. 18 not applicable to such suit. See Sales Tax — Madras General Sales Tax Act (9 of 1939) (As applied to Andhra Pradesh), S. 3. **(1960) 11 STC 460 (Andhra Pra).**

——**Arts. 286 (1) (a), 286 (2), 286 (1) (a), Explanation (before Sixth Amendment in 1956) Inter-State trade or commerce — Essentials — Explanation sale and sale under Art. 286 (2) — Distinction — Explanation sales are inside sales in spite of movement of goods from one State to another — Particular transaction whether an explanation sale — Is a question to be determined on its facts — Law as to sales tax on inter-State trade or commerce — History traced — Bengal Finance (Sales Tax) Act (VI of 1941), S. 2 (g). Explanation (2) (Before its amendment in 1959).**

The essential characteristic of inter-State trade or commerce consists in the movement of goods from one State to another across the border. This characteristic of sale in course of inter-State, trade or commerce is also emphasised in the Central Sales Tax Act, 1956. Doubt may still arise whether the scope of Art. 286 (2) and the Explanation to Art. 286 (1) (a) of the Constitution overlap each other. Under the Explanation sales also there may be movement of goods across the border from one State to another, yet the fictional outside situs of sale takes them out of the category of sales and converts them into sales within the taxing State. The position, therefore, is that if the transaction falls within the notional definition of sale as in the Explanation to Art. 286 (1), it does not fall within Art. 286 (1) (a) and if the transaction, being an Explanation Sale is to be deemed to be sale inside the taxing State, there happens to be no sale or purchase in the course of inter-State trade or commerce, within Art. 286 (2): AIR 1961 SC 347, Rel. on.

The question whether a particular transaction falls within the category of Explanation Sales or within the category of inter-State trade or commerce or within the category of sales outside the taxing State is a question of fact to be objectively ascertained on evidence in each case and cannot be determined on abstraction of legal principle. **68 Cal WN 1: AIR 1964 Cal 477 (483 to 486) (Prs 31, 32, 34).**

——**Art. 286 (as it was prior to its amendment in 1956) — Sale in course of inter-State trade and commerce — Tests laid down to satisfy conditions of — Sales Tax — Bengal Finance (Sales Tax) Act (6 of 1941), S. 5.**

In explaining the unamended Art. 286 of the Constitution the Supreme Court has laid down the following tests in order to satisfy the conditions of sale in course of inter-State trade and Commerce, namely, (a) the transaction must involve movement of goods across the border; (b) the transaction is to be inter-State in which as

a direct result of such sale goods are delivered for consumption into another State; and (c) there must be a sale of goods and the contract of sale must involve transport of goods from one State to another under the contract of sale. AIR 1955 SC 661 and 765 and 786, Rel. on.

On the question when a sale or purchase takes place outside the State, within the meaning of Art. 286 (1) (a), it has been held that the key to the problem is afforded by two indications, in the Article itself: (1) the opening words of Art. 286 (1) which speak of a sale or purchase taking place and (2) the non-obstante clause in the Explanation which refers to the general law relating to 'sale of goods under which property in the goods has, by reason of such sale or purchase, passed in another State'. These two together indicate that it is the passing of property within the State, that is intended to be fastened on, for the purpose of determining, whether the sale in question is 'inside' or 'outside' the State, and, therefore, subject to the operation of the 'Explanation' that State in which property passes would be the only State which would have the power to levy a tax on the sale. Where the property in the goods passes within a State as a direct result of the sale, the sale transaction is not outside the State for the purpose of Art. 286 (1) (a), unless the Explanation operates. The power of the State to impose the tax might still not be available unless the transaction in question is unaffected by the other bans imposed under sub-cls. (1) (b), (2) and (3) of Art. 286, AIR 1961 SC 347, Foll.

Held, taking the nature of the transaction and the preliminaries necessary for the sale and purchase of cements, that the sale occasioned movement of goods from one State to another, and also, regard being had to mode of delivery agreed upon the transactions amounted to "non-explanation" sales. **('63) 67 Cal WN 323.**

——Art. 286 (1) (a) — Sale of railway wagons in West Bengal — Delivery in West Bengal — If liable to sales tax in West Bengal — (Sales Tax — West Bengal Finance (Sales Tax) Act (VI of 1941), S. 4).

Under the general law, the place of sale of goods for purposes of taxability to sales-tax is the place where the goods are situated at the time of sale, i.e. at the time when the property in the goods passed.

In this case at the time of the contract of sale of the railway wagons, the wagons were not specific or ascertained. They were subsequently manufactured and were appropriated to the contract of sale. At the time of such appropriation the wagons were located in the State of West Bengal. The property in the goods passed to the Western Railway within the State of West Bengal.

Held, (1) that for purposes of taxability the sale took place in the State of West Bengal; (2) that even though the goods were meant for consumption in several States, yet consumption not being an ingredient of sale, it could not be said that the sale took place in any of the State where the consumption was to take place; (3) that but for Art. 286 (1) (a) the State of West Bengal had undoubted power to tax the sales and the seller relying upon the restriction imposed by Art. 286 (1) (a) had failed to establish that the sale took place outside the State of West Bengal; (4) that the levy of the tax on the sales had been validated by the Sales Tax Laws Validation Act, 1956, even though such sales were sales in the course of inter-State trade or commerce. **ILR (1960) 2 Cal 886: (1960) 11 STC 47: AIR 1960 Cal 424 (427, 428) (Pt D) (Prs 10, 17, 18, 20, 21) (DB).**

——Art. 286 — Order for wagons accepted in Calcutta — Wagons to be delivered in company's work siding in West Bengal — Payment to be made in Calcutta — Wagon meant for railway situated wholly outside West Bengal — Sale — If liable to sales tax in Bengal — (Sales Tax — Sales Tax Laws Validation Act (1956), S. 2) — (Sales-tax — Bengal Finance (Sales Tax) Act (VI of 1941), Ss. 2 (g) and 27).

Held, on facts (1) that the sale in the case was not an outside sale as contemplated by Art. 286 (1) (a) because it could not be said that the wagons were delivered outside West Bengal for consumption and as delivery was within West Bengal, the sale could not be called an 'explanation sale'. (2) that, as the contract contemplated that the rolling stock would be moved beyond the boundaries of the State the transaction constituted an inter-State and not an intra-State trade or commerce and, as such, would have been exempted under the provisions of Art. 286 (2), but the sale being within the particular period covered by the Sales Tax Laws Validation Act which removed the ban imposed by S. 27 of the Sales Tax Act on the power of taxation in respect of such sale, the power of the State to tax such sale was revived and, accordingly, the Sales Tax Authorities were within their rights in imposing sales-tax upon the transaction in question. **(1959) 9 STC 553: AIR 1960 Cal 25 (27, 30, 31, 32) (Prs 15, 26, 27, 28).**

——Art. 286 — Scope — International or inter-State trade — Bengal Excise Act — Effect of. See Ibid, Sch. VII, List 2, Entry 51. **AIR 1958 Cal 203.**

——Art. 286 (1) (a) — Outside and inside sale — What is — Lex situs is the determining factor for deciding nature of sale — S. 2 (j) of Travancore-Cochin Act (XI of 1152), not unconstitutional. See Sales Tax — Kerala Sales Tax Act (XI of 1152 T. E.), S. 2 (j), Expl. 2. **ILR (1961) 2 Ker 116.**

[**Reversed** in AIR 1965 SC 161.]

——Art. 286 (1) (a) (prior to its amendment in 1956) — 'Consumption' — Use of tobacco for bidis is 'consumption' within Art. 286 (1) (a) — M. P. Sales Tax Act (XXI of 1947), S. 4 (6) — Does not offend Art. 286 (1) (a).

Section 4 (6) of the M. P. Sales Tax Act, 1947, does not offend Art. 286 (1) (a) of the Constitution and is not ultra vires and not unconstitutional on that ground.

The use of tobacco for the production of commercially different articles like bidis must be regarded as 'consumption' within the meaning of Article 286 (1) (a). AIR 1961 SC 213, Rel. on.

Section 4 (6) cannot also be assailed on the ground that the price paid for the purchase of goods has been included as part of the turnover of the assessee when the goods are despatched for sale outside the limits of the State. By such inclusion, the incidence of taxation is not sought to be altered from tax levied on sale to tax levied on purchase. It only prescribes a method of ascertaining the sales tax on goods which have been purchased for sale within the limits of the State and then have been despatched for sale, outside the State. 1957-8 STC 575 (Bom), Rel. on. **1962 MPC 216: 1962 MPLJ 935: AIR 1962 Madh Pra 245 (253, 254) (Pt C) (Prs 20, 21) (DB).**

——Art. 286 (1) (a) (as amended in 1956) — Contract of sale entered in Madras State — Goods

delivered for consumption outside Madras State — Madras State cannot tax such sale of goods— Art. 286 (1) (a) of Constitution applies. See Sales tax — Madras General Sales Tax Act (IX of 1939), S. 3. **(1965) 1 Mad LJ 282 : (1964) 15 STC 804 : ILR (1965) 1 Mad 503.**

——Art. 286 (1) (a) — Ban under Article — Sales-tax— Madras General Sales Tax Act (IX of 1939), S. 3.

Where the goods were delivered to buyers outside the State for consumption in the delivery State the sale is an outside sale within the meaning of Art. 286 (1) (a) of the Constitution; the ban under Art. 286 (1) (a) would operate and it would render the sale not liable to tax in the State. **(1964) 15 STC 807 : (1965) 1 Mad LJ 284.**

——Art. 286 (1) (a) — Goods delivered to buyers outside the Madras State for consumption in the delivery State — Not liable to Madras Sales Tax levy.

Where goods are delivered to buyers outside the State of Madras for consumption in the delivery State it would suffice to attract the ban under Art. 286 (1) (a) of the Constitution and render them not liable to tax in the Madras State. Merely because the goods were in the Madras State at the time of sale it cannot be said that Explanation (2) to S. 2 (h) of the Madras Sales Tax Act of 1939 will be attracted and make such sales taxable in the Madras State. **(1965) 1 MLJ 284 : (1964) 15 STC 807.**

——Art. 286 (1) (a) — Ban on State's power to fix sales where goods are delivered outside the Madras State for consumption in delivery State — Scope.

Where the actual deliveries of goods were made outside the Madras State, and the goods besides being delivered to places outside the Madras State were also intended for consumption in the delivery States the ban provided in Art. 286 (1) (a) of Constitution prohibiting a State from taxing a sale which took place outside the State, would apply. **(1965) 1 MLJ 282 : ILR (1965) 1 Mad 503 : (1964) 15 STC 804.**

——Art. 286 — Madras General Sales Tax Act (1939), S. 3 — Transaction held did not take place in the State of Madras. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 3. **AIR 1957 Mad 762.**

——Art. 286 (1) (a) — Inter-State sales before 31st March, 1951 — Assessability to tax. See Sales-tax — Madras General Sales Tax Act (XXV of 1947), S. 22. **AIR 1955 NUC (Mad) 1561 (DB).**

——Art. 286 (1) — Contract for sale of bamboos by dealer in Orissa — Goods booked from station in Orissa in name of buyer as consigner for delivery to third party outside Orissa — Part payment of price to be made on delivery of railway receipt — Ownership in goods whether passed in Orissa — Sales whether completed in Orissa so as to come within taxing power of Orissa State — Burden of proof. See Sales Tax — Orissa Sales Tax Act (XIV of 1947), S. 2 (g). **ILR (1961) Cut 571.**

——Art. 286 — Sales effected in Punjab State occasioning movement of goods sold to State of Jammu & Kashmir — Sales held inter-State sales and liable to Central Sales-tax — Imposition of tax held not violative of Art. 286. See Sales Tax — Central Sales Tax Act (1956), (before its amendment by Amending Act 5 of 1958), S. 1 (2). **(1965) 67 Pun LR 891.**

——Art. 286 (1) (a) — Scope.

If the sales are outside the State so as to bring the case within the ambit of Cl. (a) of Art. 286 (1) or even if the sales are not outside the State but within, nevertheless for the purpose of consumption in another State in India so as to bring the case within the ambit of the explanation to Art. 286 (1), the sales would be immune from assessment to sales-tax. **1953 Ker LT 441 : AIR 1953 Trav-Co 556 (557) (Pr 1).**

6. Clause (1) (a), Explanation — Before Constitution (Sixth Amendment) Act, 1956.

●**——Art. 286(1), Expl.** — Goods delivered outside State of Andhra for purpose of consumption in State in which goods are delivered — Andhra State has no right to tax such sales in view of Explanation to Article 286 (1) of Constitution — Expression 'actually delivered' in Art. 286 (1) (a) Expl. — Meaning — Goods held on facts of case, to have been delivered outside Andhra State — Andhra State held not entitled to levy sales tax on them — S. 39 (1), Sale of Goods Act held inapplicable. See Madras General Sales Tax Act (IX of 1939), S. 3. **AIR 1966 SC 376.**

●**——Art. 286 — Explanation — Delivery within State Railway Receipts against payment for goods consigned to places outside the State for consumption outside the State — If goods can be deemed to be 'actually delivered' within the State authorising levy of Sales-tax — Sale of Goods Act (III of 1930), S. 39 — Applicability.**

No doubt under section 39 of the Sale of Goods Act where, in pursuance of a contract of sale, the seller is authorised to send the goods to the buyer delivery of the goods to a carrier for the purpose of transmission to the buyer, is prima facie deemed to be delivery of the goods to the buyer. But that provision will not make mere delivery of the railway receipts representing title to the goods 'actual delivery of goods' for the purpose of Art. 286 of the Constitution. The rule contained in S. 39 (1) of the Sale of Goods Act raises a prima facie inference that the goods have been delivered if the conditions prescribed thereby are satisfied, it has no application in dealing with a constitutional provision which while imposing a restriction upon the legislative power of the States entrusts exclusive power to levy sales-tax to the State in which the goods have been actually delivered for the purpose of consumption. M/s. Shree Bajarang Jute Mills Ltd. v. The State of Andhra Pradesh, **(1964) 2 SCJ 540 : (1964) 2 Mad LJ (SC) 122 : (1964) 2 Andh WR (SC) 122 : (1964) 15 STC 430 : (1964) 1 SCWR 405 : (1964) 6 SCR 691 : AIR 1966 SC 376 (379, 380) (Prs 7, 8, 9, 10).**

●**——Art. 286 (1) (a), Expl. — Scope of explanation — Auction sale of full lots of tea by samples at place X in Madras State —Money accepted and delivery order handed over to buyers at X — Mere physical delivery of tea taken at place Y in Travancore-Cochin State — Tea sent to other parts of India or exported outside — Sale amounts to an outside sale and not taxable under T. C. Act — Explanation not applicable —Sale of Goods Act (1930), Ss. 64, 2 (14) — T. C. General Sales Tax Act (XI of 1125), S. 3.**

The Explanation to Art. 286 (1) of the Constitution, creates a fiction as between two States, one where the goods are delivered for consumption in that State and the other where the title in the goods passed and the former is treated as the situs of the taxable event to the exclusion of the latter.

Where the nature and procedure of sales of teas was this, that the teas stored in the godowns at Willingdon Island which was in the State of Travancore-Cochin, and samples of those teas, etc., were taken to Fort Cochin which at the relevant time was in the State of Madras. By the samples the teas were sold by public auction in lots, some were purchased in their entirety and others in parts and after the consideration money was paid at Fort Cochin, delivery orders were given to the buyers addressed to the godown-keepers at Willingdon Island and actual delivery of tea was taken there. These teas were then sent out from Willingdon Island for consumption either in other parts of India or were exported out of India.

Held, that as regards the sales of teas in full lots the goods being specified goods the property in them passed to the buyer under S. 64 of the Sale of Goods Act as soon as the offer was accepted on fall of the hammer at Fort Cochin in the State of Madras and therefore, the only State which would have the power to levy a tax on such sale would be the State of Madras and so far as Travancore-Cochin was concerned the sale would be an outside sale. AIR 1961 SC 347, Foll. (2) Apart from that money was paid there and the delivery order was also received there even though the actual physical delivery of goods was made at Willingdon Island in the State of Travancore-Cochin. The fiction created by the Explanation to Art. 286 (1) (a) was inapplicable because there was no delivery as a direct result of sale for the purpose of consumption in any particular State. ILR 1960 Ker 1395. **Reversed.** (3) That the same consideration applied to the goods which were exported outside India from Willingdon Island and they also could not be said to be sales inside the State of Travancore-Cochin. Thomas & Co. Ltd. v. Deputy Commissioner of Agricultural I. T. and S. T. Trivandrum, **1963 Ker LJ 615 : (1963) Ker LT 1064 : (1963) 1 SCWR 410 : (1964) 1 SCJ 373 : (1963) Supp 2 SCR 608 : (1963) 14 STC 363 : AIR 1964 SC 569 (571, 572) (Prs 9, 10, 11).**

●——Art. 286 (1) (a), Expln. (as it was before 1956) — Applicability — Contract of sale — Delivery effected in State of Travancore-Cochin to ultimate consumer — Travancore-Cochin General Sales Tax Act (1125), S. 6 — Notification under, dated 5th February, 1954.

Held, on facts (1) that the sale fell within the Explanation to Art. 286 (1) (a) of the Constitution, since the delivery was to the ultimate consumer who was to use the goods for his own purpose and not for re-export.

(2) That the assessee company was entitled to tax exemption granted by the Notification dated 5th February, 1954 which was and must be deemed to be one issued under S. 6 (1), Travancore-Cochin General Sales Tax Act, 1125, as the transactions in question fell within the aforesaid notification. That notification was specially designed to afford relief to cases of non-resident dealers engaged in inter-State transactions which were held to be inter-State transactions by reason of the application of the Explanation to Art. 286 (1) (a) to such sales by the decision of Supreme Court in the United Motors case, AIR 1953 SC 252 : Judgment of the Travancore-Cochin High Court in O. P. No. 191 of 1955, dated 10th September, 1956, affirmed but on a different ground. States of Kerala v. Cochin Coal Co., Ltd., **1961 Ker LJ 405 : (1961) 2 SCJ 20 : (1961) 2 SCR 219 : (1961) 12 STC 1 : AIR 1961 SC 408 (411, 412) (Pt B) (Prs 6, 7, 9).**

(Explanation to Cl. (1) omitted by the Constitution Sixth (Amendment) Act, 1956.).

●——Art. 286 — Scope — Exemption from liability to pay sales-tax under Bihar Sales Tax Act.

The decision in State of Bombay v. United Motors (India) Ltd., AIR 1953 SC 252, explains the scope of the Explanation to Art. 286 (1) and deals with, what might be termed, 'Explanation sales'. That decision, however, does not deal with cases where the sale in question does not satisfy the requirements of the Explanation leading to the fixation of the fictional situs of the sale determining the State by which the tax might be levied. Whether any and, if so, which is the State which can levy a tax on a sale, not covered by the Explanation, is not dealt with by that decision at all.

The appellants contended that the sales of goods delivered for consumption outside the State of Bihar which involved a tax liability were made up of two types of transactions : (a) those in which the goods thus delivered were for consumption in the State of first delivery or first destination; and (b) those in which the goods thus delivered were for consumption, not in the State of first delivery but in other States and claimed that on the proper construction of Art. 286 (1) and (2) they were entitled to have both these types of sales excluded from their taxable turnover under the Bihar Sales Tax Act.

Held, (i) that sales of type (a) would be exempt from the levy of tax under the Bihar Sales-Tax Act by reason of their being 'inside' sales within the State of delivery-cum-consumption and therefore, being 'outside' sales qua the State of Bihar;

(ii) that sales of type (b) would be liable to the levy of tax in the State of Bihar and the tax levied on those sales would continue to be valid. Tobacco Manufacturers (India) Ltd. v. Commr. of Sales Tax, Bihar, Patna, **ILR 40 Pat 259 : (1962) 2 SC J 554 : 1961 BLJR 603 : 1961 MPC 545 : (1961) 2 SCR 106 : (1961) 12 STC 87 : AIR 1961 SC 402 (407, 408) (Pt B) (Prs 16, 17).**

●——Art. 286 (1) (a), Expl. (as it was before 1956) — Bihar Sales Tax Act (XIX of 1947), S. 4 and S. 33 — Non-explanation sale — What is outside sale within meaning of Art. 286 (1) (a) stated — Power of State to tax non-explanation sale where property passes to purchaser in the State.

Where the terms of the Explanation to Art. 286 (1), as it stood before its amendment in 1956, were satisfied, inter-State sales were by a fiction deemed to be 'inside' the State of delivery-cum-consumption and therefore, 'outside' all other States. In such cases, therefore, only the State 'inside' which the sale is deemed to take place by virtue of the Explanation, is exempt from the ban imposed by Art. 286 (1) (a). All other States would be subject to that ban in respect of such sale. AIR 1953 SC 252, Foll.

Per Majority :— Where, however, the property in the goods passes within a State as a direct result of the sale, the sale transaction is not outside the State for the purpose of Art. 286 (1) (a), unless the Explanation operates. The opening words of Cl. (1) and Explanation of Art. 286 indicate that it is the passing of property within the State that is intended to be fastened upon, for the purpose of determining, whether the sale in question is inside or outside the State, and, therefore, subject to the operation of the Explanation, that State in which property passes would be the only State which would have the power to levy a tax on sale. (1958) 9 STC 204 (Pat), Affirmed.

Per Shah and S. K. Das, JJ.:— By enacting that a tax shall not be imposed under the Bihar Sales Tax Act when the sale takes place outside the State of Bihar in S. 33 (1) (a) (i) of that Act (which section is in terms similar to those of Art. 286 (1) of the Constitution) only the power to tax 'Explanation Sales' which do not take place within the State of Bihar is taken away, but not the power to tax 'non-Explanation sales' in which though under the general law of sale of goods the property passes outside the State, there exists between the taxing power of the State and the sale, a nexus as contemplated by the definition of sale in S. 2 (g). If the sale is one in which the goods have been delivered outside the State of Bihar, but not as a direct result of the sale or not for the purpose of consumption in the State of first delivery, the sale will not be covered by the Explanation, and the right to tax the sale if arising otherwise under the Act relying upon the territorial nexus, will not be impaired by the prohibition imposed by Cl. (1) (a) (i) of S. 33. India Copper Corporation Ltd. v. State of Bihar, **(1961) 2 SCR 276: ILR 40 Pat 302: (1961) 1 SCJ 457: (1961) 2 SCA 269: (1961) 12 STC 56: AIR 1961 SC 347 (351, 352, 354) (Pt A) (Prs 9, 13, 23).**

●——**Art. 286 (1) (a), Explanation (as it was before 1956)** — Delivery of goods outside State for purpose of consumption — Exemption to sales-tax — Actual consumption need not be proved. (1958) 9 STC 204 (Pat), **Reversed.** India Copper Corporation, Ltd. v. State of Bihar, **(1961) 1 SCJ 457: (1961) 2 SCR 276: ILR 40 Pat 302: (1961) 2 SCA 269: (1961) 12 STC 56: AIR 1961 SC 347 (353) (Pt B) (Pr 16).**

●——**Art. 286 (1), Explanation (before amendment) — When can be invoked — 'Inside sale'— Explanation cannot be invoked.**

The 'explanation' can apply only if more than one State is involved in the same transaction. Where the purchaser buys goods in the taxing State for his own consumption, the test of an 'inside sale' is satisfied when the property in the goods passes in the same State and all the elements of the contract of sale also take place inside it. Where the property in the goods passes to a buyer who is also the ultimate consumer, the terms of the Explanation are themselves satisfied. Burmah Shell Oil Storage & Distributing Co. of India, Ltd. v. Commercial Tax Officer, **(1961) 1 SCR 902: (1960) 11 STC 764: AIR 1961 SC 315 (322, 323) (Pt A) (Prs 22, 23).**

(Explanation to Cl. (1) omitted by the Constitution (Sixth Amendment) Act, 1956.)

●——**Art. 286 (1), Explanation (as it was before 1956) — Applicability — Conversion of raw tobacco by bidi manufacturers into bidi pattis by removing stem and dust, for immediate use in bidi manufacture — There is consumption of the first commodity.**

The conversion of a commodity into a different commercial commodity by subjecting it to some processing, is consumption within the meaning of the Explanation to Art. 286 no less than the final act of user when no distinct commodity is being brought into existence but what was brought into existence is being used up. AIR 1953 SC 333, Rel. on. M/s. Anwarkhan Mahboob Co. v. State of Bombay. **(1961) 1 SCR 709: (1960) 11 STC 698: AIR 1961 SC 213 (216, 217) (Pt B) (Prs 9, 10, 11).**

[Explanation to Cl. (1) omitted by the Constitution Sixth (Amendment) Act, 1956.]

●——**Art. 286 (1) (a)**—Sales Tax Laws Validation Act (7 of 1956) — **Sale falling under Explanation to Art. 286 (1) (a) — Inter-State sales-tax on** — (Sales Tax — Bihar Sales Tax Act (1947), S. 33). See Sales Tax — Sales Tax Laws Validation Act (1956). **AIR 1958 SC 903.**

●——**Art. 286 (1) (a)** — Madras General Sales-tax Act, S. 22, Explanation (as applied to Andhra) — Whether imposes tax on inter-State sales falling within Explanation to Art. 286 (1) (a) — Adaptation by President — Validity — Nexi as basis of taxation — Scope of Explanation to S. 22 — Non obstante clause in S. 22 — Effect — Explanation to S. 22, if should be part of definition of "sale" in S. 2 (h) — Vires of Explanation — (Interpretation of Statutes — Act to be read as whole — Non obstante clause) — AIR 1957 TC 300; AIR 1958 Andh Pra 109; 1956-7 STC 731, (Trav-Co), **Overruled.** See Sales Tax— Madras General Sales Tax Act (as applied to Andhra) (9 of 1939), S. 22, Expl. **AIR 1958 SC 468.**

[This case was held in AIR 1961 Mys 3, to have been **Overruled** on another point in AIR 1959 SC 648.].

●——**Art. 286** — Scope — Determination of turnover — Sales outside State — Inclusion of. See Sales Tax — Travancore-Cochin General Sales-tax Act (XI of 1125 ME), S. 2 (j). **AIR 1957 SC 657.**

●——**Art. 286 (1) (a), Explanation — Goods manufactured in M. P. delivered for consumption in U. P. — State of M. P. if can recover sale-tax — (Sales-tax — Sales Tax Continuation Order (1950) — (Sales-tax—C. P. and Berar Sales Tax Act (XXI of 1947), S. 2 (g), Explanation II).**

Where the transactions were inter-State transactions in which as a direct result of sales the goods manufactured in M. P. were actually delivered for the purpose of consumption in U. P.

Held, that the Explanation to Art. 286 (1) (a) determined the State of Uttar Pradesh to be the State in which the sales took place and which alone was entitled to tax these transactions, the State of Madhya Pradesh becoming an "outside" State for the purpose.

Held, further, that, apart from the ban imposed on the State of Madhya Pradesh under Art. 286 (1) (a) and the Explanation thereto, these transactions were also in the course of inter-State trade or commerce and were hit by the ban of Art. 286 (2). The President's Order no doubt lifted that ban but was not competent to lift the ban under Art. 286 (1) (a) and the Explanation thereto with the result that in spite of that order the State of Madhya Pradesh was not in a position to impose a tax on these transactions during the post-Constitution period. Ram Narain Sons, Ltd. v. Asst. Commr. of Sales Tax, **(1955) 6 STC 627: (1955) 2 SCR 483: 1956 SCA 1111: (1955) SCJ 808: (1955) 2 MLJ (SC) 302: (1955) Andhra WR (SC) 556: AIR 1955 SC 765 (773) (Pt C) (Prs 26, 27).**

●——**Art. 286 (1) (a), Explanation —Applicability to inter-State trade.**

A legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field. The Explanation created a legal fiction. Legal fictions are created only for some definite purpose. Here the avowed purpose of the Explanation is to explain what an outside sale referred to in sub-clause (a) is. The Explanation in clause (1) (a) cannot be legitimately extended to clause (2) either as an exception or as a proviso thereto or read as curtailing or limiting the ambit of clause (2). Hence except in so far as Parliament may by law provide otherwise, no State law can impose or authorise the imposition of any tax on

sales or purchases when such sales or purchases take place in the course of inter-State trade or commerce and irrespective of whether such sales or purchases do or do not fall within the explanation. Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905 : (1955) 6 STC 446 : (1955) 2 SCR 603 : (1955) SCJ 672 : 1955 SCA 1140 : (1955) 2 MLJ (SC) 168 : 1955 An WR (SC) 422 : AIR 1955 SC 661 (680, 709, 720, 732, 733, 735, 742, 755, 756) (Pt K) (Prs 31, 107, 133, 159, 161, 164, 184, 214).**

●——**Art. 286 (1) (a), Explanation — Fixing of situs — Effect.**

The shifting of the situs of a sale or purchase from its actual situs under the general law to a fictional situs under the Explanation takes the sale or purchase out of the taxing power of all States other than the State where the situs is fictionally fixed. That is all that clause (1) (a) and the Explanation do. Whether the delivery State will be entitled to tax such a sale or purchase will depend on the other provisions of the Constitution. The assignment of a fictional situs to a sale or purchase has no bearing or effect on the other aspects of the sale or purchase e.g., its inter-State character or its export or import character which are entirely different topics. This fixing of situs for a sale or purchase in any particular State either under the general law or under the fiction does not conclude the matter. It has yet to be ascertained whether that sale or purchase which by virtue of the Explanation has taken place in the delivery State was made in the course of inter-State trade or commerce. For this purpose the Explanation can have no relevancy or application at all. AIR 1953 SC 252, **Overruled.** Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905 : (1955) 6 STC 446 : (1955) 2 SCR 603 : (1955) SCJ 672 : 1955 SCA 1140 : (1955) 2 MLJ (SC) 168 : 1955 An WR (SC) 422 : AIR 1955 SC 661 (682, 730) (Pt L) (Prs 33, 153).**

●——**Art. 286 (1) (a), Explanation and (2) — General and special rule — (Interpretation of Statutes — General and special enactments).**

It cannot be said that Cl. (2) contains the enunciation of the general rule and the Explanation embodies a particular or special rule. The two provisions do not relate to the same subject and, therefore, it is not possible to hold that one is the enunciation of a general rule and the other the enunciation of a particular or special rule on one and the same subject. The principle of construction that the particular or special rule must control or cut down the general rule cannot be called in aid in construing Cl. (2) and the Explanation of Cl. (1) (a). AIR 1953 Pat 87, **Reversed** and view of Bhagwati, J., in AIR 1953 SC 252, **Overruled.** Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905 : (1955) 6 STC 446 : (1955) 2 SCR 603 : 1955 SCJ 672 : 1955 SCA 1140 : (1955) 2 MLJ (SC) 168 : 1955 An WR (SC) 422 : AIR 1955 SC 661 (682, 708, 736) (Pt N) (Prs 35, 103, 168).**

●——**Art. 286 (1)(a), Explanation and (2) —** Constitution statutes — Circumstance that provision in Constitution will take effect on happening of future event, is no ground for not giving effect to its plain language — Fact that explanation to Art. 286 (1) (a) in so far as it relates to inter-State sales has no immediate effect until Parliament lifts ban under Cl. (2), need not lead Court to put forced construction to give the whole an immediate effect. Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905 : (1955) 6 STC 446 : (1955) 2 SCR 603 : 1955 SCJ 672 : 1955 SCA 1140 : (1955) 2 SCR 603 : 1955 SCJ 672 : 1955 SCA 1140 : (1955) 2 Mad LJ (SC) 168 : 1955 Andh WR (SC) 422 : AIR 1955 SC 661 (683) (Pt O) (Pr 37).**

●——**Art. 286 (1) (a), Explanation and (2) — Scope.**

It is not correct to say that the Explanation can have no immediate operation at all. It certainly has immediate operation to render sales and purchases which fall within the Explanation to be outside sales and purchases so as immediately to take away the taxing power of all States other than the delivery State with respect to them. Further cases may arise in which purchases or sales which are outside clause (2), may, nevertheless fall within and be immediately governed by the Explanation. Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905 : (1955) 6 STC 446 : (1955) 2 SCR 603 : 1955 SCJ 672 : 1955 SCA 1140 : (1955) 2 MLJ (SC) 168 : 1955 An WR (SC) 422 : AIR 1955 SC 661 (683) (Pt P) (Pr 38).**

●——**Art. 286 (1) (a) and Explanation — Effect.**

It is not correct to say that Cl. (1) (a) read with the Explanation is wholly useless. It may well be argued that there was scope for the operation of clause (1) (a) and the Explanation as and when the President exercised the powers vested in him by the proviso to clause (2). Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905 : (1955) 6 STC 446 : (1955) 2 SCR 603 : 1955 SCJ 672 : 1955 SCA 1140 : (1955) 2 MLJ (SC) 168 : 1955 Andhra WR (SC) 422 : AIR 1955 SC 661 (684) (Pt Q) (Pr 39).**

●——**Art. 286 (1), Explanation — Scope.**

(In dissenting Judgment).:— When Art. 286 (1) (a) and the Explanation refer to a sale or purchase, they merely conform to the terms of Entry 54 in List 2 of 7th Schedule and these words cannot, therefore, be construed as splitting up the power to tax sales into two parts, one available against the purchaser at all times, as in the very nature of it he must be within the State, and the other against a seller if he is within jurisdiction. The power is one and indivisible to be exercised when the conditions mentioned in the Explanation are satisfied against either a seller or buyer as the Legislature might determine. To hold that the tax could be imposed on a seller only if he is within the State would be to add words to the Explanation which are not there, and for this, there is no justification. Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905 : (1955) 6 STC 446 : (1955) 2 SCR 603 : 1955 SCJ 672 : 1955 SCA 1140 : (1955) 2 MLJ (SC) 168 : 1955 Andh WR (SC) 422 : AIR 1955 SC 661 (753) (Pt Zd) (Prs 205, 206).**

●——**Art. 286 (1) (a), Explanation — Actual delivery.**

The expression "actual delivery" in the Explanation to Art. 286 (1) (a) means delivery of the goods to the purchaser or his agent, and delivery to the commercial carrier is not actual delivery. Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905 : (1955) 6 STC 446 : (1955) 2 SCR 603 : (1955) SCJ 672 : 1955 SCA 1140 : (1955) 2 MLJ (SC) 168 : 1955 An WR (SC) 422 : AIR 1955 SC 661 (754) (Pt Ze) (Pr 210).**

●——**Art. 286 (1). Expl. — Scope of Explanation.**

The Explanation to Clause (1) (a) only explains what is an outside sale or purchase, for by saying that a particular sale or purchase is to be deemed to take place in a particular State it only indicates that it is to be deemed to take place outside all other States so as to attract the

ban of Clause (1) (a) and thereby take away the taxing power of those other States with respect to such sale or purchase. The Explanation does not operate as an exception or a proviso but only explains sub-clause (a). The fiction created by the Explanation is only for the purposes of sub-clause (a), so that sales or purchases of the kind which fall within the Explanation get the benefit of the ban imposed by sub-cl. (a). Therefore, the purpose of the Explanation read with sub-clause (a) is only to take away the power of taxation of those States in relation to those sales or purchases which are to be deemed to be outside sales or purchases. Its purpose is not and, indeed, it does not purport, to confer any taxing power on any State, and it cannot be resorted to for any such extraneous or collateral purpose. It does not convert an inter-State sale or purchase into an intra-State sale for any purpose other than the limited purpose of sub-clause (a). AIR 1953 SC 252, Diss. from. State of Trav-Co. v. S. V. C. Factory, **(1953) SCJ 471 : (1953) 2 MLJ 123 : 66 Mad LW 611 : 1954 SCR 53 : ILR (1954) TC 1 : 1954 SCA 1059 : AIR 1953 SC 333 (352) (Pt F) (Pr 59).**

●——Art. 286, and Sch. VII, List 2, Entry 54— — Scope and object — Tax on sale by State.

If a sale or purchase takes place outside a State, either under the general law or by virtue of the fiction created by the Explanation, then that State cannot, under Cl. (1) (a), tax such sale or purchase. If a sale or purchase takes place within a State, either under the general law or by reason of the Explanation, then, if such a sale or purchase takes place "in the course of" inter-State trade and commerce, no State, not even the State where the sale or purchase takes place as aforesaid can tax it by reason of clause (2) unless and until Parliament by law provides otherwise. State of Trav-Co. v. S. V. C. Factory, **(1953) SCJ 471 : (1953) 2 MLJ 123 : 66 Mad LW 611 : 1954 SCR 53 : ILR (1954) TC 1 : 1954 SCA 1059 : AIR 1953 SC 333 (352) (Pt G) (Pr 59).**

●——Art. 286 (1)(a), Expl. and (2), and Sch. VII, List 2, Entry 54 — Tax on sale or purchase of goods.

Clause (1) (a) of Art. 286 prohibits the taxation of all sales or purchases which take place outside the State, but a localised sale is a troublesome concept, for, a sale is a composite transaction involving as it does several elements such as agreement to sell, transfer of ownership, payment of the price, delivery of the goods and so forth, which may take place at different places. It is difficult to say that, any one of the ingredients mentioned above is more essential to a sale or purchase than the others. To solve the difficulty an easily applicable test for determining what is an outside sale had to be formulated, and that is what the Explanation is intended to do. The Explanation provides by means of a legal fiction that the State in which the goods sold or purchased are actually delivered for consumption therein is the State in which the sale or purchase is to be considered to have taken place notwithstanding the property in such goods passed in another State. The test of sufficient territorial nexus is thus replaced by a simpler and more easily workable test. Are the goods actually delivered in the taxing State, as a direct result of a sale or purchase, for the purpose of consumption therein? Then, such sale or purchase shall be deemed to have taken place in that State and outside all other States. The latter States are prohibited from taxing the sale or purchase; the former alone is left free to do so. Multiple taxation of the same transaction by different States is also thus avoided.

It is to be noted that the Explanation does not say that the consumption should be by the purchaser himself. Nor do the words "as a direct result" have reference to consumption. They qualify "actual delivery". The expression "for the purpose of consumption in that State" must be understood as having reference not merely to the individual importer or purchaser but as contemplating distribution eventually to consumers in general within the State. Thus all buyers within the State of delivery from out-of-State sellers, except those buying for re-export out of the State, will be within the scope of the Explanation and liable to be taxed by the State on their inter-State transactions. The Explanation deals only with inter-State sales or purchases and not with purely local or domestic transactions.

Article 286 (1) (a) read with the Explanation, thus, prohibits taxation of sales or purchases involving inter-State elements by all States except the State in which the goods are delivered for the purpose of consumption therein in the wide sense explained above. The latter State is left free to tax such sales or purchases, which power it derives not by virtue of the Explanation but under Art. 246 (3) read with Entry 54 of List II, Sch. VII.

Clause (2) of Art. 286 stands excluded as a result of the legal fiction enacted in the Explanation, and the State in which the goods are actually delivered for consumption can impose tax on inter-State sales or purchases. The effect of the Explanation in regard to inter-State dealings is to invest what, in truth is an inter-State transaction with an intra-State character in relation to the State of delivery, and Cl. (2) can, therefore, have no application. It is true that the legal fiction is to operate "for the purposes of sub-cl. (a) of Cl. (1)," but that means merely that the Explanation is designed to explain the meaning of the expression "outside the State" in Cl. (1) (a). When once, however, it is determined with the aid of the fictional test that a particular sale or purchase has taken place within the taxing State, it follows, as a corollary, that the transaction loses its inter-State character and falls outside the purview of Cl. (2), not because the definition in the Explanation is used for the purpose of Cl. (2), but because such sale or purchase becomes in the eye of the law a purely local transaction.

Per Contra (Bhagwati J.) — "While agreeing in the main with the conclusions reached (by my Lord the Chief Justice) I am however, unable to subscribe to the reasoning as also the construction put upon the Explanation to Art. 286 (1) (a)."

Per Bose J. "I regret I am unable to agree with either". State of Bombay v. United Motors (India) Ltd., **(1953) SCJ 373 : (1953) 1 MLJ 743: 55 Bom LR 536 : 66 Mad LW 577 : 1953 SCA 408 : 1953 SCR 1069 : AIR 1953 SC 252 (257 to 259, 263, 269) (Pt A) (Prs 12, 15 to 17, 34, 70).**

[**Overruled** in AIR 1955 SC 661.]

■——Art. 286 (1), Expl. — "Consumption".

In its economic sense "consumption" is just the use which a purchaser chooses to make of the goods purchased for his own purposes. He does not have to destroy them nor does he have to diminish their value or utility. A man who purchases a valuable piece of sculpture or painting for preservation in a national museum does not

destroy it nor does he use it himself except for the purposes of presenting it to the museum. But he is a consumer. In the same way, a man who purchases goods for use in his business so that his business can be carried on by the constant feeding of a stream uses the goods and therefore "consumes" them even though he does not keep them himself. It thus means the usual use made of an article for the purposes of trade and commerce.

A dealer who deals with the goods after purchasing the same does not consume the goods. He deals with or disposes of the same in the ordinary course of trade and he is a dealer or a trader in those goods. He is not a consumer of those goods. State of Bombay v. United Motors (India), Ltd., **(1953) SCJ 373 : (1953) 1 MLJ 743 : 55 Bom LR 536 : 66 Mad LW 577 : 1953 SCA 408: 1953 SCR 1069 : AIR 1953 SC 252 (266, 272) (Pt E) (Prs 49, 50, 78).**

[**Overruled** on another point in AIR 1955 SC 661.].

——Art. 286 (1), Expln. — Delivery under must be actual — Goods delivered to railway administration outside U. P. — Buyers receiving them at stations in U. P. — Actual delivery was in U. P. —Sales were subject to sales-tax by U. P. Government — (Sale of Goods Act (1930), S. 39) — (Sales-tax — U. P. Sales-tax Act (XV of 1948), S. 3). **1959 All LJ 545 : (1960) 11 STC 34 : AIR 1960 All 62 (64) (Pt A) (Prs 8, 10) (DB).**

——Art. 286(1), Explanation — Sale within State.

A sale cannot be clearly in a State unless it be a sale of the description contemplated by the Explanation to Cl. (1) of Art. 286. If it is not a sale of that description, it cannot be deemed, for purposes of that Article, to be a sale within the State, irrespective of where actually under the general law relating to sale of goods property in the goods may have passed. **1955 All LJ 860 : AIR 1955 All 653 (659) (Pt F) (Pr 24).**

——Art. 286 (1), Explanation and (2) — Sale becoming intra-State under Explanation —Inquiry whether sale had taken place in course of inter-State trade or commerce, if necessary. —

As soon as a State finds that a sale involving inter-State elements becomes intra-State under the Explanation to Cl. (1) of Art. 286, it has the fullest authority to tax it as a sale which has taken place within that State and it need not embark on a roving inquiry whether it was a sale which had taken place in the course of inter-State trade or commerce, as contemplated by Cl. (2) of the said Article. **1955 All LJ 860 : AIR 1955 All 653 (660) (Pt G) (Pr 27).**

——Art. 286 (1) (a), Explanation — Sale between parties belonging to different States — Place of sale — Determination of for purpose of sale-tax.

Whenever any sale takes place in which the parties belong to two different States, it will have to be determined where the sale has taken place for purposes of imposing sales-tax. The determination of the place of sale for purposes of Contract Act, or for determining the rights inter partes to the sale may depend on the provisions of the Sale of Goods Act, but when the liability of the sale or purchase to sales-tax has to be considered, the place, where the sale takes place, must be determined in accordance with Article 286 of the Constitution for purposes of complying with the provisions of Cl. (1) (a) of Article 286 of the Constitution, and the place of sale must be determined after taking into account the Explanation appended to that clause. **ILR (1956) 1 All 107 : 1955 All LJ 19 : (1955) 6 STC 77 : AIR 1955 All 99 (102) (Pt B) (Pr 3).**

——Art. 286 (1), Explanation — Inter-State sale — Delivery though taken outside the State was before export of goods — Sale is not inter-State sale — Not exempt from sales tax.

The asessee sold goods to certain commission agents who were acting for the dealers outside the State. He received the full price but booked the goods to place outside the State in his own name as consignor and consignee under the instructions of the Commission agents and endorsed the railway receipts in their favour. Thereafter, the assessee had no control over the goods and was not required to do anything in pursuance of the contract. It was claimed by the assessee that the transaction was an inter-State sale since the delivery was made outside the State as a direct result of the sale and hence, exempt from tax under the Explanation to Art. 286 (1) (a) of the Constitution.

Held, that the transaction was not an inter-State sale. Though the commission agents bought the goods for benefit of foreign dealers and instructed the sellers to send them to place outside the State the transaction amounted to taking delivery before the export of goods. The transaction including the delivery was thus completed within this State and ought to be regarded as inside sale. The delivery of the goods outside the State was not therefore, the direct result of the sale and the goods were delivered outside the State as those of the commission agents and not of the sellers. T. R. C. No. 98 of 1957 (Andh. Pra.), Dist. **(1962) 13 STC 755 : AIR 1963 Andh Pra 238 (239) (Pr 7) (DB).**

——Art. 286 (1), Explanation (before amendment by Constitution (Sixth Amendment) Act, 1956)— Delivery to carrier within State is delivery to buyer — It is not outside sale—Inter-State trade — Essentials — Sale of Goods Act (1930), S. 39 (1).

To be an outside sale in order to attract the exemption contemplated by the Explanation to Art. 286 (1) it is not enough that the goods were for the purpose of consumption outside the State. The further requirement is that the goods should have actually been delivered outside the State.

If under the terms of the contract, the goods are actually delivered to the buyer within the limits of the State, there could not possibly be a further delivery of the same goods again at the places of destination outside the State.

Where the goods were delivered to a carrier (Railway) within the State the carrier is constituted an agent of the buyer for accepting delivery of the goods on his behalf with the result that the goods are actually delivered within the State.

Held, on the facts that having regard to the course of business followed by the assessee company with their purchasers and the specific terms of the contract of sale, it was clear that not only the sales were intended to be inside sales but as a matter of fact all the essential ingredients of sale were completed within the State. The property in the goods passed within the State and possession was delivered unreservedly inside the State. The delivery of these goods at works siding was delivery to the purchasers and the

transport of the goods to destinations outside the State was really by or on behalf of the buyers who had taken delivery of the goods at the factory site. If the delivery had taken place within the State then the assessee company could not invoke the benefit of the exemption embodied in the Explanation. Held, further, that in order that a sale or purchase might be inter-State within meaning of Art. 286 (2) it was essential that there must be transport of goods from one State to another under the contract for sale or purchase. AIR 1955 SC 661, Rel. on. On a consideration of the material terms of the contract and the course of dealings between the parties, the terms left no room for doubt that the moment the goods were consigned to railway wagons, the assessee had no further responsibility either for loss or damage during the course of transit. Under the circumstances the common carrier was constituted the bailee of the buyers and not of the seller. After the goods were consigned to the railway wagons, the sale was complete within the State. Therefore, the transactions in question did not constitute inter-State trade or commerce, which would come within the prohibition contained in Art. 286 (2) of the Constitution. **ILR (1963) Andh Pra 883: AIR 1962 Andh Pra 522 (523, 524, 525) (Prs 9, 10, 13, 18, 19, 20) (DB).**

——Art. 286 (1) (a). Explanation (as it was before 1956) — Applicability — Sale of Goods Act (III of 1930), S. 36 — Hyderabad General Sales Tax Act (XIV of 1950) — Collieries Control Order (1945), clause (10-A) and Central Sales Tax Act (LXXIV of 1956), S. 3 (a) — Collieries delivering coal to common carriers at site for cash or credit — Absence of contract with purchasers for delivery outside or inside the State — If inter-State trade.

In order to impress the sale with the character of inter-State trade or commerce, the terms of sale should provide for the delivery being effected in another State, i.e., the delivery outside the State should be pursuant to contractual obligations. Two essential conditions of inter-State trade or commerce are that there should be sale of goods and movement of these goods across the borders of the State under a contract of sale. There should be a related connection between sale and the movement of goods. In other words deliveries should be outside the State.

Under the Notification issued by the Government of India in July 1956, the collieries are required to deliver the goods at or near the collieries and it is with reference to the place of delivery that prices are fixed by the Coal Controller. In the absence of a contract, in view of S. 36, Sale of Goods Act, coal is to be delivered to the buyers at the collieries. If they despatched goods to various places it is not pursuant to any contractual obligations but is in compliance with the request of the buyers. The petitioners transported the goods to various places outside the State as instructed by the parties and not as a condition attached to the contract of sale. There was no question of the petitioners having any vendor's lien in regard to these goods or the right of stoppage in transit.

The Colliery Control Order, 1945, contemplates that the property in the goods in transit had already passed to the buyer as soon as the goods are put on rail. The Coal Commissioner is invested with the power of division because coal is a controlled commodity. Under the order, if coal is diverted, the buyer is entitled to such compensation as the Coal Controller considers reasonable. In order that delivery for consumption in another State should come within the ambit of the Explanation to Art. 286 (1) (a) of the Constitution, it should be an integral part of the sale. That is the import of the expression 'delivery as a direct result of such sale'. Where, the petitioners had not succeeded in proving that it was a term of the contract, they could not have resort to the Explanation. Therefore, the sales are not covered by the ban created by the Explanation and are liable to sales-tax.

Section 3 (a) of the Central Sales Tax Act only contains a rule to determine as to what constitutes inter-State trade or commerce. The exact import of the expression 'sale occasioning the movement of goods' is that the delivery outside the State should be under a covenant or as an incident of contract of sale. If the petitioners had failed to prove that the sales in question are invested with inter-State character, they cannot succeed in getting them within the scope of this clause. AIR 1960 All 62, Disting. AIR 1960 Cal 25, Differed from. AIR 1959 SC 887, Rel. on. **(1961) 1 An WR 440 : 1961 Andh LT 497: (1961) 12 STC 765: ILR (1961) 2 Andh Pra 371: AIR 1962 Andh Pra 75 (80 to 83) (Prs 27, 29, 36, 38, 41, 45).**

[Reversed in AIR 1966 SC 563.]

——Art. 286 (1) (a) and Explanation — Scope of — Theory of territorial nexus in levying sales-tax — If confined to pre-Constitution sales or purchases — Sales — When exempt — Madras General Sales Tax Act (IX of 1939), S. 2 (h), Explanation and Section 22 — Scope of — Sale of Goods Act (III of 1930), Ss. 18 to 23 — Andhra Court-Fees and Suits Valuation Act (VII of 1958), S. 64 — Scope — Tax revision cases — High Court's power to refund court-fee.

Per Full Bench.— Art. 286 of the Constitution imposes certain definite restrictions on the taxing power of the Provinces which came to be designated as States under the Constitution. These are separate and independent restrictions placed upon the legislative competency of the States to make a law with respect to matters enumerated in Entry 54 of List II. The Explanation to Art. 286 (1) (a) deals only with inter-State sales or purchases and not with purely local or domestic transactions. The theory of nexus is not confined only to pre-Constitution sales or purchases but to post-Constitution sales or purchases as well.

The non obstante clause in the Explanation to Art. 286 (1) (a) is inserted with a view to make it clear that it is immaterial where the property in the goods passes. The theory of territorial nexus has not altogether ceased to operate even after the coming into force of the Constitution and will apply to sales or purchases not covered by Art. 286 (1) and the Explanation thereto. In the matter of the levy of sales-tax, the provisions of the Sales-tax Act, subject to the constitutional limitations, if any, must determine the situs of a sale. Where the assessee fails to establish the exemption from taxation, the case would be governed by the Explanation to section 2 (h) of the Madras General Sales Tax Act. The assessee must establish facts entitling him to invoke the aid of the Explanation to Art. 286 (1) (a) and it is only then that the sales will be exempt from taxation.

The provisions of section 22 and section 2 (h) along with the Explanation thereto have to be read together as one harmonious scheme and where the Explanation to Section 22 applies, that provision will govern the situation. Otherwise the Explanation to Section 2 (h) will operate. **(1961) 12 STC 31 : ILR (1961) 1 Andh Pra 178 : (1960) 2 An WR 244 : 1960 An LT 802 : AIR**

1961 A. P. 86 (93, 94) (Pt A) (Prs 39, 41, 42, 46).

——Art. 286 — Scope of — Essence of inter-State sale — States Reorganisation Act (XXXVII of 1956), Ss. 3 and 119 — Scope and effect of — Andhra Pradesh Adaptation of Laws Order (1957) — Hyderabad General Sales Tax Act (XIV of 1950), S. 1 (2) — Changes effected in S. 1 (2) — Consequences of.

By reason of the Andhra Pradesh Adaptation of Laws Order, 1957, the Hyderabad General Sales-tax Act continued to be operative in the rest of the territory comprised within the State of Andhra Pradesh. This was the position till the Andhra Pradesh General Sales Tax Act came into force on 10th June, 1957.

The Constitution (Seventh Amendment) Act, 1956, included the territories specified in sub-s. (1) of S. 3 of the Andhra State Act, 1953, and the territories specified in sub-s. (1) of S. 3 of the States Reorganization Act, 1956 in the State of Andhra Pradesh. Thereafter, both the Telangana and Andhra areas constituted the territory of the State of Andhra Pradesh. The preservation of the pre-existing sale-tax laws by reason of section 119 of the States Reorganization Act has not the effect of constituting the movement of goods from one area of the State into another area an inter-State transaction. The transaction in question must be held to be an intra-State sale. **ILR (1960) 1 Andh Pra 300 : (1960) 1 Andh WR 404 : (1960) 11 STC 420 : AIR 1960 Andh Pra 298 (299, 300) (Prs 10, 15) (DB).**

——Art. 286 (1), Explanation — Scope — Presumption of delivery for consumption — When arises.

There is no presumption in law that the thing delivered in the outside State is necessarily for consumption or use in that State. Where there is no evidence on record that the delivery was for consumption the case would not come within the ambit of the Explanation to Art. 286 (1). **(1959) 10 STC 394 : AIR 1960 Andh Pra 196 (199, 200, 201) (Pt A) (Pr 7) (DB).**

——Art. 286 (1) (a), Explanation — Situs —Outside sale — What is — Tests — (Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 2 (h)) — (Sale of Goods Act (1930), S. 1).

In order to ascertain what an outside sale is, it has first to be ascertained where in fact actual delivery has been effected.

The ban under the Article was intended for only such sales as were within the taxing powers of the State as contemplated by Arts. 245 and 246 (3) read with entry 54 in List 2 of the 7th Schedule. If all the conditions of explanation are not satisfied the nature of the sale involving inter-State elements would have to be determined on the language of the valid enactment fixing the situs of sale.

Section 2 (h) of the Madras General Sales Tax Act read with Explanation 2 fixes the situs of sale in the Madras State if the goods were within the State at the time the contract is made and the sufficiency of that nexus is undisputable. When the sale in question is not shown to be covered by the Explanation to Art. 286 (1) and it satisfies the test of territorial nexus prescribed by the Act the fact that some of the parts of the sale in question did not take place inside the State would not make the sale an outside sale within the meaning of Art. 286 (1) (a) and therefore, outside the taxing power of that State. **(1959) 10 STC 394 : AIR 1960 Andh Pra 196 (202, 203) (Pt B) (Prs 11, 12) (DB).**

——Art. 286 (1) — Situs of sale—Property where passes — Seller taking back receipts for giving it to bankers for collection of price, whether decisive. See Sale of Goods Act (1930), S. 23. AIR 1959 Andh Pra 192 (DB).

——Art. 286 (1) (a) Explanation — Sale where takes place — General rule stated — Effect of explanation indicated — AIR 1957 Pat 112, **Dissented from. 1958 An LT 816 : (1958) 2 An WR 428: (1958) 9 STC 761: AIR 1959 Andh Pra 36 (39) (Pt D) (Pr 10) (DB).**

[**Overruled** on another point in (1960) 2 An WR 244 (FB)].

——Art. 286 Explanation — Scope — (Sales-tax — Sales-tax Laws Validation Act (1956) — Effect of).

A transaction where the sale has been completed in one State but the delivery is effected in another State is an integral part of the sale and attracts the Explanation to Art. 286 of the Constitution. AIR 1958 SC 468, Rel. on.

The result of the Sales Tax Laws Validation Act 1956 is that all sales which come within the range of Explanation to Art. 286 are taxable in the States in which the deliveries are made. The Explanation is concerned only with the delivery to the buyer and not with the transport of the goods by his agent across the border and handing them over to his principal in another State. The right to levy tax is vested in the State where delivery is effected: AIR 1955 Mad 502, Rel. on. **(1959) 10 STC 199 (Andhra Pradesh).**

——Art. 286 (1) (a), Expl. — Goods sold and delivery effected to buyer in one State — Subsequently buyer removing them to another State for consumption — Explanation does not apply. **1955 An WR 692 : (1955) 6 STC 426 : 1955 An LT (Cri) 557 : AIR 1957 Andh Pra 996 (996, 997) (Pr 1) (DB).**

——Art. 286 (1) (a), Explanation — Applicability.

In the case of a transaction of sale involving inter-State elements, only that State where the goods are actually delivered for the purpose of consumption would be entitled to tax the transaction. But the fact that the goods have been delivered for consumption within a particular State should be established by evidence. It is not enough, to attract the Explanation, that the goods purchased in one State have ultimately reached a different State where they were utilised for consumption in that State. It is necessary to prove that the delivery for consumption was the direct result of the sale or the purchase as the case may be. If the goods were sold and delivery effected to the buyers in a particular State, the mere fact that subsequently the buyer took the goods to another State for purposes of consumption, would not affect the liability of the goods for sales-tax in the State where delivery was effected, as in that case the goods were not delivered in the State as a direct result of the sale. 1955 Andhra WR 692, Rel. on. **AIR 1955 NUC (Andhra) 5839 (DB).**

——Art. 286 (1) (a), Explanation and (2) — "In the course of inter-State trade".

The word "course" etymologically denotes "movement from one place to another," and the expression "in the course of" not only implies a period of time during which the movement is in progress but postulates also a connected relation. The sale by a trader in one State to a user in another State would be a sale in the course of inter-State trade, according to the natural meaning of those words. Where the goods were actually in transit, they were consigned to the

railway and the railway receipts were purchased by the petitioner, the transaction has an inter-State element. **AIR 1955 NUC (Andhra) 5839 (DB).**

——Art. 286 (1) (a), Expln. — Goods sold and delivery effected to buyer in one State — Subsequently buyer removing them to another State for consumption — Explanation does not apply.

In the case of a transaction of sale involving inter-State elements, it is clear that only that State where the goods are actually delivered for the purpose of consumption would be entitled to tax the transaction; but the fact, viz., that the goods are delivered for consumption within a particular State should be established by evidence. It is not enough, to attract Explanation to Art. 286 (1) (a) that the goods purchased in one State have ultimately reached a different State where they were utilised for consumption in that State. But it is also necessary to prove that the delivery for consumption was as the direct result of the sale or purchase as the case may be. If the goods were sold and delivery effected to the buyers in a particular State, the mere fact that subsequently the buyer took those goods to another State for purposes of consumption would not affect the liability of the goods for sales-tax in the State where delivery was effected, for in that case, the goods were not delivered in the second State as a direct result of the sale. AIR 1953 SC 252 and AIR 1955 Mad 502, Foll. **(1955) Andhra WR 692 (DB).**

——Art. 286 (1) (a) Explanation — Goods sold and delivery effected to buyer in one State — Subsequently buyer removing them to another State for consumption — Explanation does not apply. **AIR 1955 NUC (Andhra) 5838.**

■ **——Art. 286, Cl. (1) (a), Explanation and Cl. (2)** — Art. 286 (2) applies only to cases not covered by Explanation to Art. 286 (1) (a). Satyanarayana Murthy and Brothers v. State of Madras, **1955 Andhra WR 578: 1955-6 STC 405: 1955 Andhra LT (Civil) 487: AIR 1955 Andhra-Pra 248 (250) (Pr 8) (FB).**

——Arts. 286, 254, Sch. 7, List 2, Entry 54 — Assam Sales Tax Act (1947), S. 2 (12), Explanation — Validity — Legislative competence — Theory of territorial nexus — Applicability to sales tax legislation — Imposition of sales tax in respect of transactions where property passes outside State — Pre-Constitution period — Assessment and realisation after Constitution — (Government of India Act (1935), S. 107 (2), Sch. 7, List 2, Item 48). See Sales Tax — Assam Sales Tax Act (14 of 1947), S. 2 (12). **AIR 1960 Assam 116.**

■ **——Art. 286 (1) (before amendment by Constitution (Sixth Amendment) Act (1956)** — Situs of sale — Provisions of Sale of Goods Act are not relevant — Contract of sale in Calcutta — Price to be paid in Calcutta — Goods to be delivered outside Assam for consumption — Situs of sale held outside in Assam. See Sales Tax — Assam Sales Tax Act (XVII of 1947), S. 2 (12). **AIR 1960 Assam 28 (SB).**

——Art. 286 (1) (a) — Sale of goods of inter-State nature — (Sales Tax — Assam Sales Tax Act (XVII of 1947), S. 3 (1) (A) (i).

The levy of Sales Tax under the Assam Sales Tax Act is hit by Art. 286 (1) (a) of the Constitution and S. 3 (1) (A) (i) of the Assam Act, where the sale of goods is of an inter-State nature, the goods being despatched for delivery outside the State of Assam, even if the title to the goods passed in the State of Assam. **(1959) 10 STC 327: AIR 1958 Assam 119 (127) (Pt D) (Pr 36) (DB).**

——Art. 286 (1), Explanation — Delivery not for consumption in States to which goods were despatched — Place of sale.

The Explanation fixes the situs of the sales which are of inter-State character for the purpose of taxation and the sale by virtue of the explanation will be deemed to have taken place in the State in which the goods are delivered for the purpose of consumption therein. For every other State, it will be an outside sale and not liable to be taxed. **(1959) 10 STC 327: AIR 1958 Assam 119 (126, 127) (Pt E) (Pr 36) (DB).**

——Art. 286 (1), Explanation —'Delivery' — Meaning of.

The delivery contemplated in the Explanation is not a constructive delivery to the carrier but actual delivery. **(1959) 10 STC 327: AIR 1958 Assam 119 (126, 127) (Pt F) (Pr 36) (DB).**

——Art. 286 (a), Explanation — 'For the purpose of consumption in that State' — Meaning.

Where, according to the 'terms of an agreement, wooden sleepers, after they were passed by Sleeper Control Officer, were to be despatched from different railway stations within the State of Assam to the outside stations according to the allotment made by the proper authorities and allotments were made having regard to the requirements and necessity of each station:

Held, that the sleepers must have been delivered to the allottee State for the purpose of consumption therein. **(1959) 10 STC 327: AIR 1958 Assam 119 (127) (Pt G) (Pr 36) (DB).**

——Arts. 286 (2) — Sales Tax Validation Ordinance and Sales Tax Laws Validation Act — Object and effect of.

The purpose of the Ordinance and the subsequent Act was to validate the levy and collection of tax by the delivery State and not to validate the levy or collection of tax by the States which are not delivery States. The sales which are outside sales and are not covered by Explanation to Art. 286 (1) (a) are also hit by Art. 286 (2) and the Validating Act does not affect such sales. **(1959) 10 STC 327: AIR 1958 Assam 119 (128) (Pt I) (Pr 38) (DB).**

——Art. 286 (2) — Coercive provision of law in Assam Sales Tax Act 1947, S. 15 (1) (b) and Assam Sales Tax Rules, R. 90 held to be illegal— Issue of writ against said provisions being utilised to petitioner's prejudice. See Ibid, Art. 226, **AIR 1956 Assam 177 (DB).**

[**Reversed** on another point in AIR 1962 SC 107]

——Art. 286 (1) (a), Explanation and (2) — Effect of Explanation — Applicability of sub-s. (2).

The effect of the Explanation attached to Cl. (1) (a) of Art. 286 is to invest what in truth is an inter-State transaction with an inter-State character in relation to the State of delivery and Cl. (2) of the Article can, therefore, have no application to such cases. **AIR 1956 Assam 66 (70) (Pt A) (Pr 10) (DB).**

——Art. 286 (1) (b), Expln. — Dealer—Test of— Supply of goods in Assam for consumption — Supplier having no office or factory in State — Effect. See Sales Tax — Assam Sales Tax Act (XVII of 1947), Ss. 2 (3), 2 (12). **AIR 1955 Assam 113 (DB).**

——Art. 286 (1) (a) and Explanation (as it was before 1956) — Applicability — Goods sold to Bombay buyers for export — Wagons indented by buyers — Delivery given at Railway Stations in M. P. — Protection under Art. 286 (1) (a) read with Explanation — Right to claim — Exemption

from tax in M. P. — Petitioner not entitled to protection. **1961 Nag LJ (Notes) 69.**

[Explanation to Cl. (1) omitted by the Constitution Sixth (Amendment) Act, 1956.]

——Art. 286 — Scope of — Sales and purchases in course of import and export — Passing of property — Test — (Sale of Goods Act (1930), S. 19).

Where the sale of goods has been effected to exporters F.O.R. and the exporters were to make payment on presentation of documents relating to the goods which are covered by buyer's export license, the material question which should be answered in order to decide whether the sale is exempted by the provisions of the Article, is when did the property in the goods pass to the buyer. That is essential because only if the sale had taken place after the goods have entered the export stream or have passed the customs barrier the provisions of Art. 286 would be attracted to it.

Normally the question of passing of property is a question of intention to be gathered from the terms of the contract. One test, is to consider whether the exporter could have delivered the goods which he had purchased to any purpose other than the purpose of export. Could he have resold the goods for his own domestic purpose? and the answer to that question must obviously be in the negative where the exporter only gets delivery of the goods by means of the documents of title after they have crossed the customs barrier. **59 Bom LR 599: (1957) 8 STC 617: ILR (1957) Bom 747: AIR 1958 Bom 120 (121, 122, 123) (Pt A) (Prs 2, 4, 5, 6) (DB).**

——Art. 286 (1), Explanation — Object of — (Interpretation of Statutes — Explanation) — [C. P. Code (1908), Preamble].

An explanation is not a proviso. It does not carve out of the section something which the section has provided and deal with that part which is carved out. It is not the function or purpose of an explanation to extend the scope of the section itself or to restrict its operation. An explanation ordinarily is intended to apply to the whole ambit of the section and to throw light on the construction of the words used by the Legislature. An explanation very often introduces a legal fiction and treats the legal fiction as a reality contained in the section itself.

The Explanation to Art. 286 (1) also creates a legal fiction or raises a statutory presumption with regard to the meaning and scope of the expression "outside the State" used in Art. 286 (1). What it says is that if you find that goods have been actually delivered as a direct result of a sale or purchase for the purpose of consumption in a particular State, then the sale or purchase shall be deemed to have taken place in the State, and it further emphasises the statutory presumption or legal fiction by stating that this is so even though the property in the goods has passed by reason of such sale or purchase in another State. **(53) 55 Bom LR 246: 1953-4 STC 10 (DB).**

[**Reversed** in AIR 1953 SC 252 which itself was **overruled** in AIR 1955 SC 661].

——Arts. 286 (1) (a), 286 (2), 286 (1) (a), Explanation (Before Sixth Amendment in 1959)—Inter-State trade or commerce —Essentials — Explanation sale and sale under Art. 286 (2) — Distinction — Explanation sales are inside sales in spite of movement of goods from one State to another — Particular transaction whether an explanation sale — Is a question to be determined on its facts — Law as to sales tax on inter-State trade or commerce — History traced — Bengal Finance (Sales Tax) Act (6 of 1941), S. 2 (g) Expl. (2) (Before its amendment in 1959). **68 Cal WN 1: AIR 1964 Cal 477 (483, 484, 485, 486) (Prs 31, 32, 34).**

——Art. 286 (1) (a), Expln. (before amendment in 1956) — Railway Wagons delivered in West Bengal to Western Railway for its use — Railway using them in and through several States — Effect — If delivered in any one State for consumption in that State.

In case of through transport of goods wagons would sometimes be used for carriage of goods from the Western Railway to other Railways and vice versa. Although the wagons were delivered in the State of West Bengal as a direct result of the sale, it cannot be said that such delivery was for the purpose of consumption in the State of West Bengal. It cannot, therefore, be said that the sales were Explanation-sales, that is to say, sales as a direct result of which the goods were delivered in any one State for consumption in that State. **ILR (1960) 2 Cal 886: (1960) 11 STC 47: AIR 1960 Cal 424 (427) (Pt A) (Pr 13) (DB).**

——Art. 286 (1) (a), Expln. (before amendment in 1956) — Scope and object of.

The purpose of the Explanation is to explain what is a sale outside the State. If the situs of the sale can be fixed by recourse to the Explanation in any particular State, the sale is necessarily outside all other States and is outside even the State in which under the general law the property in the goods has passed by reason of sale. But in a case where the sale does not fulfil the requirements of the Explanation, the sale is not necessarily an outside sale. A sale which is not an Explanation sale may yet be an inside sale, that is to say, a sale inside that State. **(1960) 11 STC 47: ILR (1960) 2 Cal 886: AIR 1960 Cal 424 (427, 428) (Pt B) (Pr 15) (DB).**

——Art. 286 (1) (a), Expln. (before amendment in 1956) — Consumption of goods — If ingredient of sale.

The consumption of the goods bought is not an ingredient of the sale. The place where the goods are consumed cannot localise the sale or fix its venue or situs.

Where railway wagons were prepared and delivered in West Bengal for purposes of use(consumption) in several States, the sale of the said wagons is not an Explanation-sale and the situs of the sale cannot be fixed by recourse to the Explanation. The fiction introduced by the Explanation, does not come into play. The Explanation, therefore, does not make the sale a sale outside West Bengal. **ILR (1960) 2 Cal 886: (1960) 11 STC 47: AIR 1960 Cal 424 (427, 428) (Pt C) (Prs 15, 16) (DB).**

——Art. 286 (1) (a), (before its amendment in 1956), Expln. and (2) — Explanation — Fiction created by — Sale falling within scope of Explanation is not inside sale in context of Cl. (2).

The Explanation to Cl. (1) (a) of Art. 286 (as it was before 1956) enacted a fiction for locating the situs of an inter-State sale by laying down that a sale takes place outside every State other than the delivery-cum-consumption State. But a sale which falls within the scope of the Explanation is not an inside sale simpliciter in the context of Cl. (2) of Art. 286. It is an oversimplification to say that as the quantities of the commodity imported from outside the State were delivered in the Jammu and Kashmir State as a direct result of the sales for the purpose of consumption in that State, the Sales Tax Officer ipso facto became entitled to levy tax on the sales. It

is also erroneous to say so because it completely ignores Cl. (2) of Art. 286 and also the fact that Explanation sales are essentially inter-State Sales. **1962 Kash LJ 83: AIR 1962 J and K 89 (92)(Pt B) (Pr 6) (DB).**

[Partly **Reversed** on another point in AIR 1966 SC 1350].

——**Art. 286 (1) (a), (before its amendment in 1956), Expln. and (2) — Sale—Part of ingredients of sale taking place in State — Its effect on inter-State sale — Transport of petrol from one State to another — Held sale took place in course of inter-State trade.**

Held, that as both the conditions postulated in the Bengal Immunity Co. Case, AIR 1955 SC 661 had been satisfied the sale of petrol took place in the course of inter-State trade. **1962 Kash LJ 83: AIR 1962 J and K 89 (93) (Pt C) (Pr 7) (DB).**

[Partly **Reversed** on another point in AIR 1966 SC 1350.]

——**Art. 286 (1) (a) and (2) — Madras General Sales Tax Act (1939), Section 2 (h) — Sale of rubber in 1953-54 for consumption in purchaser's factories in Bombay and Calcutta — Orders placed by purchasing department in T. C. State for supply of rubber to purchaser's godown at Fort Cochin in Madras State — Orders accepted by agent of estate owners — Delivery of goods in Fort Cochin — Payments made and contract forms issued in T. C. State — Right of rejection of goods for non-compliance of terms reserved in contract — Levy of sales-tax under Madras Act — Sales whether exempt under Art. 286 (1) (a) or Art. 286 (2).**

Held, on facts (i) that notwithstanding the execution of the documents at Kottayam the sales would be liable to pay tax under the Madras General Sales Tax Act due to the goods being at Fort Cochin, unless they be 'outside sales' under Art. 286 (1) (a) and therefore, exempt from the sale tax; (ii) that rubber not having been shown to have been delivered as a direct result of the sales for the purposes of consumption in Bombay or in Calcutta, the Explanation to Art. 286 (1) (a) before the amendment of 1956 would not be attracted. On the other hand the goods were shown to have moved from the erstwhile State of Travancore-Cochin into the State of Madras, which was not the State where the goods were to be consumed, and thereby continuous journey for the purpose of consumption in West Bengal or Bombay had been broken. Therefore, the contracts were not Explanation sales, nor were they otherwise "outside sales" because the property in the goods had passed in the taxing State under Explanation 2 of Section 2 (h), Madras General Sales Tax Act; (iii) that the sales were not inter-State sales and therefore, not exempt from taxation under Art. 286 (2). The words "in course of import" have been defined to mean where the import be the direct result of the contract; and the words "in course of inter-State Sales" cannot be construed differently. It follows that as the ownership in the goods had passed after the rubber had come to rest in the Cochin godown, the earlier stages became part of the agreement to sell, which stages should be excluded from consideration where only sales are being taxed. The purchaser's right to reject the goods after the ownership had passed would also not make the sales inter-State when the further movement to the destination was not provided by the contracts. **1961 Ker LJ 1264.**

——**Art. 286 (1) (a)** — "Outside sale" — Locus of sale for purposes of Sales tax levy — Lex situs is the determining factor — Word "sale" in Article, whether has same meaning as in Sale of Goods Act — Explanation 2 to Section 2 (j), Travancore-Cochin General Sales Tax Act (XI of 1125) is not violative of Art. 286 (1) (a). **('60) ILR (1960) Ker 1395.**

[**Reversed** in AIR 1964 SC 569.]

——**Art. 286 (1) (a), Expln. (Before its amendment by 6th Amendment in 1956) — Sale outside or inside the State where property passes — Test to determine — Explanation when applies — Sale of timber F. O. R. certain place in State — Delivery of goods and passing of property at the place — Mere despatch to various destinations according to purchaser's instructions does not make it outside sale — Sale of Goods Act (1930), Section 39 — Sales Tax — C. P. and Berar Sales Tax Act (1947), Section 27-A.**

For the purposes of determining whether under Art. 286 (1), as it stood before the Constitution (Sixth Amendment) Act, 1956, a sale is 'inside' or 'outside' the State, it is the passing of property within the State that is intended to be fastened on and, therefore, subject to the operation of the Explanation. That State in which the property passed would be the only State which would have the power to levy a tax on the sale. Where the Explanation applies, the sale transaction is by legal fiction deemed to have taken place 'inside' the State of delivery and, therefore, 'outside' the State in which the property has passed. AIR 1961 SC 315, AIR 1961 SC 347 and (1963) 12 STC 363, Rel. on. Thus where a contract of sale of timber was 'F. O. R. Mandla Fort' in the Madhya Pradesh State, if the sale was completed in the State of Madhya Pradesh, property in the goods passed there, and the goods were also actually delivered to the buyer at Mandla Fort, then the seller is undoubtedly liable to pay sales tax in respect of timber sold by it in the State of Madhya Pradesh. If, on the other hand, as direct result of the sale transactions, the timber was delivered for consumption outside the State of Madhya Pradesh, then notwithstanding the fact that property in the goods passed in the State of Madhya Pradesh, the sales would not be liable to any tax under the Act by reason of the Explanation to Art. 286 (1) of the Constitution.

Held on examination of the terms of contract, that as the sale was under the term 'F. O. R. Mandla Fort the actual delivery of timber to the purchaser was at Mandla. That being so, the assessee could not invoke the Explanation to Art. 286 (1) (a) of the Constitution. As the delivery of timber was within the State of Madhya Pradesh and property in the goods passed to the purchaser at that place the tax liability accrued in the State of Madhya Pradesh and that State had the power to levy sales tax on the sale transactions concluded between the parties. That liability was in no way altered or affected by reason of the subsequent despatch of timber from Mandla Fort in accordance with the instructions contained in the Acceptance of Tender Form. **Held,** further that if in a contract of sale, the place of delivery is fixed as F.O.R. the 'place of despatch', then the goods are actually delivered to the buyer at that place. That being so, there cannot be again a 'delivery' of the goods to the buyer at any other place merely because they are subsequently transported by the Railway according to the instructions given by the parties. Section 39 of the Sale of Goods Act does not come into play when in a contract of sale there is an express stipulation that the goods shall be delivered 'f. o. r. the place of despatch'. **(1964) 15 STC 602: 1965 Jab LJ 635: 1964 MPLJ 620.**

——**Art. 286** — Development of Sales Tax Law in India — State of law in pre-Constitution **and**

post-Constitution periods — C. P. and Berar Sales Tax Act (XXI of 1947), Section 2 (g), Expl. II. See Ibid, Art. 245. **AIR 1962 Madh Pra 225 (DB).**

——Art. 286 (1) Explanation (Before its omission by Constitution (6th Amendment) Act, 1956) — Actual delivery, meaning and nature of C. P. and Berar Sales Tax Act (XXI of 1947), Section 4 (6).

'Actual delivery' in the context in which the expression was used in the Explanation to Art. 286 (1) only meant, 'factual or real delivery of the physical goods in species as opposed to notional or constructive delivery'. Such delivery could thus take place only at the moment when the buyer or his authorised agent came into actual physical possession of the goods. Delivery of possession by transferring documents of title in respect of the goods sold was thus not 'actual delivery' nor was delivery to a common carrier, who was presumed to be the buyer's agent for taking delivery, an 'actual delivery' to the buyer. **1961 MPLJ 804: 1961 Jab LJ 1011: 1961 MPC 582: AIR 1962 Madh Pra 225 (232) (Pt B) (Pr 26) (DB).**

——Art. 286 (1) Explanation (Before its omission by Constitution (6th Amd.) Act, 1956) — 'For purposes of consumption', meaning of — C. P. and Berar Sales Tax Act (XXI of 1947), S. 4 (6).

The expression "for the purposes of consumption in that State" in the Explanation to Art. 286 (1) must be understood as having reference not merely to the individual importer or purchaser but as contemplating distribution eventually to consumers in general within the State. Thus all buyers within the State of delivery from out-of-State sellers, except those buying for re-export out of the State, would be within the scope of the Explanation and liable to be taxed by the State on their inter-State transaction. **1961 MPLJ 804: 1961 Jab LJ 1011: 1961 MPC 582: AIR 1962 Madh Pra 225 (233) (Pt C) (Pr 28) (DB).**

——Art. 286 (1) (a), Explanation (as it was before 1956) — Applicability — Evidence to prove actual consumption in delivery State — Necessity.

All that the Explanation to Art. 286 (1) required was that goods delivered as a direct result of sales should have been so delivered 'for the purpose of consumption' in the delivery State. In order to attract the Explanation, it would be enough if it was shown that delivery was given in another State for the purpose of consumption in that State. AIR 1953 SC 252, Rel. on. **1961 MPLJ (Notes) 28.**

——Art. 286 — Scope — Goods sent from M. P. to U. P. where they were sold to consumers — State of M. P. — Right to levy sales-tax — (Sales-Tax — Sales-Tax Laws Validation Act (VII of 1956)) — (Sales-tax — C. P. and Berar Sales-Tax Act (1947), Section 2 (g), Expl. II).

The bar in Art. 286 is created by two separate clauses. The first clause creates a bar in respect of the imposition of tax on the sale or purchase of goods where such sale or purchase takes place outside the State. The second clause introduces a bar in respect of sales or purchases which take place in the course of inter-State trade or commerce. The bar of the second clause did not operate till 31st March, 1951, by reason of the President's Order which had been issued under the proviso to that clause. Later, an Ordinance (the Sales-Tax Laws Validation Ordinance, 1956) and an Act (the Sales-Tax Laws Validation Act, 1956) validated the recovery of sales-tax in spite of the fact that the sale or purchase took place in the course of inter-State trade or commerce. Where the goods were sent from M. P. to dealers in Uttar Pradesh who sold or delivered them for consumption in that State, sales-tax could only be collected by the State in which the goods were actually delivered for the purpose of consumption in that State and not by the State from which the goods were sent for such delivery. Taxes if collected by the State of M. P. in such circumstances after 26-1-1950 would offend against Art. 286 (1). Mullaji Jamaluddin and Co. v. State of M. P., **ILR (1957) Madh Pra 631: (1958) 9 STC 499: 1958 Jab LJ 410: 1958 MPC 277: 1958 MPLJ 353: AIR 1958 Madh Pra 220 (221) (Pt B) (Pr 7) (FB).**

——Art. 286 (as it stood in 1955) — Sale — Passing property—Constituted sale — Property passing in Kerala State — Delivery in pursuance of sale in Madras State did not form component part of such State. See Madras Sales of Motor Spirit Taxation Act (VI of 1939), Section 3 (1). **AIR 1965 Mad 529 (DB).**

——Art. 286 (1) (a) and Explanation and Art. 286 (2) (before Sixth Amendment) — Construction and relative scope — State's power to tax inter-State sale or purchase — Sales Tax Laws Validation Act(VII of 1956) — Scope and effect of — If liberates taxing power of State and lifts ban imposed by Art. 286 (2) — Art. 286 (2) — If overrides Art. 286 (1).

Under Art. 286 of the Constitution there is a very clear ban imposed restricting the power of the State to impose a tax on sale or purchase of goods, where such sale, or purchase takes place outside the State. Not only is the ban clear, but it is also absolute. The Explanation to Art. 286 (1) (a) — which is only in regard to that provision (sub-cl. (a)) — defines a sale which should be deemed to have taken place in the taxing State. Article 286 (1) (a) read with the Explanation takes in and covers inter-State sale or purchase. The ban imposed on the State to tax sale or purchase taking place outside the taxing State is absolute and independent of any other ban in Art. 286; Art. 286 (2) is not capable of being interpreted as enabling Parliament to destroy it. If the terms of the Explanation are satisfied, such sales are by a fiction deemed to be 'inside' the State of delivery-cum-consumption and therefore, outside all other States. In such cases, therefore, only the State 'inside' which the sale is deemed to take place by virtue of the Explanation is exempt from the ban imposed by Art. 286 (1) (a). All other States would be subject to that ban in respect of such sales. The real position is that all outside sales that is inter-State sales in respect of which the taxing State is not the inside State, the delivery-cum-consumption States, are absolutely prohibited from being taxed by the State Legislature. The ban on the States' power to tax outside sales is permanent and irremovable, and Art. 286 (2) has to be read only as enabling the Parliament to lift the ban on inside sale or purchase of the taxing State. The Sales Tax Validation Act only provided for lifting the ban to the extent to which Parliament was permitted to do so under the clear terms of the Constitution. Article 286 (2) cannot be read as completely overriding Art. 286 (1), leading to the result that provided Parliament exercises its power, sale or purchase in the course of inter-State trade or commerce could be indiscriminately taxed by all the States. Article 286 (1) clearly covers inter-State sale or purchase, though in terms it does not say so. The intention of the framers of the Constitution was that no law of the State should tax a sale or purchase in the course of inter-State trade or commerce which is

extra-territorial in character. An inside sale falling within the Explanation can be taxed if Parliament lifts the ban under Art. 286 (2). If the terms of the Explanation do not cover a particular sale, then the question whether the sale is an outside sale qua the taxing State has to be determined by finding out the place where the property in the goods passed. In respect of an inter-State sale not falling within the Explanation to Art. 286 (1) (a), on the lifting of the ban by Parliament under Art. 286 (2) the State wherein the property in the goods passed may levy tax if the words of the taxing section of the enactment are wide enough to cover such a transaction. **ILR (1964) 1 Mad 367: (1965) 1 MLJ 411: (1963) 14 STC 923.**

——**Art. 286 (1),** Explanation — Sales Tax — Madras General Sales Tax Act (IX of 1939), Section 22 — Sales in which property passes outside Madras State but delivery for consumption inside Madras — Transaction taxable under Section 22. See Sales Tax — Madras General Sales Tax Act (IX of 1939), Section 22. **AIR 1963 Mad 116 (DB).**

[**Overruled** on another point in AIR 1964 SC 922.]

——**Art. 286 (1) and (2) — Sales Tax Laws Validation Act (1956), Section 2 — Madras General Sales Tax Act (IX of 1939), Section 3 (1) — Turnover and Assessment Rules, Rule 4-A — Inter-State sale in Madras State — Delivery-cum-consumption in Kerala State — Transactions between period covered by Validation Act — Seller in Madras State whether last purchaser within R. 4-A — Liability of transactions to tax in Madras — Effect of Validation Act — Inter-State sale whether converted into intra-State sale.**

The Sales Tax Laws Validation Act cannot have the effect of treating all inter-State sales as intra-State sales as that would amount to abrogation of Art. 286 of the Constitution altogether. The Constitution prohibits a State from taxing sales ouside the State. The State where actual delivery of goods takes place for the purpose of consumption is deemed to be the locus where the sale takes place: AIR 1953 SC 252, Rel. on.

With regard to 'explanation sales', the State, in which actual delivery is effected for purpose of consumption can levy tax on the sale, provided the Parliament lifts the ban under Art. 286 (2). But with regard to what may be called 'non-explanation sales', that is, sales which do not fall within the Explanation to Art. 286 (1) of the Constitution, the mere lifting of the ban under Art. 286 (2) by the Parliament will not enable a State to levy a tax in respect of a sale which may yet be a sale outside the State territory.

What is an 'outside sale' is defined by the Constitution by the Explanation to Art. 286 (1) which states what should be deemed to be an 'inside sale'. The irresistible inference is that an 'inside sale' falling within the terms of the explanation can be taxed if the Parliament lifts the ban under Art. 286 (2). If the terms of the explanation do not cover a particular inter-State sale then the question whether the sale is an 'outside sale' qua the taxing State has to be determined by finding out the place where the property in the goods passes. In respect of an inter-State sale not falling within the Explanation to Art. 286 (1) (a) on the lifting of the ban by the Parliament under Art. 286 (2) the State wherein the property in the goods passes may levy tax if the words of taxing section of the enactment were wide enough to cover such a transaction.

Held, on facts (1) that as the sales were outside the Madras State and inside the Kerala State, the latter being 'delivery-cum-consumption' State, the sales cannot be taxed by the Madras State. (2) It cannot be accepted that the Mills in Kerala were the last purchasers. The Mills are the purchasers in inter-State sales, falling within the Explanation to Art. 286. The 'delivery-cum-consumption' State is the Kerala State and in relation to the Madras State, it is an 'outside' sale. The situs of the sale having been located by the Constitution as the Kerala State the Madras State is under a disability to tax such sales. Once the transactions are beyond the purview of the Madras Act, it is inconceivable that the parties to the transaction can be brought in for any measure of tax liability. It must therefore be held that the Mills are not the last purchasers. As the petitioners have failed to establish that they were not last purchasers, the assessment under Rule 4-A was correct. **75 Mad LW 524: (1962) 13 STC 785: ILR (1962) Mad 1131: (1963) 1 Mad LJ 28: AIR 1963 Mad 5 (7, 8, 9) (Prs 15, 16, 20, 23, 24) (DB).**

——**Art. 286 (1) (a) and (b) — Applicability — Cotton imported into India from abroad by Bompay dealers — Purchase by spinning mill at Tirupur in Madras — Dealers' agents clearing goods through customs and then despatching goods to Tirupur — Purchaser paying price into bank against delivery of railway receipt — Right of Madras to tax sales — Validity of Rule 4-A (iv), Madras (General Sales-tax Turnover and Assessment) Rules, 1939.**

The assessee, a spinning mill at Tirupur, Madras State was assessed to sales tax under Rule 4-A (iv) of the Turnover and Assessment Rules on its purchases of cotton which had been imported from Egypt, by Bombay dealers. The Bombay dealers imported cotton from Egypt and the shipping documents were in their names. The assessee intimated the Bombay dealers about its requirements and then the Bombay dealers placed order with suppliers in Africa. The shipments were directed from African ports to Cochin. The clearing agents of the Bombay dealers at Cochin cleared the goods through customs and then despatched them to Tirupur to the assessee who paid the price into the bank against delivery of railway receipt:

Held, (1) that since the purchases of cotton were made after the cotton had been imported into India by the Bombay dealers and after the cotton had crossed the customs frontier in India, the purchases did not fall within the scope of Art. 286 (1) (b) of the Constitution. They were not purchases in the course of import but were purchases effected after the import had been completed:

(2) that both the requirements of the explanation to Art. 286 (1) (a) were satisfied and Madras had the right to tax the sales, once Parliament lifted the ban on taxation on sales and purchases in the course of inter-State commerce:

(3) that Rule 4-A (iv), as it stood in the relevant period, was intra vires and it was not in conflict with any of the provisions of Section 5 (ii) of the Madras General Sales Tax Act. **(1960) 11 STC 306: AIR 1961 Mad 87 (88, 89) (Prs 4, 5, 8) (DB).**

——**Arts. 286 (1) (a) Explanation and 286 (2), Inter-State sale when President's Sales Tax continuance Order was in force — Which State can levy Sales-tax — Question whether it was 'Explanation sale' has to be decided — (President's Sales Tax Continuance Order (1950)).**

The 'explanation sale', that is, the sale which falls within the scope of Art. 286 (1) (a) of the Constitution can itself be a sale in the course of inter-State trade and to such a sale the ban

imposed under Art. 286 (2) would also apply. When that ban was lifted by the President's Sales Tax Continuance Order and some articles were sold outside certain State, the question is whether it was an inside sale as far as that State was concerned, or whether it was an outside sale which came within the scope of explanation to Art. 286 (1) (a). If they were outside sales, the President's Order would not enable that State to tax on those transactions, because the implied ban imposed by explanation to Art. 286 (1) (a) would apply proprio vigore and could not be covered by the President's Sales Tax Continuance Order, which was concerned only with the lifting of the ban on taxing of sales in the course of inter-State trade. In such a case the question at issue is, whether there were sales of articles outside that State for consumption in the States of delivery. (AIR 1955 SC 765 and AIR 1955 SC 661, Relied on). **(1959) 10 STC 598: (1960) 1 Mad LJ 140: 73 Mad LW 282: AIR 1960 Mad 236 (236, 237) (Prs 2, 3, 4) (DB).**

——**Art. 286 (1) (a)** — Sales Tax — Madras General Sales Tax Act (9 of 1939), Sections 3 and 22 — Transactions in cotton falling within the scope of explanation to Art. 286 (1) (a) of the Constitution — Transactions taking place between 26-1-50 and 31-3-50 i.e. during the period not covered by Sales Tax Validation Act, 7 of 1956 which lifted the constitutional ban on the right of States to taxable turnover of the assessee — Such transactions must be excluded from the taxable turnover of the assessee — The President's Sales Tax Continuance Order which was in force during the relevant period cannot validate the imposition of levy after the Constitution. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 3. **(1960) 11 STC 622 (Mad).**

——**Art. 286 (1) (a) — Sales Tax — Madras General Sales Tax Act (9 of 1939), Section 3 and Section 2 (h) — Goods outside Madras State brought within — Sale transaction involving inter-State element — Liability to tax.**

Where the goods are originally outside the State, but are brought into the State by reason of the purchase, then whether the property in the goods passes within the State or not, the tax liability is attracted by virtue of the main portion of the definition of "sale" in section 2 (h) read with Section 22. In regard to them, Art. 286 (1) (a) and the Explanation thereto, which, by reason of their introduction into the Madras General Sales Tax Act as Section 22, have to be read as part of the Sales Tax Act of the Madras State, will fictionally deem such sales to be "inside" sales inasmuch as Madras is the State of delivery or consumption. But when this view was overruled by the Supreme Court in the Bengal Immunity case, AIR 1955 SC 661, the postion which emerged was, that though these sales were "inside" sales for the purposes of the Madras Sales Tax Act, the tax upon them became obnoxious to the provisions of Art. 286 (2), and, therefore, they would have been exempt from tax. But the Sales Tax Laws Validation Ordinance (No. 3 of 1956) promulgated by the President on 30-1-1956 applies to such sales, and to the tax liability arising thereon, and after the Ordinance, the exemption based upon Art. 286 (2) will no longer be applicable. And hence the turnover on the purchase value of cotton purchased during the year 1951-52 by the mills situated in Madras State from Messrs. Volkart Brothers is not excluded from taxation under the Madras General Sales Tax Act. **(1956-57) 7 STC 691: 70 Mad LW 142: (1957) 1 MLJ 356: AIR 1957 Mad 362 (366, 367, 368) (Pt C) (Prs 10, 17, 22) (DB).**

——**Art. 286** — Madras General Sales Tax Act, Section 2 (h) (before its amendment by Act 25 of 1947) — Negotiable Instruments Act (1881), Section 5 — Sale of Goods Act (1930), Section 25 (3) — Export of goods to foreign buyer under letter of credit — 95 per cent. of price paid to seller in Madras State on presenting documents — Goods pass to buyer in State of Madras and liable to tax. See Sales Tax — Madras General Sales Tax Act (9 of 1939) (Before its amendment by Act (25 of 1947), Section 2 (h). **AIR 1956 Mad 695.**

●——**Art. 286** — Place of sale — Test. See Sales Tax — Madras General Sales Tax Act (IX of 1939), Section 3. **AIR 1956 Mad 659 (FB).**

——**Art. 286 — Intra-State or inter-State Sale — (Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 2 (h)).**

Held, on facts that as between the seller and the buyer the sale was completed by the delivery of the goods sold at the seller's premises within the State of Madras. That made it an intra-State sale, a sale wholly concluded within the State of Madras. The liability to tax under the Madras General Sales Tax Act arose at that stage and fell upon the seller. That the goods were purchased avowedly for transport outside the State of Madras would not make it a sale in the course of inter-State commerce. In the despatch of the goods by the agent to his principal, there was no element of sale. As between the seller and buyer acting through his agent the sale was concluded by delivery within the State, when the seller was liable to pay the sales-tax. **1956 Mad WN 600: (1956) 2 Mad LJ 324: (1956) 7 STC 522: 69 Mad LW 569: ILR (1957) Mad 55: AIR 1956 Mad 631 (632) (Pr 3) (DB).**

——**Art. 286 (1) (a), Explanation and (2) — Sales transactions — Goods outside Madras brought into that State — Levy of sales tax — (Sales Tax — Madras General Sales Tax Act (IX of 1939), Section 3) — (Sales Tax Laws Validation Ordinance (1956), S. 2).**

Where, by reason of the sales transactions sought to be taxed, goods which were outside the State of Madras were brought over into that State and the transactions took place between the dates mentioned in Ordinance III of 1956,

Held, that as goods were transported to the State of Madras and delivered for consumption there, they were inside sales within the explanation to Art. 286 (1) (a), but they were clearly transactions in the course of inter-State trade within Art. 286 (2) and therefore exempt from taxation, but by reason of Section 2 of the Ordinance, the sales being taxable before the Ordinance under Madras Sales Tax Act, the tax was rendered valid. **(1956) 7 STC 771: AIR 1956 Mad 627 (628) (Pt B) (Pr 5) (DB).**

——**Art. 286** — Madras General Sales Tax Act (1939), Section 3 — Right to levy tax — State in which property in goods passes and not State where contract is made can levy tax — No evidence as to place of contract — Goods delivered and price paid in State of Madras — Property in goods passes in Madras State — Sellers liable to pay Sales Tax — Onus is on sellers to establish that sale did not take place in Madras State. See Sales Tax — Madras General Sales Tax Act (9 of 1939), Section 3. **AIR 1955 Mad 541.**

——**Art. 286 (1) (a), Explanation — Delivery outside the State — (Sales-tax — Madras General Sales Tax Act (IV of 1939), Section 7 — Applicability) — (Sale of Goods Act (1930), Section 39 (1) — Delivery to carrier).**

The assessee was a registered manufacturer of and a licensed dealer in groundnut oil carrying on business in Pollachi. During the accounting year, he sold oil to Messrs. Tata Oil Mills Co., Ltd. The course of business between the assessee and the purchasers was as follows: As the sale of the oil was 'loose' the containers were supplied by the purchasers who sent their own drums to the assessee for the carriage of the oil. These containers were filled in at the assessee's mills and were transported to Pollachi Junction and then loaded on Railway wagons by the sellers who obtained Railway receipts in the name of the buyers as consignors, the consignees of course being the same. On the instructions of the buyers all the oil sold under these contracts was routed to Ernakulam where it was cleared by the buyers and the commodity was consumed in the latter's mills. The railway receipts were, with the relative invoices, handed over at Coimbatore to the buyers where they had an office and the sellers received a good portion of the price. The balance was paid after weights were checked and fatty acid tests were carried out by the buyers at Ernakulam.

Held, that as the carrier was constituted an agent of the buyer for accepting delivery of the goods on his behalf the goods had "actually been delivered to the buyer at Pollachi within the Madras State" and therefore, the tax liability had accrued and this was not altered or affected by reason of the subsequent despatch of the goods at the instance of the buyer from the State of Madras to Ernakulam outside the State.

The circumstance that the weight of the oil as well as the fatty acid contents were checked at Ernakulam and it was only thereafter that the balance of the price was paid to the assessee did not militate against the buyer having taken delivery of the goods at Pollachi when they were handed over to the buyer's agent, viz., the carrier.

The requirements of Section 7 of the Madras General Sales Tax Act were even stricter and the exemption narrower than that embodied in the Explanation to Art. 286 (1) (a). Therefore, in a case to which the latter provision was not attracted, the provisions of Section 7 could not possibly apply. In the present case the contract stipulated for delivery inside the State and so the terms of Section 7 of the General Sales Tax Act were not brought into play. AIR 1953 SC 252 Disting. **ILR (1956) Mad 299: 68 Mad LW 471: (1955) 2 MLJ 319: (1955) 6 STC 230: AIR 1955 Mad 502 (503, 504) (Prs 6, 7, 9, 10, 12) (DB).**

(See the decision in the Bengal Immunity Co. case.)

——**Art. 286 (1) (a)** — Inter-State Sales before 31st March, 1951 — Assessability to tax. See Sales Tax — Madras General Sales Tax Act (XXV of 1947),S. 22. **AIR 1955 NUC (Mad) 1561 (DB).**

——**Arts. 286 (1), Explanation 245 (1), 246 and Sch. 7, List II, Entries 92 and 54** — Power of State to tax, intra-State and inter-State sales — Sales Tax — Madras General Sales Tax Act (9 of 1939), Ss. 3 and 22. See Ibid, Art. 245 (1). **AIR 1953 Mad 116 (DB).**

——**Art. 286 (1), Explanation — "Consumption" — Meaning of.**

The word "consumption" in the Explanation cannot be understood in the limited sense of eating but in the wider sense of using. **(1952) 3 STC 405: 1952 Mad WN 878: 1952 Comp TC 179: (1952) 2 MLJ 614: 65 Mad LW 1046: AIR 1953 Mad 116 (128) (Pt D) (Pr 33) (DB).**

——**Art. 286 (Before amendment by Constitution (Sixth Amendment) Act, 1956) — Explanation sale — Inter-State trade — Inside sale — Scope of Art. 286 (1) (a) and (1) (b) and (2) — Actual delivery, when takes place.**

Before a sale can be considered as an "inside sale" under the explanation to Art. 286 (1) (a) actual delivery to the purchaser or to his agent should have taken place inside the taxing State; a delivery to the common carrier as such is not "actual delivery" within the contemplation of the Explanation to Art. 286 (1). The Explanation to Art. 286 (1) (a) can apply only if more than one State is involved in the same transaction. When there is no other State in which the goods are said to have been consumed apart from the State where the property in the goods passed, the Explanation is not needed as the key. The power to tax in those circumstances is exercisable by virtue of transfer of title to the property. Where the property in the goods passed within a State as a direct result of the sale, the sale transaction is not outside the State for the purpose of Art. 286 (2) (a) unless the Explanation operates. The expression "consumption" found in the Explanation to Article 286 (1) (a) is not used to denote destruction or user as understood in ordinary parlance; it is used as a term in economics, comprehending the diverse use of the goods in question, e.g., the distribution of the goods as in the case of resale is also consumption coming within the meaning of that expression. Sale or purchase for the purpose of export or for the purpose of inter-State trade is not a sale or purchase in the course of export or import or in the course of inter-State trade. Sales in the course of export or in the course of inter-State trade must of necessity be put through by transporting the goods by rail or ship or other means of communication. In other words, sale or purchase must occasion the export or inter-State trade or commerce. To put it differently, the sale or purchase must be inextricably bound up with the export or import or with inter-State trade or commerce and must form an integral part thereof. **40 Mys LJ 774: (1962) 13 STC 508: AIR 1963 Mys 141 (147) (Pt A) (Pr 29) (DB).**

——**Art. 286 (1 (a) Expln. and (2) — Applicability — Manufacturing Company in Mysore — Sale of tobacco goods outside Mysore for consumption— Property in goods to pass to purchaser as soon as goods are delivered to carrier in Mysore — Whether constitutes actual delivery to purchaser within Mysore State.**

Held, that the expression 'actual delivery' in the Explanation to Art. 286 (1) (a) means delivery of the goods to the purchaser or his agent and delivery to the common carrier is not actual delivery. The goods sold by the assessee to persons outside the State could not therefore, be considered to have been actually delivered to them within the State of Mysore and were exempt from being taxed.

The ban under Art. 286 (1) (a) read with the Explanation applies to the case and so the assessees were not liable to pay sales-tax with respect to goods sold and exported outside the State of Mysore and the continuance order of the President under sub-cl. (2) will not lift the ban placed by Cl. (1). AIR 1955 SC 661 and AIR 1955 SC 765, Applied. **ILR (1956) Mys 260: (1957) 8 STC 248: AIR 1957 Mys 14 (16) (Pr 7).**

——**Arts. 286 (1) (a), Explanation 245** — Validating Laws — Explanation sales made liable to tax by Validating Act — Assessment order was passed prior to Validating Act and when order suspending levy of tax was in force — Assessment can be made after pasing of Validating Act — Orissa Sales Tax Laws (Validation) Act (7 of

(1956). See Ibid, Art. 246. **AIR 1965 Orissa 190 (DB).**

——Art. 286 (1) Explanation (as it was before the Constitution (Sixth Amendment) Act of 1956) — 'For the purpose of consumption in that State' — Evidence of actual consumption in outside State not necessary — Orissa Sales Tax Act (XIV of 1947), S. 12 (2).

In order to get the benefit of the exemption from Orissa Sales Tax by virtue of the Explanation to Art. 286 (1) (a) of the Constitution, it is not necessary for the assessee to prove that the goods were actually consumed in the outside States. It is enough if he proves that the goods were intended for purpose of consumption outside the State. AIR 1961 SC 347, Rel. on. **(1961) 12 STC 652: AIR 1962 Orissa 99 (99, 100) (Pr 3) (DB).**

——Art. 286 (1), Explanation — Goods purchased from outside dealers under declaration given under R. 27 (2)— Re-sale to outside dealers in contravention of the declaration — Proviso to S. 5 (2) (a) (ii) is attracted — Sale price realised ought to be included in taxable turnover. See Sales Tax — Orissa Sales Tax Act (XIV of 1947), S. 5 (2) (a) (ii). Proviso. **ILR (1962) Cut 797.**

——Art. 286 (1), Explanation — Legal fiction— (Sales-tax — Orissa Sales-Tax Act (XIV of 1947), Ss. 2 (c), 4, 12 (5) — Dealer —Non-registration).

Held, that sales were taking place within the State of Orissa and further that in the transactions of sale under consideration the petitioners were the sellers and were selling their goods in Orissa as the goods were delivered for consumption in the State of Orissa as a direct result of the sales. Not only orders were secured from the purchasers in Orissa by the canvassing agents of the petitioners but the sales were completed in Orissa though the petitioners were private limited liability Companies having their registered office at Mount Road, Madras. No distinction could be drawn between a sale as a legal fiction and an actual sale for the purpose of the present cases; such transactions were to be deemed to be sales for all purposes of this Act. In such transactions of sales, therefore, the petitioners were the sellers and must, therefore, be held to be selling goods as contemplated in the definition of a dealer. But there was a further element involved within the meaning of the term "carrying on business" that is to say a few stray and occasional cases of sales could not lead the Court to find that the petitioners were carrying on business of selling their goods in Orissa. It had further to be found that the petitioners were habitually or systematically selling their goods within the State of Orissa.

Held, further, that the petitioners proceeded in a bona fide manner for obtaining a judicial pronouncement of the High Court before submitting their returns to the sales-tax authorities. They had, therefore, sufficient cause for not applying for registration, as the decision of their Lordships of the Supreme Court, reported in AIR 1953 SC 253 alone was not sufficient for fixing the liability of the petitioners for taxation. When there was still a further question to be determined that the petitioners were dealers within the meaning of the Act, it could not be said that the petitioners wilfully avoided to get themselves registered so as to attract the penal provisions of the Act. Case-law discussed. **ILR (1955) Cut 334: AIR 1955 Orissa 122 (124 to 127) (Prs 2, 3, 4, 6) (DB).**

——Art. 286 (1) (a) — Inter-State transaction involving delivery outside province — Taxability — (Sales-Tax—Orissa Sales-Tax Act (XIV of 1947), S. 4).

The constitutional position under Art. 286 (1) (a) seems to be that where any transaction of sale involves inter-State elements only that State where the goods are actually delivered for the purpose of consumption would be entitled to tax that transaction. AIR 1953 SC 252, Rel. on.

Several dealers in Raipur and Manbhum placed orders with the petitioner, a dealer in Orissa had also paid some money in advance. On receipt of such orders, petitioner indented for railway wagons, loaded them with cocoanuts and booked them by rail to Raipur and Manbhum and sent the Railway Receipts to the purchasing firms either through bank or through V. P. P. The purchasing firms obtained custody of the Railway Receipts on payment of the full price inclusive of transport charges and then took delivery of the cocoanuts at the places of destination. The petitioner claimed exemption from sales-tax in Orissa in respect of these transactions relying on Art. 286 (1) (a) of the Constitution.

Held, that if the State of Orissa wished to tax a transaction of sale involving inter-State elements they had to show that the delivery also took place in Orissa for the purpose of consumption. On the above facts, however their power of taxing the transaction did not exist. **19 Cut LT 359: ILR (1953) Cut 553: AIR 1953 Orissa 334 (336) (Pt A) (Pr 6) (DB).**

——Art. 286 (1) (a) and Expl. — Object of — Taxability of inter-State sales — Test.

The primary object of inserting the provisions of Art. 286 in the Constitution was to give a simple definition of the situs of sale involving inter-State elements so as to avoid the uncertainties which prevailed before the commencement of the Constitution. The Constitution makers, with a view to simplify the law on the subject for the purposes of sales-tax and prevent multiple taxation, defined 'inside sale' in the Explanation thereby also defining what was 'outside' sale that is to say, sale outside a State, the determining factor in each case being the place where there was actual delivery of goods for the purpose of consumption which was an easily ascertainable test. **19 Cut LT 357: ILR (1953) Cut 553: AIR 1953 Orissa 334 (336) (Pt B) (Pr 6) (DB).**

——Arts. 286 (1) (a) and 286 (2) — Sales outside State and Inter-State sales — Tax on, by States — Validity — Effect of President's Order in 1950 and Act VII of 1950 — Sales Tax Continuation Order (1950), S. 2 — (Sales Tax Laws Validation Act (1956), S. 2).

In the case of sales of goods despatched outside the State and consumed in the State of first destination, two bans or restriction are attracted. The first ban is imposed by the Explanation to Art. 286 (1) (a), because it fixes the situs of such sales outside the State by means of a legal fiction and because such sales are

deemed to be outside sales, the State has no legislative authority to tax such sales. The second ban is imposed by Art. 286 (2) against taxation of goods in inter-State commerce or trade. In this category of sales, there are thus two hurdles to surmount, and the President's Order of 1950 and the Central Act VII of 1956 are ineffectual and inoperative, because the ban imposed by the Explanation to Art. 286 (1) (a) has not been surmounted. AIR 1955 SC 765, Rel. on.

In the case of sales of goods despatched outside the State and consumed in States other than the State of first destination, however, only one ban is attracted namely, the ban imposed by Art. 286 (2), and not the ban imposed by the Explanation to Art. 286 (1) (a). It follows, therefore, that the second category of sales has only one hurdle to surmount, namely, the hurdle imposed by Art. 286 (2), and that hurdle has been surmounted by the President's Order and by Central Act (VII of 1956) for the period from 26-1-1950 to 6-9-1955. **1957 BLJR 631: (1956) 7 STC 745: AIR 1957 Pat 288 (290) (Pt A) (Pr 3) (DB).**

——Art. 286 (1) (a), Explanation, Art. 246 (3), Sch. VII, List II, Entry 54 — Scope of — Inter-State sales — Tax on, by consuming State — Source of legislative competency.

The argument that only the consuming State has the authority to impose sales tax by virtue of the Explanation to Art. 286 (1) (a) and that no other State except the consuming State may impose sales-tax, proceeds on a wrong assumption that the Explanation to Art. 286 (1) (a) is a source of power of the taxing State. The provision of Art. 286 (1) (a) is only in the way of restriction or fetter of the legislative power of taxation. The affirmative grant of power is contained in Art. 246 (3) and in Entry No. 54 of List II of the Seventh Schedule. **1957 BLJR 631: (1956) 7 STC 745: AIR 1957 Pat 288 (292) (Pt C) (Pr 5) (DB).**

——Art. 286 (1) (a), Explanation — Exemption under, when available.

A person is exempted from the payment of tax only if there is proof that the goods were delivered and consumed in the State of first destination. The sales would not be exempted if the goods are not consumed in the State of first destination but they are re-exported from the State of first destination to other States. **1956 Pat LR 510: 1957 BLJR 130: (1956) 7 STC 776: ILR 35 Pat 1055: AIR 1957 Pat 112 (114) (Pt B) (Pr 5) (DB).**

——Art. 286 (1) (a) and (2) — Scope — Bihar Sales Tax Act (XIX of 1947), S. 2 (g) as amended by Bihar Sales Tax Act, 1948 (VI of 1949) — Definition of sale, whether ultra vires — Goods produced in Bihar sold outside Bihar after Constitution — If taxable.

The definition of sale as given in S. 2 (g), Bihar Sales Tax Act 1947, as amended by the Bihar Sales Tax Act, 1948, is ultra vires the Bihar Provincial Legislature to the extent it contravenes Art. 286 of the Constitution of India.

Held, on facts that the assessee could not legally be taxed in the present case for sales of goods delivered outside the State of Bihar after the 26th January, 1950. AIR 1953 SC 252 and AIR 1954 SC 403 and AIR 1955 SC 661 and AIR 1955 SC 765, Rel. on. **(1957) 8 STC 841: AIR 1956 Pat 432 (434) (Pr 6) (DB).**

——Art. 286 — Net turnover of manufacturer of cocoanut oil — Sale of oil outside State — Deduction of sale price not allowed. See Sales Tax — Travancore-Cochin General Sales Tax Act (XI of 1125), S. 2 (j). **AIR 1955 Trav-Co 126 (DB).**

7. Sale and purchase in course of import and export — Clause (1) (b).

●**——Art. 286 (1) (b) — Assessment of sales-tax —Assessee claiming exemption under Art. 286 (1) (b) — Burden of proving facts is on assessee.** See Ibid, Art. 226. **(1965) 16 STC 599: (1965) 2 SCWR 243: 1965 Cant LJ 90: AIR 1966 SC 142.**

●**——Art. 286 (1) (b) — "In the course of export of the goods out of the territory of India" — Meaning of — Sale for export and sale in the export — Distinction — Sales of tea by auction to agents of foreign buyers — Held sales and export did not form part of single transaction— Sales were for export but not in the course of export.**

A transaction of sale which occasions export or which is effected by a transfer of documents of title after the goods have crossed the customs frontiers is exempt from sales-tax levied under any State legislation. To constitute a sale in the course of export of goods out of the territory of India, common intention of the parties to the transaction to export the goods followed by actual export of the goods to a foreign destination is necessary. A sale, by export involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated and the sale and resultant export form part of a single transaction. A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connnection between the two cannot be volunarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. There are a variety of transactions in which the sale of a commodity is followed by export thereof. At one end are transactions in which there is a sale of goods in India and the purchaser immediate or remote exports the goods out of the India for foreign consumption. For instance, the foreign purchaser either by himself or through his agent purchases goods within the territory of India, and exports the goods and even if the seller has the knowledge that the goods are intended by the purchaser to be exported, such a transaction is not in the course of export for the seller does not export the goods, and it is not his concern as to how the purchaser deals with the goods.

Such a transaction without more cannot be regarded as one in the course of export because etymologically "in the course of export" contemplates an integral relation or bond between the sale and the export. At the other end is a transaction under a contract of sale with a foreign buyer under which the goods may under the contract delivered by the seller to a common carrier for transporting them to the purchaser. Such a sale would indisputably be one for export, whether the contract and delivery to the common carrier are effected directly or through agent. But in between lie a variety of transactions in which the question whether the sale is one for export or is one in the course of export i.e., it is a transaction which has occasioned the export, may have to be determined on a correct appraisal of all the facts. Where there are two sales leading to export the first under which goods are procured for sale and the property in the goods passes within the territory of India, and the second by the buyer to a foreign party resulting in export—the first cannot be regarded as a sale in the course of export, for a sale in the course of export must be directly and integrally connected with the export. It cannot also be predicated that every sale which results in export is to be regarded as sale in the course of export.

Per Majority, Wanchoo and Rajagopala Ayyangar, JJ. Contra :— Tea cannot be exported otherwise than under a licence : such a licence may be issued to a manufacturer or to the purchaser of the quota granted by the Central Government to the manufacturer when tea is sold with export right. When auctions of tea with the export rights are held at Fort Cochin, sellers on whose behalf the auctioneer acts as the agent know that bids are offered by the buyers of tea for the purpose of export. It is also known that the bidder is an agent or an intermediary of a foreign buyer. When chests of tea out of the export quota are sold together with the export rights, the goods are earmarked for export, and knowledge that the goods were purchased by the bidders for exporting them to the foreign principals of the bidders must clearly be attributable to the sellers. But the co-existence of these circumstances does not impress upon the transactions of sale the character of a transaction in the course of export out of the territory of India. Though the fact that the tea chests are sold together with export rights imputes knowledge to the seller that the goods are purchased with the intention of exporting there is nothing in the transaction from which springs a bond between the sale and the intended export linking them up as part of the same transaction. Knowledge that the goods purchased are intended to be exported does not make the sale and export parts of the same transaction nor does the sale of the quota with the sale of the goods lead to that result. There is no statutory obligation upon the purchaser to export the chests of tea purchased by him with the export rights. The export quota merely enables the purchaser to obtain export licence which he may or may not obtain. There is nothing in law or in the contract between the parties or even in the nature of the transaction which prohibits diversion of the goods for internal consumption. The sellers have no concern with the actual export of the goods, once the goods are sold. They have no control over the goods. There is therefore, no direct connection between the sale and export of the goods which would make them parts of an integrated transaction of sale in the course of export. The sales were intended to be complete without the export, and as such it cannot be said that the said sales occasioned export. The sales were therefore, for export and not in the course of export. AIR 1952 SC 366 and AIR 1953 SC 333 and AIR 1956 SC 158 and AIR 1958 SC 1002 and AIR 1962 SC 1733 and AIR 1961 SC 311, Rel. on. Ben Gorm Nilgiri Plantations, Co-conoor (Nilgiris), etc. v. S. T. Officer, Special Circle, Ernakulam, etc., **1964 Ker LJ 1019 : (1964) 2 SCJ 693 : (1964) 7 SCR 706 : (1964) 15 STC 753 : AIR 1964 SC 1752 (1754 to 1758) (Prs 4, 5, 8 to 10, 17).**

■——**Art. 286 (1) (b) — "In the course of export" — Meaning of — Does not include sale which precedes export — Andhra Act XIV of 1955 does not contravene Art. 286 (1) (b).**

It is only the sale under which the export is made that is protected by Art. 286 (1) (b) and a purchase which precedes such a sale does not fall within its purview though it is made for purpose of, or with a view to export. Hence Andhra Act XIV of 1955 by which S. 5 of the Madras General Sales Tax Act (IX of 1939) has been amended by addition of item (viii) must be held not to contravene Art. 286 (1) (b) on the ground of imposing tax on sales in the course of export. AIR 1952 SC 366, Disting., AIR 1953 SC 333 and AIR 1956 SC 158 and AIR 1958 SC 1002, Rel. on. East India Tobacco Co., etc. v. State of A. P., **(1962) 2 SCA 695 : (1963) 1 SCR 404 : (1962) 13 STC 529 : AIR 1962 SC 1733 (1737) (Pt C) (Pr 14).**

■——**Art. 286 (1) (b) — 'In the course of export' — Meaning of.**

The concept of export in Art. 286 postulates, just as the word 'import' , the existence of two termini as those between which the goods are intended to move or between which they are intended to be transported, and not a mere movement of goods out of the country without any intention of their being landed in specie in some foreign port.

Therefore, transactions of sale of bunker coal to be supplied from the assessee's depot in Candle island in Madras State and trimmed into the steam-ships standing in the waters of Port Cochin for enabling them to sail out of India, cannot be said to be sales in the course of export within the meaning of Art. 286 (1) (b) merely because the coal was to be carried outside the territory of India. AIR 1961 SC 315, Rel. on. State of Kerala v. Cochin Coal Co., Ltd. **1961 Ker LJ 405 : (1961) 2 SCJ 20 : (1961) 2 SCR 219 : (1961) 12 STC 1 : AIR 1961 SC 408 (410, 411) (Pt A) (Pr 5).**

■——**Art. 286 (1) (b) (before amendment) — Sale 'within course of export'.**

Every sale or purchase proceding the export is not necessary to be regard as within the course of export. It must be inextricably bound up with the export, and a sale or purchase connected with the ultimate export as an integral part thereof is not within the exemption. Sales or purchases for the purpose of export are not protected, unless the sales or purchases themselves occasion the export and are an integral part of it. Burmah Shell Oil Storage & Distributing Co. of India Ltd. v. Commercial Tax Officer, **(1961) 1 SCR 902 : (1960) 11 STC 764 : (1962) 2 SCJ 251 : AIR 1961 SC 315 (323) (Pt B) (Pr 27).**

●——**Art. 286 (1) (b) (Before amendment) — 'Export' — Sale of aviation spirit to foreign bound aircraft is not export.**

The test of export is that the goods must have

a foreign destination where they can be said to be imported. If the goods are exported and there is sale or purchase in the course of that export and the sale or purchase occasions the export to a foreign destination, the exemption is earned. The crucial fact is the sending of the goods to a foreign destination where they would be received as imports.

Aviation spirit loaded on board an aircraft for consumption, though taken out of the country, is not exported since it has no destination where it can be said to be imported, and so long as it does not satisfy this test, it cannot be said that the sale was in the course of export. Further, the sales can hardly be said to 'occasion' the export. The seller sells aviation spirit for the use of the aircraft, and the sale is not integrally connected with the taking out of aviation spirit. The sale is not even for the purpose of export. It does not come within the course of export, which requires an even deeper relation. The sale, thus, does not come within Art. 286 (1) (b). Burmah Shell Oil Storage & Distributing Co. of India Ltd. v. Commercial Tax Officer. **(1961) 1 SCR 902: (1960) 11 STC 764: AIR 1961 SC 315 (323, 324) (Pt C) (Prs 28, 29).**

●——Art. 286 (1) (b) — Sale under F. O. B. contracts — Property in goods passes to seller only when they are put on board the ship — Hence sales are exempt from sales-tax.

Sales in which goods remain the seller's property till they had been brought on board the ship are exempt from sales-tax under Art. 286 (1) (b) of the Constitution.

If the property in the goods passes to the buyer after they have, for the purpose of export to a foreign country, crossed the customs frontier the sale has taken place 'in course of the export' out of the territory of India. The normal rule in F. O. B. contracts is that, in the absence of a special agreement, the property in the goods does not pass until the goods are actually put on board the ship

The following circumstances are not sufficient to hold that the seller and the buyer agreed that the property will pass to the buyer even before shipment:

(i) the fact that the bill of lading was taken in the name of the buyer when it has been retained by the sellers. When the bills of lading though made out as if the goods were shipped by the buyer, were actually obtained and retained by the sellers, that fact itself would ordinarily indicate an intention of the parties that the property in the goods would not pass still after payment.

(ii) the circumstance that the export was, under the contract, to be under the buyer's export licence because the ordinary rule in F. O. B. contracts is that it is the duty of the buyer to obtain the necessary licence: (1917) 2 KB 784 and (1955) 1 QB 499. Rel. on; 1956 AC 588, Distinguished.

(iii) the intention of the parties that in compliance with the requirements of Cl. 5 (2) of the Export (Control) Order, 1954 the goods shall be the property of the licensee at the time of the export. The word 'export' in that Order must be taken to have the same meaning as given to it by the definition in the Import and Export (Control) Act, 1947 and on that definition the time of export is the time when the goods go out of the territorial limits of India. These territorial limits would include the territorial waters of India. Consequently the time of the export is when the ship with the goods goes beyond the territorial limits. At any rate, the export of the goods cannot be considered to have commenced before the ship carrying goods leaves the port. Hence, the intention of the parties would mean nothing more than that the property in the goods shall pass immedidately before the ship goes beyond the territorial waters of the country, or at the earliest when the ship leaves the port. Whichever view is taken there is nothing to indicate that the intention to comply with the requirements of Cl. 5 (2) of the Exports (Control) Order carries with it an intention that the property should pass to the buyer at the time the goods cross the customs frontier. AIR 1953 SC 252, Disting. B. K. Wadeyar, Sales-tax Officer v. M/s. Daulatram Rameshwarlal. **(1963) 1 SCJ 550 : (1961) 1 SCR 924 : (1960) 11 STC 757 : AIR 1961 SC 311 (313, 314) (Pt A) (Prs 5, 6, 7, 8, 9).**

●——Art. 286 (1) (b) — Sale "in course of import" — Property in goods transferred by importer to Government, while goods were on high seas, by delivery of shipping documents against payment — Effect.

The course of import of goods starts at a point when the goods cross the customs barrier of the foreign country and ends at a point in the importing country after the goods cross the customs barrier; the sale which occasions the import is a sale in the course of import; a purchase by an importer of goods when they are on the high seas by payment against shipping documents is also a purchase in the course of import and a sale by an importer of goods, after the property in the goods passed to him either after the receipt of the documents of title against payment or otherwise, to a third party by a similar process is also a sale in the course of import.

Where the importer pursuant to the earlier contracts delivered the shipping documents, including the bill of lading to the Government against payment when the goods were on the high seas, the sales fall under the fourth principle and therefore, they are sales that took place in the course of import of the goods into India. AIR 1953 SC 333 and AIR 1952 SC 366: Foll. J. V. Gokal & Co. (Private), Ltd. v. Assistant Collector, Sales-Tax. **1960 Mad WN 776: (1960) 11 STC 186: 1960 SCJ 671: (1960) 2 SCA 19: (1960) 2 SCR 852: AIR 1960 SC 595 (599)(Pt A) (Prs 11, 12).**

●——Art. 286 (1) (b) — Applicability — Bengal Finance (Sales Tax) Act (VI of 1941), S. 5 (2) (a) (v) — Dealer purchasing tea in West Bengal for party in Bombay — Goods appropriated by Bombay party — Tea then sent to foreign country — Claim to deduction.

Held, (1) that under S. 5 (2) (a) (v) of the Bengal Finance (Sales Tax) Act, 1941, deduction was claimable in respect of sales of goods to have been despatched by or on behalf of the dealer to an address outside West Bengal; (2) that in this case the property in the goods passed in favour of the Bombay parties as soon as the the goods were appropriated by the Bombay parties and so the despatch of the goods outside West Bengal was on behalf of the Bombay parties; (3) that, therefore, in this view of the matter S. 5 (2) (a) (v) of the Bengal Finance (Sales Tax) Act would be wholly inapplicable; (4) that the dealer would not be entitled to claim the protection of Art. 286 of the Constitution once it was held that the title to the goods had passed in favour of the Bombay parties long before the goods were entrusted to the carrier. AIR 1952 SC 366 and AIR 1953 SC 333 and AIR 1958 SC 1002, Rel. on. AIR 1958 Bom 120 & AIR 1955 Mad 722, Disting.

Gordhandas Lalji v. B. Banerjee., **(1958) 9 STC 581: AIR 1958 SC 1006 (1009, 1010) (Prs 8 to 10)**

●——**Art. 286 (1) (b) — Sales preceding one occasioning export — Taxability.**

Sales made 'for the purpose of export' are not protected unless they themselves 'occasion the export', in other words, all sales that precede the one that occasions the export are taxable, even if the goods are manufactured with the main intention for export. AIR 1953 SC 333 and AIR 1956 SC 158, Foll. State of Mysore v. Mysore Spinning and Manufacturing Co., Ltd. **(1958) 9 STC 188: AIR 1958 SC 1002 (1004, 1005) (Pt A) (Prs 10, 19, 20).**

●——**Art. 286 (1) (b) and Sch. VII, List II, Entry 54 — Sale in course of export —Exemption— Government prescribing procedure for export — Effect.**

A sale is not exempt from taxation because Government has under the Cotton Textile (Export Control) Order itself prescribed the course of the export by (1) prohibiting all export from the country save by or through licensed exporters and (2) directing that all goods for export are to be specially packed and specially marked 'for export only'. The reasons are twofold. The first is that even without the Government order the ordinary course of export would take the same procedure and therefore, the compulsion of the Government order makes no difference. The second reason is that the right to tax sales is given to the States under entry 54 in List II, therefore, the Centre cannot prevent them from taxing sales that are otherwise taxable either by a Central Act or by rules made under it. State of Mysore v. Mysore Spinning & Manufacturing Company, Ltd. **(1958) 9 STC 188: AIR 1958 SC 1002 (1004) (Pt B) (Prs 11, 12, 13).**

●——**Art. 286 (1) (b) — Sale in course of export — Effect of ban on export.**

The fact that A cannot export while B can, cannot turn a transaction that would not be an 'export' transaction without the ban into one that is just, because A is under a disability. State of Mysore v. Mysore Spinning & Manufacturing Co. Ltd. **(1958) 9 STC 188: AIR 1958 SC 1002 (1005) (Pt C) (Pr 14).**

●——**Art. 286 (1) (b) — Sale in the course of export — Sale through export licence-holders — Latter whether agents of sellers — (Contract Act (1872), S. 182).**

Where the sales were sales to export licence-holders in India and not to overseas buyers direct, because the sellers were obliged to follow the procedure as under the Cotton Textile (Export Control) Order, this is clearly not a case of agency. Even if this was the only way in which an export could be effected, that would not make the exporter the agent of the seller because by the very act of purchase, the exporter became a principal and bought as such. State of Mysore v. Mysore Spinning & Manufacturing Co., Ltd. **(1958) 9 STC 188: AIR 1958 SC 1002 (1005) (Pt D) (Prs 16, 18, 19).**

●——**Art. 286 (1) (b) — Purchases made for export but themselves not occasioning export are not exempted — They are liable to be taxed — Non-payment of sales-tax — Conviction for offence — (Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 3 and S. 15-b).**

After securing orders for supply of skins to the London buyers, where the assessees go about purchasing the requisite kind and quantity of skins to implement such orders, then no doubt, they are purchases for the purpose of export but as such purchases do not themselves occasion the export they do not fall within the exemption of Art. 286 (1) (b) of the Constitution. Hence, these purchases are liable to be included in the turnover and assessed to sales-tax, under the Madras General Sales Tax Act. AIR 1952 SC 366: and AIR 1953 SC 333, Foll.

On the basis of the evidence on record in this case it was held by the Supreme Court that it was impossible for the assessees to contend that the purchases were exempt from sales tax by virtue of Art. 286 (1) (b), that the assessments were illegal and that consequently the non-payment thereof was not an offence. In this view the Madras High Court in its decision reported in AIR 1954 Mad 833: erred in holding that the prosecution had failed to establish their case and in acquitting the accused. State of Madras v. Gurviah Naidu and Co. Ltd., **1956 Mad WN 65: (1955) 6 STC 717: 1956 Cr LJ 331: 1956 SCC 98: AIR 1956 SC 158 (161) (Pt A) (Pr 9).**

●——**Art. 286 (1) (b) — Sale in the course of import or export.**

Per Majority.— With respect to the scope of Art. 286 (1) (b) the following conclusions may be summed up—

(1) Sales by export and purchases by import fall within the exemption under Art. 286 (1) (b). AIR 1952 SC 366, Foll.

(2) Purchases in the State by the exporter for the purpose of export as well as sales in the State by the importer after the goods have crossed the customs frontier are not within the exemption; and

(3) Sales in the State by the exporter or importer by transfer of shipping documents while the goods are beyond the customs frontier are within the exemption assuming that the State power of taxation extends to such transactions.

Per Das, J.:— A sale or purchase "in the course of" import or export within the meaning of Art. 286 (1) (b) includes (i) a sale or purchase which itself occasions the import or export, (ii) a sale or purchase which takes place while the goods are on the high seas on their import or export journey, and (iii) the last purchase by the exporter with a view to export and the first sale by the importer to a dealer after the arrival of the imported goods. If a sale or purchase takes place within a State, either under the general law or by reason of the Explanation, then, if it takes place in the course of import or export as explained above, no State, not even the State within which such sale or purchase takes place can tax it by reason of clause (1) (b). State of Travancore-Cochin v. S. V. C. Factory, **1953 SCJ 471: (1953) 2 MLJ 123: 66 Mad LW 611: 1954 SCR 53: ILR (1954) TC 1: 1954 SCA 1059: AIR 1953 SC 333 (338, 352) (Pt A) (Prs 16, 59).**

●——**Art. 286 (1) (b) — "Import into" and "export out of" — (Words and Phrases).**

The words "import into" and "export out of" in the context of Cl. (1) (b) do not mean the article or commodity imported or exported. The reference to "the goods" and to "the territory of India" make it clear that the words "export out of" and "import into" mean the exportation out of the country and importation into the country respectively. State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory, **1953 SCJ 471: (1953) 2 MLJ 123: 66 Mad LW 611: 1954 SCR 53: ILR (1954) TC 1: 1954 SCA 1059: AIR 1953 SC 333 (336) (Pt B) (Pr 10).**

●——Art. 286 (1) (b) — In the course of import or export—"In the course of"—(Words and Phrases).

Per Majority. :— The word "course" etymologically denotes movement from one point to another, and the expression "in the course of" not only implies a period of time during which the movement is in progress but postulates also a connected relation. A sale in the course of export out of the country should be understood in the context of Cl. (1) (b) as meaning a sale taking place not only during the activities directed to the end of exportation of the goods out of the country but also as part of or connected with such activities. The time factor alone is not determinative. (1877) 4 Ch. D 765, Rel. on.

Per Das, J.:— The word "course" conveys the idea of a gradual and continuous flow, an advance, a journey, a passage or progress from one place to another. Etymologically it means and implies motion, a forward movement. The phrase "in the course of" clearly has reference to a period of time during which the movement is in progress. State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory, **1953 SCJ 471: (1953) 2 MLJ 123 : 66 Mad LW 611 : 1954 SCR 53 : ILR (1954) TC 1 : 1954 SCA 1059 : AIR 1953 SC 333 (336, 346) (Pt C) (Prs 10, 49).**

●——Art. 286 (1) (b) — Integrated activities in relation to sale.

Per majority. :— The phrase "integrated activities" as used in AIR 1952 SC 366 to denote that "such a sale" (i.e., a sale which occasions the export) "cannot be dissociated from the export without which it cannot be effectuated, and the sale and the resultant export form parts of a single transaction". It is in that sense that the two activities —the sale and the export—are said to be integrated. It is not correct to speak of a purchase for export as an activity so integrated with the exportation that the former could be regarded as done "in the course of" the latter.

Per Das, J. :— By adopting the principle of integrated activities in AIR 1952 SC 366 we have included the agreement for sale to or purchase from, the foreign merchant as taking place within the period connoted by that phrase. The agreement for sale or purchase, which occasions the export or import as the case may be, is obviously, in point of time, anterior to the actual and physical handing over of the goods to the carrier for taking the goods out of the country or for bringing them into the country as the case may be, but, nevertheless, such a sale or purchase has been held to have taken place "in the course of" export or import and as such exempt from taxation by the States. State of Travancore-Cochin v. S. V. C. Factory. **1953 SCJ 471 : (1953) 2 MLJ 123 : 66 Mad LW 611 : 1954 SCR 53 : ILR (1954) TC 1 : 1954 SCA 1059 : AIR 1953 SC 333 (336, 347, 348) (Pt D) (Prs 11, 50).**

●——Art. 286 (1) (b) — Restriction as to imposition of tax on sale or purchase of goods in the course of "import or export" — Scope — Interpretation of Statutes — Assembly debates — Value of.

Whatever else may or may not fall within Art. 286 (1) (b) of the Constitution of India, sales and purchases which themselves occasion the export or import of the goods, as the case may be out of or into the territory of India come within the exemption. Such sales must of necessity be put through by transporting of goods by rail or ship or both out of the territory of India, that is to say by employing the machinery of export. A sale by export involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction. Of these two integrated activities, which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other. Assuming that the properties in the goods passed to the foreign buyers and the sales were thus completed within the State before the goods commenced their journey the sales must nevertheless be regarded as having taken place in the course of the export and are therefore, exempt under Art. 286 (1) (b). That clause assumes that the sale has taken place within the limits of the State and exempts it if it takes place in the course of the export of the goods concerned.

The question whether the word "sale" used in the Constitution has the same meaning as in the law relating to the sale of goods or imports a wider concept than the passing of title from the seller to the buyer which under that law is determined by highly technical rules based upon the presumed intention of the parties and liable to be displaced by their expressed intention was left open. It was assumed for the purpose of these appeals that the word 'sale' used in the Constitution has the same meaning as in the law relating to the sale of goods.

Reference to speeches made by members of the Constituent Assembly in the course of the debates on the draft Constitution in interpreting any article of the Constitution is unwarranted. (1950) 2 MLJ 42 : 1950 SCR 88 : (1950) SCJ 29, Ref. to. The "import-export" clause found in the American Constitution is widely different in language, scope and purpose and a varying body of doctrine and tests have grown around them interpreting, extending or restricting, from time to time, their operation and application in the context of the expanding American commerce and industry and not much help can be derived from them in the solution of the problems arising under Art. 286 of the Indian Constitution. State of Travoncore-Cochin v. Bombay Company Ltd. **65 LW 1087 : (1953) 1 MLJ 1 : (1952) SCJ 527 : 1952 Ker LT 581 : 1952 SCA 656 : ILR (1953) TC 337 : 1952 SCR 1112 : 34 PLT 1 (SC) : AIR 1952 SC 366 (367, 368) (Pt A) (Prs 10, 14, 15).**

——Art. 286 (1) (b) — "In the course of" in Cl. (2) must be given the same meaning as that expression has in Cl. (1) (b). **AIR 1956 All 445 (446, 447) (Pt A) (Prs 6, 10) (DB).**

——Art. 286 (1) (b), Sch. VII, List 1, Entry 41—Customs frontiers — Import of goods—When complete—Sale of oils to foreign ships from bonded warehouse — Sales-tax.

'Customs frontiers' has been defined in the notification dated 1-4-1937 under the Government of India Act, 1935 as "The frontier, whether one or more than one, whether sea or land, whether exterior or interior, of British India". Though the power to define the customs frontiers is vested in the Parliament under entry 41 of List I of the Constitution there is no subsequent notification defining it other than the Notification already in force under the Government of India Act. So that, the customs frontier must be regarded as the same as the frontier of India and its frontier extends along the sea to a width of six miles, which according to law has been de-

clared as the territorial water belt. As soon as that frontier is crossed by the goods, the import must be regarded as complete. AIR 1953 SC 333, Rel. on.

Where therefore, the oils and petroleum products of the assessee-company crossed the outer limit of the territorial sea abutting the shores of Visakhapatnam, the importation of the goods into India must be regarded as complete and once the customs frontier is crossed the exemption under Article 286 (1) (b) of the Constitution would vanish as the goods must be regarded as having ceased to be in the course of the import, and any sale of the oils effected thereafter, whether in the limits of the territorial sea or on land, from out of a bonded warehouse to the ocean going vessels, for their own consumption would be subject to sales-tax.

The sales cannot also be regarded as in the course of the export as the sales are effected in India to ocean-going vessels, not as common carriers but to the vessels themselves, for their own consumption. In other words, the sale of the oils to the ocean-going ships takes place then and there for the consumption of the purchaser. There is, therefore, no question of any export at all involved in the case. 1952 SCJ 527: (1953) 1 MLJ 1: AIR 1952 SC 366, Rel. on. **ILR (1961) Andh Pra 460: (1960) 11 STC 533: AIR 1960 Andh Pra 619 (620, 621) (Pt A) (Pr 4) (DB).**

——Art. 286 (1) (b) — Applicability — Sales-tax levied under R. 16 (2) (ii), Madras General Sales-tax (Turnover and Assessment) Rules — Validity. See Sales-Tax — Madras General Sales Tax (Turnover and Assessment) Rules (1939), R. 16 (2) (ii). **AIR 1958 Andh Pra 425.**

——Art. 286 (1) (b) — Applicability — Sale preparatory to export — No exemption from sales-tax — (Sales Tax — Madras General Sales Tax Act (Madras Act IX of 1939) (as amended by Andhra Act (XIV of 1955), S. 5, Item (viii)).

A purchase of goods in the State for the purpose of export out of State is only an act preparatory to export and not an act done in the course of the export of goods out of the territory of India, and therefore, a levy of tax on the purchase of such goods does not contravene Art. 286 (1) (b) of the Constitution. AIR 1953 SC 333; AIR 1956 SC 168; (1956) An WR 964; AIR 1957 Andh Pra 297, Foll. **1958 An LT 36: (1958) 9 STC 104: (1958) 1 An WR 227: ILR (1958) Andh Pra 225: AIR 1958 Andh Pra 294 (301) (Pt D) (Pr 35) (DB).**

——Art. 286 (1) (b) — Exemption under — Applicability — Madras General Sales Tax (Turnover and Assessment) Rules (1939), R. 16 (2) (ii) — Repugnancy to Article.

The exemption under Art. 286 (1) (b) does not apply to dealers who are last purchasers of untanned hides and skins within the State and who export the goods outside the State, as a purchase for export cannot be regarded as an activity so integrated with the exportation that the former can be regarded as done "in the course of" the latter. R. 16 (2) (ii), Madras General Sales Tax Rules is not therefore, repugnant to Art. 286 (1) (b). 1955 STC 717, Foll. **ILR (1956) Andh Pra 1062: 1956 Andhra LT 863: (1956) 7 STC 568: 1956 Andhra WR 964: AIR 1957 AP 297 (300, 301) (Pt E) (Prs 14, 16) (DB).**

——Art. 286 (1) (b) — 'In the course of export of the goods outside the territory of India' — Meaning of — Sale of aviation spirit to foreign bound aircrafts for consumption during flights — Delivery of goods into tanks of aircrafts at airfields within customs barrier and payment of price upon completion of delivery — Sales whether liable to tax under Bombay Sales Motor Spirit Taxation Act (VI of 1946).

Held, that the sales of aviation spirit to foreign bound aircrafts were local sales and not sales in the course of export of the goods outside the territory of India within the meaning of Art. 286 (1) (b) of the Constitution of India and as such were not exempt from payment of tax under the Bombay Sales of Motor Spirit Taxation Act, 1946. In all cases where a sale is completed prior to the carriage of goods beyond the territory of India and the goods are not deliverable outside the territory of India towards completion of any contract (whatever) for sale of such goods, the sales must be held to be local sales: 1953 SCJ 471: (1953) 2 Mad LJ 123; AIR 1953 SC 333, Explained and Distinguished. **63 Bom LR 903: AIR 1962 Bom 295 (300, 301) (Pt A) (Prs 26, 34).**

——Art. 286 (1) (b) — Contravention of. See Sales Tax — Bengal Finance (Sales Tax) Act, (VI of 1941), S. 2 (g). **AIR 1965 Cal 236.**

——Art. 286 — Certiorari when can issue — Sales whether in course of export out of India — Decision of Sales Tax Officer—Issue of writ. See Ibid, Art. 226. **(1959) 10 STC 68 (Cal).**

——Art. 286 (1) (b) — Sale in course of export outside India — Exemption.

Sales outside the territory of India in the course of export are, under Art. 286 (1) of the Constitution, to be exempted. The question whether sales are in course of export or not is a difficult one. A sale by export involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Delivery to a Shipping Agent would not take it out of the mischief of the exemption. If Government directed the petitioner to sell to parties outside India and if the petitioner delivered the goods to Shipping Agents as directed by Government, that would be an export or a sale in course of export. AIR 1952 SC 366: 1952 SCJ 527: (1953) 1 Mad LJ 1, Foll. **(1958) 62 Cal WN 397: 1959-10 STC 14.**

——Art. 286 — Sale of aviation spirit to foreign-bound aircraft — Liability to tax under section — Section if infringes Art. 286 of Constitution. See Sales Tax — Bengal Motor Spirit Sales Taxation (Second Amendment) Act (32 of 1954), S. 2 (a) (1). **AIR 1957 Cal 395.**

——Art. 286 (1) (b) — Sale or purchase in course of export.

The sale of goods to, or the purchase of goods by, a party for the purpose of export is not necessarily a sale or purchase of the goods in the course of export. Such a transaction is not necessarily to be considered as entering the stream of export at that stage. **(1957) 8 STC 142: 61 CWN 195: AIR 1957 Cal 395 (399) (Pt B) (Pr 18).**

——Art. 286 (1) (b)— Sale in the course of export — What constitutes — Assessee must have direct connection in exportation of goods.

In order to constitute a sale in the course of export within the meaning of Art. 286 (1) (b) the seller must figure as an exporter and must

have a connection with the activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea.

Held, in the circumstances of the case that the fact that the assessees might have export quota permits for each financial year under the Tea Act had no bearing in considering the question as to whether the particular sales were covered by the exemption provided in Art. 286 (1) (b). So far as the assessees were concerned, the sale had become complete when once the goods were purchased in auction by the agent and delivery was also taken by him and the fact that there was a subsequent export by the agent to the foreign principal could not make the sale by the assessees as one made in the course of export of the goods out of the territory of India. Hence, the sales were not exempt under Art. 286 (1) (b). AIR 1952 SC 366, AIR 1953 SC 333, AIR 1955 Mad 722, AIR 1956 SC 158, AIR 1958 SC 1002, AIR 1961 SC 315 and AIR 1961 SC 1344, Rel. on. **ILR (1961) 2 Ker 673: AIR 1962 Ker 243 (249, 251, 252) (Prs 27, 31, 32, 37, 42).**

——Art. 286 (1) (b) (as amended in 1956) — Central Sales-tax Act (1956), S. 5 (1) — "Sale or purchase in the course of export of goods out of territory of India" — Meaning — Purchases with a view to export — Sales if exempt under Art. 286 (1) (b) — Central Sales-tax Act (1956), S. 5 (1).

Mere purchases in the State with a view to export, and subsequent export, are not sufficient to secure the exemption from tax under Art. 286 (1) (b). In order to attract the exemption there must be a causal connection which is intimate and real. The sales must inextricably be bound up with the export and form an integral part thereof. One must be able to say that without the export the sale is not effectuated, or, in other words, that it was the sale which occasioned or produced or caused the export: AIR 1952 SC 366: AIR 1953 SC 333; AIR 1955 SC 661; AIR 1958 SC 1002, Rel. on.

Where the sales of tea by the tea estates to the local agents of the foreign buyers by public auction imposed or involved no obligation to export and there was no movement under the contract of sale although the goods were as a matter of fact exported; the sales are not exempt from tax under Art. 286 (1) (b). **1962 Ker LJ 146: 1962 Ker LT 133: ILR (1961) 2 Ker 698: (1962) 13 STC 309.**

——Art. 286 (1) (b) (Before Sixth Amendment) — 'In the course of the import of the goods' — Meaning of — Sale of goods by transfer of documents of title relating to goods on board ship before it crosses customs frontiers — Exemption from tax — Central Sales Tax Act (LXXIV of 1956), section 5 — 'Customs frontiers' — Meaning of.

'Import' taken as a whole from start to finish or 'the course' of import as used in Article 286 (1) (b) of the Constitution as it stood before it was repealed consists of a bundle of interlinked and inter-laced activities spread over a duration of time beginning from the goods going through the custom gate of the exporting country and ending with the crossing of the customs barricade of the importing country. The import stream dries up and ceases to flow after the Customs Department of the importing country levies duty and thereby declares the eligibility of the goods to be cleared and mingled with the general mass of goods and merchandise in the country. It is not necessary that the goods should be physically removed from the harbour premises. Once the duty is levied despite the non-payment of the duty and its retention in the bonded warehouse the import is at an end and the notional customs barrier is supposed to have been crossed. A sale by transfer of documents of title relating to goods on board a ship at a point of time after the ship had navigated into the territorial waters but before the goods crossed the customs barrier must be held to be a sale in the course of import within the meaning of Article 286 (1) (b) of the Constitution as it stood prior to the repeal thereof as well as under section 5 of Central Sales Tax Act. The course of import covers a range of integrated activities.

"Customs frontier" as used in section 5 of the Central Sales Tax Act, 1956, and as understood prior to the enactment of that Act would not mean any geographical feature like land or coast or limits of territorial waters, but would only mean the operation of the machinery of the Customs Department consisting of levy and collection of duty and clearance of the goods. 'Customs frontiers" must properly be construed as Customs barriers. **ILR (1964) 1 Mad 383: (1963) 14 STC 904: (1965) 1 MLJ 424.**

——Art. 286 — Red Book-Hand Book of Rules and Procedure, 1961 — Import Trade Control, Appendix 9 — Determination of relationship flows through a contract — Legislations creating rights and liabilities pertaining to principal — Agent relationship — Effect — Licensee under S. 3, Import (Control) Order, 1955 issuing letter of authority to a person to import the goods — Transaction treated by parties as sale — Holder of letter of authority importing the goods and selling to licensee cannot be treated as an agent of licensee — Transaction is a sale — Assessment of sales-tax not barred under Art. 286 of the Constitution. **(1964) 2 Mad LJ 84: AIR 1964 Mad 162 (DB).**

——Art. 286 — Export sale — What constitutes— Property passing on delivery of goods in godowns of exporting houses — No contract by exporting houses with foreign buyers when goods received in godowns — Export houses held not acting as agents of seller — Sale not in course of export — Sale of Goods Act (1930), S. 23.

An export sale is one which is effected between a seller in the State and a buyer abroad outside the Indian territory. The foundation of such a sale is the contract between the two. The absence of a contract either in the form of an actual agreement signed by the seller and the buyer or their respective agents or in the form of letters between the buyer and the seller evidencing the terms of the agreement is definitely fatal to any claim that any sale transaction by a local dealer is an export sale hit by the provisions of Art. 286 of the Constitution. T. C. No. 150 of 1959 (Mad), Followed.

Delivery of the goods by the seller to the buyer passes the property in the goods, where the seller does not reserve the right of disposal.

Thus, where the property in goods passed on the delivery of the goods in the godowns of the exporting houses and when the goods were taken over the exporting firms had not entered into any contracts with any foreign buyer.

Held, that the conclusion was inescapable that the firms were not acting as the agents of the assessee seller in putting through any export sale. The sale could not be said to be in the course of export. **1962 Mad WN 121: (1962) 13 STC 805: (1962) 2 Mad LJ 197: AIR 1962 Mad 323 (324, 325, 326) (Prs 4, 8, 9, 10) (DB).**

——Art. 286 (1) (b) — "Course of import" when terminates — Goods not cleared for home consumption but kept in bounded warehouses after assessment of customs duty — Course of import held ended — Goods not exempt under Art. 286 (1) (b).

It is not the factual mingling of the imported goods with the mass of the goods of the local area that terminates the course of import. When once the goods have been landed at a customs port and have been subjected to tax in the sense that levy of import duty has been made thereon, then even though the goods might not have been cleared for home consumption, the goods can be said to have ceased to be part of the import stream and have notionally crossed the customs frontier.

Thus where the importers, after the customs duty had been levied upon their goods, stocked their goods in the Customs warehouse and from there sold the goods to the ocean going vessels;

Held, that the course of import of goods had come to an end and the sales to the ocean-going vessels could not be said to be still in course of import. Such sales were not exempt under Art. 286 (1) (b) from sales-tax. AIR 1953 SC 333 and AIR 1958 SC 341, Disting. **1962 Mad WN 90: (1962) 13 STC 163: 75 Mad LW 115: ILR (1962) Mad 585: AIR 1962 Mad 298 (301) (Pr 13) (DB).**

——Art. 286 (1) (b) — Sale in the course of export of goods — Name of foreign buyer not indicated in terms of contract of sale — Delivery of goods to be effected in local godowns — On delivery part of price to be paid by local man — Balance to be paid on shipment — Held property in goods passed on delivery at local place— Sale did not fall within ban under Art. 286 (1) (b) and liable to be taxed under the Madras General Sales Tax Act. **1961 Mad WN 806: (1962) 13 STC 824: AIR 1962 Mad 250 (251) (Pr 5) (DB).**

——Art. 286 (1) (b) — Scope — Sales in the course of export — (Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 3).

Where under one of the contracts it was specifically provided that the property in the goods sold passed to the vendee only after the delivery of the shipping documents and under the second contract it was clearly implied, inasmuch as it was stated that payment was to be on presentation of the shipping documents, that the property passed to the buyers only after the presentation of the shipping documents:

Held, that in both cases the property in the goods sold passed to the buyers only after the goods crossed the customs barrier and got into the stream of export. Thus they were sales in the course of export and the turnover from those sales was exempt from tax liability. **1958 Mad WN 115: (1958) 1 Mad LJ 225: (1958) 9 STC 208: 71 MLW 252: AIR 1958 Mad 314 (316) (Pt A) (Pr 5) (DB).**

——Art. 286 (1) (b) — Scope — Sales in the course of export — (Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 3).

Where according to the contract, the sales were completed by delivery to the party at their godowns in Madras and the contract also stated specifically that the buyers 'confirmed having bought' from the assessee 'today the undermentioned goods' and although the goods were bought for export there was no privity of contract between the seller and the persons abroad to whom the goods were ultimately sold:

Held, that the buyer under the contracts was the party in Madras and he was the exporter and not the assessee. The fact that the contracts provided that the assessee should bear the shipping charges, etc., and that those came out of the price payable by the buyer to the assessee did not affect the jural relationship of the assessee with that party as seller and buyer of the goods in question. Those sales were therefore not either export sales or sales in the course of export but were only sales for export and therefore were not within the scope of Art. 286. Held, further that even a stipulation in the contracts that the shipment was to be within one month from the date of the contract did not also affect the real position namely that the sales were not export sales. **1958 Mad WN 115: (1958) 1 Mad LJ 225: 71 Mad LW 252: (1958) 9 STC 208: AIR 1958 Mad 314 (316, 317) (Pt B) (Prs 6, 7, 8) (DB).**

——Art. 286 — Scope — Sale in course of export — Sale completed by delivery to buyer in India — Contract providing for reimbursement of the buyer if the ultimate buyer from abroad rejected the goods — Absence of privity of contract between seller and ultimate buyer — Reservation of right in favour of the buyer in India did not affect the position that the sale was not a sale in the course of export but only a sale for export. (1872) 7 Com Pleas 438, Distinguished. **1958 Mad WN 115 (1958) 1 Mad LJ 225: 71 Mad LW 252: (1958) 9 STC 208: AIR 1958 Mad 314 (317) (Pt C) (Pr 10) (DB).**

——Art. 286 (1) (b) and (2) — Dealer selling goods to exporter — No exemption under Art. 286 (1) (b) — Delivery complete in Madras State — No inter-State trade — (Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 2 (h)).

Where a registered dealer sells coffee to a registered exporter in the State of Madras and the said exporter under the term of the contract of sale eventually exports the goods, it is as his goods that he exports. It is he who enters into the contract of sale with the buyer abroad. It is only that transaction with his purchaser abroad that can be brought within the scope in Art. 286 (1) (b) of the Constitution and not the earlier purchase by the exporter himself from the dealer. 45 T. C. 205 (SC); 5 STC 262, Foll. Further, if the exporter transports the goods out of the State of Madras, such a transport does not make the antecedent transaction of sale, a sale or purchase in the course of inter-State trade or commerce within the meaning of Art. 286 (2) of the Constitution. **1956 Mad WN 135: 69 Mad LW 79: (1956) 7 STC 135: (1956) 1 MLJ 487: AIR 1956 Mad 449 (451) (Pt E) (Prs 11, 15) (DB).**

——Art. 286 (1) (b) — Export sale — Meaning of — Sale when occasions export.

An "export sale" is one in which the assessee figures as an exporter, privity having been established between him and the foreign buyer, either through direct negotiation or dealing, or through the local representatives of the latter. As sale will occasion an export or there will be an export sale only where the sale is to a foreign buyer with whom the local seller has privity and when as a direct result of such sale the goods are transported across the frontier.

Where merchants in Bombay who entered into their respective contracts with the assessees were themselves the purchasers, whether their purchases were on their own behalf or on behalf of undisclosed foreign principals between the latter of whom and the assessees there was no privity and undoubtedly a sale took place:

Held, that the assessees were not the sellers who exported or whose sales occasioned the ex-

port. AIR 1952 SC 366 Applied. **(1955) 2 MLJ 545: 69 Mad LW 1056: ILR (1956) Mad 962: (1955) 6 STC 694: AIR 1955 Mad 722 (724, 725) (Pt C) (Pr 15) (DB).**

——**Art. 286 (1) (b) — Sale in the course of export — Appropriation of goods to contract — Property when passes to buyer — (Sale of Goods Act (1930), Ss. 23 (2) and 25 (2)).**

The course of the export out of or of the import into the territory of India does not commence or terminate until the goods cross the customs frontier. AIR 1953 SC 333, Foll.

C and F contracts for the sale of goods were entered into by the assessee with merchants in Bombay. The goods were to be exported from Cochin harbour to foreign countries by the assessee on account and risk of the buyers. There was appropriation of goods to the contract by reason of packing the goods in the gunny bags and marking them with the buyers' initials with the assent of the buyers.

The appropriation, however, was not unconditional because the seller had further duties in connection with the goods which included loading them on board the ship and obtaining proper bills of lading for conveyance of the goods to the contracted destination and the seller in his turn was entitled to payment in exchange for these shipping documents.

Held, that the property in the goods did not pass to the buyers until the relevant bills of lading were presented to the buyers or in any event at least not until the goods were put on board the vessels at the harbour. In this view, as the goods were booked and had started on their journey to a foreign destination at the moment when the title in the goods passed to the buyer, there was "a sale in the course of export" entitling the assessee to the constitutional exemption under Art. 286 (1) (b). **69 Mad LW 1056: ILR (1956) Mad 962: (1955) 2 MLJ 545: (1955) 6 STC 694: AIR 1955 Mad 722 (725, 728) (Pt F) (Prs 16, 25) (DB).**

● ——**Art. 286 (1) (b) — Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 3 (3) —Madras General Sales Tax (Turnover and Assessment) Rules (1939), Rules 4 (2) (d) and 16 (il) — Validity of sales-tax levied under these rules.**

The tax on the purchase of untanned hides and skins by a licensed dealer in hides and skins levied by reason of Rules 4 (2) (d) and 16 (2) of the Madras General Sales Tax (Turnover and Assessment) Rules does not contravene Art. 286 (1) (b) of the Constitution and the levy of the tax is valid. AIR 1954 Mad 984, **Overruled.** State of Madras v. K. H. Chambers, Ltd. **(1955) 6 STC 157: ILR (1955) Mad 579: (1955) 2 MLJ 63: 68 Mad LW 923: AIR 1955 Mad 314 (321, 323) (Pt A) (Prs 15, 16, 26) (FB).**

● ——**Art. 286—Levy of sales-tax by State— Export and import — American decisions bearing on the subject — Their utility.**

The decisions in America, to wit 'Coe v. Errol'; (1885) 29 Law. Ed. 715; 'Richfield Oil Corporation v. State Board of Equalization', (1946) 91 Law Ed. 80, do not afford real assistance in construing the provisions of the Madras General Sales-tax Act, 1939 and Art. 286 (1) (b) of the Constitution. The tax impugned in each one of the American decisions, is, or is tantamount to a tax on commodities, whereas the sales-tax in Madras is a tax on the turnover, which is determined by the amount involved in the individual transactions of sales. The question in America always is whether a particular tax, is a tax on imports or exports, directly or indirectly. The constitutional prohibition is of imposts on imports or exports. But in Art. 286 the prohibition is in respect of transactions of sale or purchase in the course of import or export. Whereas in America it becomes very material to determine whether at a particular point of time an article has or has not entered the stream of export, in Madras it becomes unnecessary to embark on such an enquiry. AIR 1952 SC 366 (368), Rel. on.

The American Courts have held that a tax which discriminates against exported goods is virtually a tax on exports. The passages in their decisions stem from this concept of a discriminatory tax being a prohibited impost. Under the scheme of the Indian Constitution and the distribution of legislative and taxation powers under it, there is no prohibition on Parliament to tax exports and the entire control over exports and imports as well as duties on such exports and imports are excluded from the purview of the States. State of Madras v. K. H. Chambers, Ltd. **68 Mad LW 923: (1955) 6 STC 157: ILR (1955) Mad 579: (1955) 2 MLJ 63: AIR 1955 Mad 314 (319, 325) (Pt B) (Prs 12, 40) (FB).**

●——**Art. 286 (1) (b) — Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 5 (iv)— Madras General Sales Tax (Turnover and Assessment) Rules (1939), Rule 16 — Single point tax — Fixation of point — Sale on last purchase is not tax on sale in course of export.**

According to the Madras General Sales Tax Act, 1939 and the rules, raw hides and skins are a commodity in respect of which the rule as to single point taxation applies and the tax is levied upon the last taxable purchaser who deals with the commodity in its raw state. It is by reason of this principle that export figures as a fact to determine the last buyer. In other words, the tax is really one on the transaction of purchase anterior to the export, the factum of the export figuring merely as marking the final stage of a series of purchases by one licensed dealer from another on the occurrence of which the taxable event, namely, the last purchase, is determined. State of Madras v. K. H. Chambers Ltd., **68 Mad LW 923: (1955) 6 STC 157: ILR (1955) Mad 579: (1955) 2 MLJ 63: AIR 1955 Mad 314 (321 to 324) (Pt C) (Prs 18, 30) (FB).**

● ——**Art. 286 — Sales-tax.**

In Art. 286 taxes on both sales as well as purchases are exempt if made either in the course of export or import. State of Madras v. K. H. Chambers Ltd., **68 Mad L W 923: (1955) 6 STC 157: ILR (1955) Mad 579: (1955) 2 MLJ 63: AIR 1955 Mad 314 (323) (Pt G) (Pr 27) (FB).**

● ——**Art. 286 — Sale or purchase in the course of export.**

A purchase of goods for the purpose of export even though such purchase is effected to implement orders for the export of these goods is not "a sale or purchase in the course of export" within the meaning of the exemption in Art. 286. AIR 1953 SC 333, Expl. State of Madras v. K. H. Chambers, Ltd., **68 Mad LW 923: (1955) 6 STC 157: ILR (1955) Mad 579: (1955) 2 MLJ 63: AIR 1955 Mad 314 (322, 324) (Pt H) (Prs 18, 28) (FB).**

——**Art. 286 (1) (b)** — Applicability —Assessee, a groundnut dealer, purchasing after 26th January, 1950, a quantity of groundnut for purpose of export — Assessee held not entitled to claim exemption under Art. 286 (1) (b) in respect of purchase price of groundnut. AIR 1952 SC 366 and AIR 1953 SC 333, Discussed. **67 Mad LW 819 =**

(1954) 2 MLJ 548 : AIR 1954 Mad 1117 (1118) (Pt A) (Pr 2) (DB).

——Art. 286 (1) (b) — Sale to export is not exempt from sales-tax — (Sales-tax — Madras General Sales-tax Act (IX of 1939).)

Under Art. 286 (1) (b) of the Constitution, the sale and the export which are treated as integrated activities are alone exempt if the sale is the occasion for the export and it commences from the time when the agreement of sale was entered into with the foreign buyer. A purchase anterior to it by the exporter and a sale to the exporter by another person would not be within the limits of integrated activity as defined by the Supreme Court. Both the purchase by the exporter and sale by the assessee to the exporter who ultimately exports the goods under a sale are beyond the limit and therefore, cannot be treated as a sale in the course of export which attracts the exemption, notwithstanding the fact that the goods by virtue of the Cotton Textiles (Export Control) Order, 1949, were earmarked by the assessee for the purpose of export and export only. AIR 1952 SC 366 and AIR 1953 SC 333, Rel. on. **1954 Mad WN 507 : ILR (1955) Mad 781 : (1954) 2 MLJ 314 : 67 Mad LW 493 : AIR 1954 Mad 937 (938) (Pt A) (Pr 2) (DB).**

(See also the decision of the Supreme Court in the Bengal Immunity Co. Case reported as AIR 1955 SC 661.).

——Art. 286 (1) (b) — Scope — Sale of untanned hides and skins by export outside India — Exemption from tax. See Sales Tax — Madras General Sales Tax Turnover and Assessment Rules (1939), R. 4. **(1954) 2 MLJ 312 : AIR 1954 Mad 984 (DB).**

——Art. 286 (1) (b) — Sales-tax.

The last purchases made by the dealers in a State cannot be brought within the scope of the exemption contemplated by Art. 286 (1) (b) of the Constitution. It is only the last sales made to the foreign buyer that will be exempt as they alone will be considered to be in the course of export outside the territory of India. AIR 1952 SC 366 and AIR 1953 SC 333, Foll. **1954 Cr LJ 1267: 1954 Mad WN 821: (1955) 2 MLJ 81: ILR (1955) Mad 184 : AIR 1954 Mad 833 (837) (Pt C) (Pr 12) (DB).**

——Art. 286 (1) (b) and (2) — "In the course of export" — Meaning of — Sales or purchases having no direct connection with goods exported — Power of States to impose tax thereon.

The decisions on the export and import clause in the American Constitution do not support the contention that an export must be construed as including purchases prior to the transaction under which the goods are exported. Similarly, the authorities on the commerce clause so far from supporting the contention that exports should be deemed to include the chain transactions preceding it clearly establish that immunity from taxation under the commerce clause should be narrowly construed so as to limit it to the period between the actual commencement and termination of inter-State commerce. American case law considered.

The words "in the course of export" in Art. 286 cannot bear the same meaning as "for the purpose of export". In their natural meaning the words "in the course of export" would have a more restricted operation than the words "for the purpose of export". Quite obviously the words "in the course of" have been suggested by the decisions of the American Courts on the commerce clause. The object of Art 286 (2) is clearly to prevent States from interfering with the free flow of commerce in the country by erecting barriers of taxation. That was precisely the object of the commerce clause in America. Whether the goods are in the course of transit is the paramount question to be decided under the the commerce clause. It is this conception that appears to have been adopted in the words "sale of goods, where it takes place in the course of inter-State trade". These words limit the prohibition on the power of the State to impose tax on sales only where they are the subject-matter of inter-State commerce. The power of the State to tax sales before the inter-State commerce commences and after it ends is left untouched. In this view, the power of the States to impose tax under Art. 286 (2) would be of the same character and extent as the power of the States in America in relation to the commerce clause.

It would be in accordance with sound rules of construction to put the same meaning on the words "in the course of" occurring both in Art. 286 (1) (b) and in Art. 286 (2). Thus understood the prohibition under Art. 286 (1) (b) will begin to operate only from the time when the goods exported begin their international journey and it will cease when that journey ceases. In other words, the prohibition is limited to the period covered by the actual exportation or importation of the goods. The power of the State to impose tax at any stage before or after is not affected.

In American law the commerce clause and the export and import clause operate differently on the power of the State to impose tax. While under the commerce clause the States have plenary powers of taxation subject only to the powers of the Congress to regulate inter-State commerce, in the case of the export and import clause, it is a total want of jurisdiction. It would appear that the intention of the framers of the Constitution of India was to discard this distinction and enact one law for both foreign and inter-State trade and that they chose to adopt the law relating to inter-State commerce in America as furnishing a basis for reconciling the competing demands of both the Union to control and regulate commerce, inter-State and foreign, in the best interest of the country, and of the States, to raise revenue on transactions, which are rendered possible by the protection afforded by the States.

It must accordingly be held that both in Arts. 286 (1) (b) and 286 (2) the power of the States to impose a tax on export or import or inter-State trade or commerce is taken away only in respect of sales or purchases made directly in relation to the goods which are the subject-matter of transportation either in inter-State or international commerce, whether such sales take place prior to the commencement of the transport or during its progress. The prohibition does not extend to sales or purchases which have no direct connection with the goods which are exported. **(1952) 2 MLJ 614: (1952) 3 STC 405 : 1952 Mad WN 878: 65 Mad LW 1046: AIR 1953 Mad 116 (121, 122, 124, 125) (Pt A) (Prs 15, 19, 20 to 22, 24) (DB).**

——Art. 286 (1) (b) — Purchase of goods in Pakistan — Transport of goods in Madras — Liability of purchaser to be taxed under Madras General Sales Tax Act — (Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 3).

Unless the goods are in transit under a contract between two persons in two different countries, entered into either at the commencement of the transport or during its progress, there can be no question of a sale or purchase in the course of import.

The representative of the petitioner used to go

to Dacca, make the purchases there, pay the price, and consign the goods from there to Madras. The contracts of purchases were completed in Dacca, before the goods were put in transit; and what the petitioners did was merely to transport their own goods from Dacca to Madras. The petitioners having been assessed to sales-tax under the Madras General Sales Tax Act:

Held, that the transport by the petitioners of their own goods after purchase in Pakistan could not be brought under Art. 286 (1) (b) as a purchase in the course of import, but that as the purchases were completed in Dacca that would be outside the operation of the Madras General Sales Tax Act as that authorises a levy of tax only on sales or purchases within the Province of Madras; and as the tax was imposed on the petitioners as purchasers, it must be held to be unauthorised. **(1952) 3 STC 405 : 1952 Mad WN 878 : (1952) 2 MLJ 614 : 65 Mad LW 1046 : AIR 1953 Mad 116 (125, 126) (Pt B) (Pr 26) (DB).**

——Art. 286 — Scope and effect — Madras General Sales Tax Act (IX of 1939) and Rules thereunder — Constitutional validity — Purchase of raw hides for tanning and export outside the territory of India — Assessment to sales-tax — Validity — Power of State to tax inter-State and extra-State sales — Limits.

The High Court could not entertain in proceedings by way of writ such objections to the assessment of the sales-tax as could have been urged before the Tribunals constituted under the Act. Madras Act (IX of 1939) is intra vires of the powers of the State Legislature. It is not open to the objection that it is an unconstitutional delegation by the Legislature of its functions to the executive. It is not repugnant to Art. 14 of the Constitution as being discriminative and the rules framed thereunder are valid excepting only R. 16 (5). (1952) 2 MLJ 598, Foll.

The purchases of hides and skins prior to the transaction under which the goods are exported to foreign countries cannot be included in "export" under Art. 286 (1) (b) of the Constitution. Immunity from taxation should be limited to the period between the actual commencement and termination of inter-State commerce. The words "sale of goods where it takes place in the course of inter-State trade" limit the prohibition on the power of the State to impose tax on sales only where they are the subject-matter of inter-State commerce. The power of the State to tax sales before the inter-State commerce commences and after it has ended is left untouched.

Under Art. 286 (1) (b) the prohibition on the power of the State to tax exports and imports is stated in precisely the same terms as in relation to inter-State commerce under Art. 286 (2) and that is only in respect of sales or purchases which take place in the course of the import or the export of the goods. It would be in accordance with sound rules of construction to put the same meaning on the words "in the course of" occurring both in Art. 286 (1) (b) and Art. 286 (2). Thus understood the prohibition under Art. 286 (1) (b) will begin to operate only from the time when the goods exported begin their international journey and it will cease when their journey ceases. That is, the prohibition is limited to the period covered by the actual exportation or importation of the goods. The powers of the State to impose tax at any stage before or after is not affected.

Both in Arts. 286 (1) (b) and 286 (2) the power of the State to impose a tax on export or import or inter-State trade or commerce is taken away only in respect of sales or purchases made directly in relation to the goods which are the subject-matter of the transportation either in inter-State or international commerce, whether such sales take place prior to the commencement of the transport or during its progress. The prohibition does not extend to sales or purchases which have no direct connection with the goods which are exported.

Where the purchases have been completed and the goods are then transported into Madras it would be outside the operation of Madras General Sales-tax Act.

Sales-tax could be levied on sales which are of an inter-State character provided they were substantially effected within the State and a law imposing such a tax is not ultra vires. (1952) 2 MLJ 593, Foll.

The right to impose the tax arises when the contract is concluded provided of course the contract is completed by the passing of property.

The State has plenary powers of taxation over inter-State sales. The State has no power to impose tax on extra-State sales.

In respect of inter-State sales the State in which the contract is concluded is the only State which has the power to impose a tax.

Where the goods are delivered for consumption in a particular State, that State has the power to impose a use tax or purchase-tax thereon notwithstanding that the transaction of sale is extra-State. (Vide Art. 286 (1) (a), Explanation—which has become incorporated in the Madras General Sales-Tax Act by the Adaptation of Laws (Fourth Amendment) Order, 1952, which shall be deemed to have come into force on 26th January, 1950).

With regard to taxes it might be assumed that the Legislature meant them to be valid to whatever extent they could be sustained. It cannot be contended that because the Turnover and Assessment Rules which were framed before the Constitution mixed up what would not be taxable with what is taxable the rules should be declared void in their entirety. **1952 Mad WN 878 : (1952) 2 MLJ 614 : 65 LW 1046 : (1952) 3 STC 405 : AIR 1953 Mad 116 (121, 122, 124, 125) (Pt A) (Prs 15, 19, 20 to 22, 24) (DB).**

——Art. 286 (1) (b) — Dealer in India selling goods to buyer in Nepal — Test to determine inter-State sale — Sale involving series of integrated activities ending in delivery of goods — Dealer is entitled to claim exemption.

Sales and purchases which themselves occasion the export of goods, as the case may be, out of or into the territory of India come within the exemption of Art. 286 (1) (b) of the Constitution of India. The finding of the Sales Tax Officer that delivery of the goods to the purchaser was finalised in India is not a conclusive test for the determination of the question whether the sale made by the dealer in India to Nepal buyer is a sale in the course of the export of the goods within the meaning of Art. 286 (1) (b) of the Constitution. The true test is whether the sale and the export involve a series of integrated activities, commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods for transport out of the country by land or sea. Where, therefore, a dealer in India has prepared credit memos, in the name of a buyer in Nepal and the sold goods are actually exported to Nepal in pursuance of the contract of sale between the parties, the dealer in India is entitled to exemption of the value of the goods sold to Nepal buyer. **AIR**

1952 SC 366, Foll. **1964 BLJR 6 : AIR 1963 Pat 359 (360, 361, 362) (Prs 3, 4).**

——Art. 286 (1) (a) and (b) — Applicability — 'In the course of' — Interpretation — (Sales Tax — Bihar Sales Tax Act (XIV of 1947), S. 4).

The expression 'in the course of' in Art. 286 (1) (b) as it stood before the Constitution (Sixth Amendment) Act, postulates that the transaction of sale must be an integral part of the activity of exporting the goods out of the country. In order to attract exemption under Art. 286 (1) (b) it is necessary for the assessee to show that the sale took place not only during the activities directed towards the export of the goods out of the country, but also that the sale was a part of the activities of such export.

The assessee's case was that the contract for sale of goods had been made and the goods had been despatched from Bihar to the firms in Calcutta who in their turn exported them to foreign countries and it was not the case nor had it been found that the goods had been sold to the Calcutta firms for the purpose of delivery and consumption in the State of West Bengal.

Held, that neither Cl. (a) nor Cl. (b) of Art. 286 (1) of the Constitution was applicable to the case and the sale was not exempted. AIR 1953 SC 333, AIR 1956 SC 158, Relied on. **(1958) 9 STC 173 : AIR 1959 Pat 30 (30, 31) (Pt A) (Prs 3 to 5) (DB).**

——Art. 286 (1) (b) — Applicability — Punjab General Sales-tax Act (XLVI of 1948), S. 29 (1) (ii) — Sale in the course of export — What is— Mere intention to export without an actual exportation — Not sufficient to constitute such sale.

The sale in the course of export predicates an inextricable connection or bond between the sale and the export, leaving no option to the purchaser of not exporting without committing a breach of the contract in question. In order to attract the exemption under Art. 286 (1) (b), there must also in addition be the resultant export. The sale must itself occasion export, or what is the same thing, the export must be made under the sale. To occasion export, there must accordingly exist between the contract of sale and actual exportation a bond so that each link is inseparably connected with the one immediately preceding it. The two activities of the sale and the export must be so integrated as to leave no possibility of a voluntary interruption without entailing a breach of the contract or an obligation arising from the nature of the transaction. It would thus postulate common intention on the part of the contracting parties to export the goods which must be actually followed by export and this appears to be essential in order to constitute a sale in the course of the export of the goods. There must necessarily come into existence an obligation to export and there must also be an actual export pursuant to such obligation. Merely because a sale has been followed by the export of the goods sold does not by itself clothe the sale with the quality of its being in the course of their export. Nor is mere intention to export without an actual exportation, sufficient to constitute a sale in the course of export, because a sale by export involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods for the purpose of export. Such a sale cannot be dissociated from the export without which it cannot be effectuated because the sale and resultant export form but parts of a single transaction.

At one end are transactions in which there is a sale of goods in India and the purchaser, immediate or remote, exports the goods out of India for foreign consumption. Such a transaction without more cannot be regarded as one in the course of export because etymologically "in the course of export" contemplates an integral relation or bond between the sale and the export. At the other end, a transaction under a contract of sale with a foreign buyer under which goods may under the contract be delivered by the seller to a common carrier for transporting them to the purchaser. Such a transaction would indisputably be one for export. **(1965) 16 STC 553 : AIR 1965 Punj 391 (394) (Pt A) (Prs 6, 7) (DB).**

——Art. 286 (1) (b)— The fact whether transaction is a sale 'in course of export' is to be ascertained from exact nature of transaction — Sale in course of export is exempted under Article. See Sales Tax — Central Sales Tax Act (1956), S. 5 (1). **(1965) 16 STC 534 : 67 Punj LR 155.**

——Art. 286 (1) (b) — A sale by export — Meaning of — Sales and purchases which themselves occasion export or import of goods out of or into India come within exemption — Punjab General Sales Tax Act (XLVI of 1948), S. 5 (2), Cl. (a) (vi) — Deduction of purchase price of unginned cotton purchased for export to foreign market is permissible even if sale takes place through commission agent and outside State of Punjab.

Article 286 prohibits a State Government from levying any tax on the sale or purchase of goods which are exported or imported. Sales and purchases which themselves occasion the export or import of the goods as the case may be, out of or into the territory of India come within the exemption even if the contract of sale is entered into between the foreign buyer on the one hand and the petitioner through its agent at Bombay or Jagraon on the other. Such a sale would certainly be in the course of export if it occasions, or results in, the export of goods outside the territory of India. And again this would be so, irrespective of the fact whether the goods are actually stocked at Bombay or Jagraon, at the time of the contract : AIR 1952 SC 366, Foll. Thus the dealer could deduct the purchase price of cotton from the gross turnover under S. 5 (2) Cl. (a) (vi) even if the cotton was sold through the commission agents of the dealer and the sale took place outside the State of Punjab. **1965 Cur LJ 121 : 67 Pun LR 69 :(1965) 16 STC 542.**

——Art. 286 (1) (b) — Sale in the course of import of goods into India — Transactions of sale of cement imported from Pakistan — Property in goods passing to buyers when they had not reached India and were in course of import — Transaction held not liable to sales tax.

Held, on facts, (i) that the sale which occasioned the movement of goods may be taken to be the first sale made by Milkhiram and Sons to the State Trading Corporation. Subsequent sales by the State Trading Corporation through its agent cannot be said to have occasioned the movement of goods in India; (ii) that the property in the goods passed to the ultimate buyers when the goods had not reached the territory of India but only were in the course of import.

Therefore, the sales took place when the cement was in the course of import and as such they were not liable for payment of sales-tax by virtue of Art. 286 (1) (b). AIR 1961 Mad 87, Dist.; AIR 1960 SC 595, Rel. on. **ILR (1963) 13 Raj 908 : 1963 Raj LW 517 : (1964) 15 STC 966 : AIR 1964 Raj 5 (9, 10, 11) (Pt D) (Prs 14, 16, 17, 19) (DB).**

[**Reversed** in AIR 1966 SC 142 on the ground that the High Court should not have decided disputed questions of fact but should merely have quashed the assessment order on the ground that the Sales Tax Officer had not dealt with the question raised before him and remanded the case—Ed.]

——Art. 286 (1) (b) — Sales taking place in series of transactions preceding export or import of goods — Levy of sales-tax on — Validity — Sales tax — Travancore-Cochin General Sales-Tax Act (11 of 1125), S. 26.

Under Art. 286 (1) (b) (which is incorporated as S. 26 of Travancore Sales Tax Act), while the goods are in the course of import into the territory of India or while the goods are in the course of export out of the territory of India, if a sale takes place, sales-tax cannot be levied. The words "in the course of" in Cl. (b) make the scope of this clause very wide. It is not restricted to the point of time at which goods are imported into or exported from India. The series of transactions which necessarily proceed export or import of goods will come within the purview of this clause. Therefore, while in the course of that series of transactions the sale has taken place, such a sale is exempted from the levy of sales tax. The sale may have taken place within the boundaries of the State. Even then, sales-tax cannot be levied if the sale had taken place while the goods were in the course of import into India or in the course of export out of India.

The object of Article 286 of the Constitution is to ensure that sales-taxes which may be imposed by the various States in this country do not interfere with imports and exports and interstatal trade and commerce which are ultimately matters of national concern affecting the whole country and are beyond the purview of the powers vested in individual States. That is the reason why restriction is imposed by Article 286 upon the power of individual States to legislate in respect of sales-tax and to levy such tax in particular instances.

In the case of exports, all C and F, CIF and FOB contracts, made with the intention of exporting, fall within the purview of Art. 286 (1) (b); though the sales in those cases had been completed before the exports commenced, and are exempt from tax. **(1952) 3 STC 91 : 1952 Ker LT 59 : AIR 1952 Trav-Co 83 (84 to 86) (Prs 3; 8; 14) (DB).**

8. Clause (2) — Inter-State sales — Before Constitution (Sixth Amendment) Act, 1956.

● **——Art. 286 (2) (Before its amendment by Constitution (Sixth Amendment) Act, 1956)** — Inter-State sales contemplated by Art. 286 (2) were the same as those defined in S. 3 (a), Central Sales Tax Act — Sales effected between 1st April, 1956 and 10th September, 1956 in which goods moved from outside Mysore into Mysore being inter-State sales could not be taxed by Mysore State. AIR 1963 SC 980, Rel. on. State Trading Corporation of India Ltd. v. State of Mysore, **(1963) 14 STC 416 : AIR 1967 SC 585 (586, 587) (Pt B) (Pr 7).**

● **——Art. 286 (2)** (Before amendment by Constitution (6th Amendment) Act, 1956) — Scope. See Sales Tax — Bihar Sales Tax Act (XIX of 1947 before Amendment Act VII of 1957), S. 2 (g). **(1964) 1 SCJ 351 : AIR 1964 SC 584.**

● **——Art. 286 (2) (Before amendment by Constitution (Sixth Amendment) Act, 1956) — Sale or purchase in the course of inter-State trade or commerce — Contract itself involving movement of goods from outside the State of Mysore into the State — Held, sales were inter-State sales and exempt from tax.**

The tests which have been laid down to bring a sale within inter-State sales are that the transaction must involve movement of goods across the border. Transactions are inter-State in which as a direct result of such sales the goods are actually delivered for consumption in another State. A contract of sale must involve transport of goods from one State to another under the contract of sale.

Held, on facts that the contract itself involved the movement of goods from the factory to the purchaser i.e., across the border from one State to another because the factories were outside the State of Mysore and therefore, transactions were clearly transactions of sale of goods in the course of inter-State trade or commerce. Thus the sales were in the nature of inter-State sales and were exempt from sales tax. AIR 1963 SC 347, Distinguished : AIR 1955 SC 786; AIR 1952 SC 366; AIR 1955 SC 333; AIR 1961 SC 1344; AIR 1955 SC 661, AIR 1955 SC 765 and AIR 1961 SC 65, Rel. on. 38 Mys LJ 516 **Reversed.** Cement Marketing Co., of India (P.), Ltd. v. State of Mysore, **(1963) 1 SCWR 202 : (1963) 3 SCR 777 : (1964) 2 SCJ 287 : (1963) 14 STC 175 : AIR 1963 SC 980 (983, 984) (Prs 9, 13).**

● **—Art. 286 (2) — Assam Sales Tax Act (XVII of 1947), S. 15 (as amended in 1951) — Assam Sales Tax Rules, R. 80 — S. 15 and R. 80 do not offend.**

Section 15 (as amended), Assam Sales Tax Act, and R. 80 framed under the Act do not offend against Art. 286 (2) and are not ultra vires on that ground. Only sales, which affect inter-State trade or commerce directly and are an integral part thereof, are saved under Art. 286 (2). Where tea is purchased in Assam for the purpose of being sold to dealers in Assam or outside the State, the transactions of sales are wholly inside the State and are intra-State sales and tax imposed thereon does not offend Art. 286 (2). AIR 1961 SC 1344, Applied.

Section 3(1)A of the Act saves from taxation all those transactions which, if they were taxed, would have fallen within the ban of Art. 286. The effect of this saving is to make such transactions immune from taxation, and no further amendment of the law in the machinery section was necessary.

What has already been excluded by the operation of the Constitution and the Act cannot become taxable, because the net turnover has to be calculated in a particular manner. From that net turnover, such sales must be excluded by the operation of Art. 286 (2) and S. 3(1)A of

the Act. The ban of Art. 286(2), which is again re-enacted by S. 3(1)A, makes it incumbent that the sales falling within those provisions should be excluded from the net turnover. AIR 1956 Assam 177, **Reversed.** State of Assam v. Ramesh Chandra Dey, **(1961) 12 STC 441: (1962) 1 SCR 986: AIR 1962 SC 107 (108, 109) (Prs 5, 7).**

●——**Art. 286 (2) (as it stood prior to Sixth Amendment) — 'Sale or purchase in course of inter-State trade or commerce' — Meaning — Orissa Sales Tax Act (1947), S. 5 (2) (a) (ii).**

In order that a sale or purchase might be inter-State, it is essential that, there must be transport of goods from one State to another under the contract of sale or purchase. A purchase made inside a State, for sale outside the State cannot itself be held to be in the course of inter-State trade and the imposition of a tax thereon is not repugnant to Art. 286 (2) of the Constitution.

Under S. 5, Orissa Sales Tax Act, 1947, certain sales to the petitioner were not included in the taxable turnover of the sellers by reason of the registration certificate which the petitioner had obtained on a declaration that the goods were to be resold in Orissa. But in violation of that declaration the petitioner sold the goods to dealers outside the State and so the purchases by him were included in his turnover and assessed to sales-tax:

Held, that the levy was not on the sales by the petitioner to persons outside the State, but on purchases by him inside the State. The former sales were in the course of inter-State trade and were not taxable under Art. 286 (2), but the latter were purely intra-State sales, and a tax imposed thereon did not offend Art. 286 (2). AIR 1955 SC 661, AIR 1953 SC 333, Rel. on; AIR 1955 SC 786, Disting. Endupuri Narasimham and Son v. State of Orissa. **28 Cut LT 1: (1962) 1 SCR 314: (1962) 1 SCJ 54: (1962) 1 SCA 39: (1962) 1 Mad LJ (SC) 32: (1962) 1 Andh WR (SC) 32: 1962 SCD 1: (1961) 12 STC 282: AIR 1961 SC 1344 (1345, 1346) (Prs 4, 5).**

●—**Art. 286 (2)** — Sales Tax Laws Validation Act (7 of 1956), S. 2 —Act is not ultra vires —Scope and purpose of Act, indicated. See Sales Tax—Sales Tax Laws Validation Act (7 of 1956), S. 2. **AIR 1958 SC 468.**

[This case was held in AIR 1961 Mys 3, to have been **Overruled** on another point in AIR 1959 SC 648.]

●——**Art. 286 (2)** — Sales Tax Laws Validation Act (1956), S. 2 — "Law of a State" — Madras General Sales Tax Act 9 of 1939, S. 22, if within protection of S. 2. See Sales Tax — Sales Tax Laws Validation Act (7 of 1956), S. 2. **AIR 1958 SC 468.**

[This case was held in AIR 1961 Mys 3, to have been **Overruled** on another point in AIR 1959 SC 648.]

●——**Art. 286 (2)** — Madras General Sales Tax Act (1939), S. 22, Explanation — Repugnancy to Art. 286 (2) of Constitution — Subsequent enactment of Sales Tax Laws Validating Act — Effect of, indicated — Invalidity of S. 22, Explanation is removed — (Interpretation of Statutes — Constitutionality — Invalidity — Void and null statutes). See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 22, Explanation. **AIR 1958 SC 468.**

[This case was held in AIR 1961 Mys 3 to have been **Overruled** on different point in AIR 1959 SC 648.]

●——**Art. 286 (2)** — Madras General Sales Tax Act (1939), S. 22 —Validity — Constitution of India, Sch. VII, List I, Entry 42 — Entry if covers inter-State sale — Validity of S. 22. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 22. **AIR 1958 SC 468.**

[This case was held in AIR 1961 Mys 3, to have been **Overruled** on another point in AIR 1959 SC 648.]

●——**Arts. 286 (2), 245** — Territorial extent of legislative power — Theory of territorial connection or nexus — Applicability to sales-tax legislation. See Ibid, Art. 245. **1958 SCR 1355: ILR 37 Pat 827: AIR 1958 SC 452.**

●——**Art. 286 (2) — C. P. and Berar Sales Tax Act (XXI of 1947), Ss. 8 and 27-A — Inter-State commerce — Registered dealer in Madhya Pradesh importing finished tobacco from registered dealers in State of Bombay — Transaction is in the course of inter-State commerce — No liability can be imposed either for sales-tax or purchase-tax — (Sales-tax — C. P. and Berar Sales-tax Act (21 of 1947), Ss. 8 and 27-A).**

Section 8 of the C. P. and Berar Sales-tax Act requires that a dealer while being liable to pay tax under the Act shall not carry on business as a dealer unless he has been registered as such and possesses a registration certificate. The liability to pay tax under the Act is thus postulated and unless and until a person is liable to pay such tax he need not get himself registered as a dealer.

All the transactions entered into by a registered dealer, however, do not necessarily import a liability to pay tax under the Act because, whenever the question arises in regard to his liability to pay any tax under the Act, such liability would have to be determined in spite of his being a registered dealer with reference, inter alia, to the provisions of S. 27-A of the Act which incorporates within its terms the bans which have been imposed on the powers of the State Legislature to tax under Art. 286 (1) (a) and (2) of the Constitution.

If, therefore, a dealer who has got himself registered as dealer under the provisions of S. 8 (1) of the Act is sought to be made liable in respect of transactions of sale effected by him he could claim exemption from such liability if the transactions of sale or purchase took place in the course of inter-State trade or commerce after 31-3-1951, except in so far as Parliament may by law otherwise provide. Mohanlal Hargovind Das v. State of Madhya Pradesh, **(1955) 2 SCR 509: (1956) 1 Mad LJ (SC) 5: 1956 SCA 105: 1955 Nag LJ 719: (1955) 6 STC 687: (1956) SCJ 6: AIR 1955 SC 786 (788, 789) (Pr 11).**

●——**Art. 286 (2) — Scope.**

Art. 286 (2) cannot be regarded as subject to the States taxing power, and it cannot be said that the protection of Art. 286 (2) could not have been intended to be larger. Dissenting view in AIR 1953 SC 232, & in AIR 1953 SC 333, Approved. Bengal Immunity Co. Ltd. v. State of Bihar, **ILR 34 Pat 905: (1955) 6 STC 446: (1955) 2 SCR 603: (1955) 2 MLJ (SC) 168: 1955 An WR (SC) 422:**

(1955) SCJ 672: 1955 SCA 1140: AIR 1955 SC 661 (682) (Pt M) (Pr 34).

●——Art. 286 (2) — Scope.

The opening words of clause (2), namely, "Except in so far as Parliament may by law otherwise provide" clearly indicate that the lifting of the ban may be total or partial, that is to say, Parliament may lift the ban wholly and unconditionally or it may lift it to such extent as it may think fit to do and on such terms as it pleases. In exercise of its legislative powers under Entry 42 of List I of 7th Schedule read with Art. 286 (2) Parliament may make a law permitting the States to tax inter-State sales or purchases of certain commodities only. Parliament may by way of regulating inter-State trade or commerce, fix a ceiling rate of tax on sales or purchases of goods which the law made by the States under Entry 54 of List II may not exceed. Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905: (1955) 6 STC 446: (1955) 2 SCR 603: (1955) 2 MLJ (SC) 168: 1955 An WR (SC) 422: (1955) SCJ 672: 1955 SCA 1140: AIR 1955 SC 661 (678) (Pt J) (Pr 27).**

●——Art. 286 (2) — Bihar Sales Tax Act (XIX of 1947) — Validity.

Article 286 (2) puts an absolute restriction on the taxing power of the States where transactions of sale or purchase take place in the course of inter-State trade or commerce unless and until the ban is lifted by Parliament within the terms thereof. The charging section of the Bihar Act read with the relevant definitions cannot operate to tax inter-State sales or purchases and it must be held that as Parliament has not otherwise provided, the Act, in so far as it purports to tax sales or purchases that take place in the course of inter-State trade or commerce is unconstitutional, illegal and void. The Act imposes tax on subjects divisible in their nature but does not exclude in express terms subjects exempted by the Constitution. In such a situation the Act need not be declared wholly ultra vires and void, for it is feasible to separate taxes levied on authorised subjects from those levied on exempted subjects and to exclude the latter in the assessment of the tax. Order was issued directing that, until Parliament by law provided otherwise, the State of Bihar do forbear and abstain from imposing Sales-tax on out-of-State dealers in respect of sales or purchases that had taken place in the course of inter-State trade or commerce even though the goods had been delivered as a direct result of such sales or purchases for consumption in Bihar.

All the provisions contained in Bihar Sales Tax Act with regard to the registration of the outside dealer, the maintenance of the books of account, submission of returns by him to the sales-tax authorities of the State of Bihar, the production and inspection of books of account before the sales-tax authorities, the search of the premises of the outside dealer by them and the imposition of penalties on him by reason of his non-compliance with the various provisions contained in the Act amongst others are unwarranted and the illegitimate exercise of the powers incidental to the power of taxing sales or purchases conferred upon the State of Bihar by Art. 246 (3) and the Entry 54 in List II of the Seventh Schedule to the Constitution and do not affect non-resident businessmen who are outside the territories of the State of Bihar. AIR 1953 SC 252, **Overruled.** Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905: (1955) 6 STC 446: (1955) 2 SCR 603: (1955) SCJ 672: 1955 SCA 1140: (1955) 2 MLJ (SC) 168: 1955 An WR (SC) 422: AIR 1955 SC 661 (687, 688, 710, 711, 722, 742) (Pt T) (Prs 48, 51, 52, 110, 113, 137, 184).**

●——Art. 286 (1) (a) and Explanation and (2) — Scope.

It cannot be held that if Article 286 (2) applies to the class of sales covered by Article 286 (1) (a) and the Explanation thereto it would result in discrimination against local trade in favour of inter-State trade and it will be inconsistent with the provisions of Part XIII of the Constitution. The consumers within a State who would resort to transactions of purchase across the border with a view to avoid the payment of the intra-State sales-tax would be comparatively few and could in conceivable cases be caught within the net by imposing a tax on goods of a non-discriminatory nature within the meaning of Art. 304 (a). This reason is therefore, no deterrent to holding that the ban under Art. 286 (2) is absolute and unaffected by Art. 286 (1) (a) and the Explanation thereto. Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905: (1955) 6 STC 446: (1955) 2 SCR 603: (1955) SCJ 672: 1955 SCA 1140: (1955) 2 MLJ (SC) 168: 1955 Andhra WR (SC) 422: AIR 1955 SC 661 (708) (Pt V) (Pr 104).**

●——Art. 286 (1), Explanation and (2) —Scope.

It cannot be said that the Constitution itself has divided transactions of sale or purchase in the course of inter-State trade and commerce into two distinct categories, one falling within Art. 286 (1) (a) and the Explanation thereto and the other falling within Art. 286 (2). The transaction of sale or purchase would be one but it is subject to the imposition of distinct bans having regard to the view-point from which it is being looked at. If it is looked at from the view point of its being an outside or an inside sale it may be caught within the ban of Art. 286 (1) (a). If it is looked at from the view-point of its being a transaction in the course of inter-State trade or commerce it may be caught within the ban imposed by Art. 286 (2). These bans are mutually exclusive and may have to be applied to the same transaction of sale or purchase, one ban not necessarily excluding the other. Bengal Immunity Co., Ltd. v. State of Bihar, **ILR 34 Pat 905: (1955) 6 STC 446: (1955) 2 SCR 603: 1955 SCJ 672: 1955 SCA 1140: (1955) 2 MLJ (SC) 168: 1955 An WR (SC) 422: AIR 1955 SC 661 (708, 709) (Pt W) (Pr 106).**

●——Art. 286, Cl. (1) (a), Explanation and Cl. (2) — Art. 286 (2) applies only to cases not covered by Explanation to Art. 286 (1) (a).

Clause (1) (a) of Art. 286 read with the Explanation enacts a prohibition of taxation of sales or purchases involving inter-State elements by all States except the State in which the goods are actually delivered as a direct result of such sales or purchases, for consumption in that State. Art. 286 (2) banning the imposition of tax by a State on sales or purchases taking place in the course of the inter-State trade or commerce applies only to cases not covered by the Explanation, such as inter-State sales or purchases where goods are imported into the State, not for consumption therein, but for re-export to other States. Art. 286 (2) does not affect the power

of a State where goods are actually delivered as a direct result of sales or purchases, for consumption in that State to tax inter-State sales or purchases. AIR 1953 SC 252, Foll. Satyanarayana Murthy Brothers v. The State of Madras, **(1955) 6 STC 405: 1955 Andhra WR 578: AIR 1955 Andhra 248 (FB).** (See however the decision of the Supreme Court in The Bengal Immunity Co., Case, (1955) SCJ 672: (1955) 2 MLJ 168 (SC): AIR 1955 SC 661).

● ——**Art. 286 (2) — "In the course of inter-State Trade".**

The sale by a trader in one State to a user in another would be a sale "in the course of inter-State trade" according to the natural meaning of those words, and there is no reason for imposing the restriction that the transaction should be one between two traders only. State of Bombay v. United Motors (India), Ltd. **(1953) SCJ 373: (1953) 1 MLJ 743: 55 Bom LR 536: 66 Mad LW 577: 1953 SCR 1069: 1953 SCA 408: AIR 1953 SC 252 (258) (Pt D) (Pr 17).**

[Overruled on another point in AIR 1955 SC 661.]

——**Art. 286 (2) and (1) (b) — "In the course of inter-State trade or commerce" — Meaning of.**

The expression 'in the course of' must be given the same meaning in Cl. (2) of Art. 286 as it has in sub-Cl. (b) of Cl. (1). Consequently, the first sale by a whole-sale dealer of goods brought by him into this State from another State is not a transaction in the course of inter-State trade or commerce, and is accordingly not exempt from liability to sales-tax. AIR 1953 SC 333, Rel. on. **ILR (1956) 1 All 703: 1956 All LJ 537: (1956) 7 STC 813: AIR 1956 All 445 (446, 447) (Pt A) (Prs 6, 10) (DB).**

——**Art. 286 (2) — Applicability — Export of goods not necessarily arising out of sale nor forming part and parcel of sale — (Sales Tax — Hyderabad General Sales Tax Act (XIV of 1950), S. 2 (k).**

It is clear from the language of Art. 286 that only such sales as take place in the course of inter-State trade or commerce fall within the ban of Art. 286 (2). Where there is no relationship between the transaction of sale and movement of goods and where the export of goods does not necessarily arise out of sale nor is it part and parcel of the sale, it admits of no doubt that it is not a sale in the course of inter-State trade. When the delivery of goods is contemplated to be effected in the State itself and the movement of the goods thereafter largely depends upon certain circumstances and conditions which in no way form part of the sale transaction and with which the seller is in no way connected, such a sale does not take place in the course of inter-State trade or commerce: AIR 1956 SC 158, AIR 1955 SC 661, AIR 1966 Mad 449, Rel. on. **(1960) 11 STC 705: AIR 1960 Andh Pra 502 (506, 507) (Pt C) (Pr 6).**

——**Art. 286 (2)** — Levy of tax on inter-State sales — Validity — Effect of Sales Tax Laws Validation Act. See Sales Tax — Hyderabad General Sales Tax Act (XIV of 1950), S. 3. **(1960) 1 Andh WR 145.**

——**Art. 286 (2) — Inter-State sale — All essentials of sale completed in State to agent of non-resident principal — Export of goods by agent to principal — Sale is not inter-State sale.**

Whether a sale has inter-State elements or not and whether it was made in the course of inter-State trade is a matter to be determined on the particular circumstances of each case.

Where the sale or purchase was completed as soon as it was delivered in the State itself to the agent on behalf of the non-resident principal, inasmuch as the several ingredients of sale such as agreement to sell, transfer of ownership, payment of price and delivery of goods had all been completed within the State itself, and nothing further was to be done in the matter so far as the seller was concerned, the sale is not an inter-State sale, though it might be that the agent to whom the goods were delivered by virtue of sale transaction, according to convenience, might have to export the same subject to the terms and conditions as settled between him and the principal. The case, however, would be different if some of the ingredients of transaction were completed outside the State or though all the essential ingredients took place within the State, transport of the goods took place across the borders of the State as part and parcel of the transaction of sale itself. **(1960) 11 STC 646 (Andh Pra).**

——**Art. 286 (2)** — 'In the course of inter-State trade or commerce' — Interpretation — Movement of goods contemplated. **(1959) 10 STC 327: AIR 1958 Assam 119 (127) (Pt H) (Pr 37) (DB).**

——**Art. 286 (2)** —Scope — S. 15 (1) (b), Assam Sales Tax Act, as amended and R. 80 are ultra vires. See Sales Tax — Assam Sales Tax Act (XVII of 1947), S. 3 (as amended by Assam Act (IV of 1951). **AIR 1956 Assam 177 (DB).**

[Reversed in AIR 1962 SC 107.]

——**Art. 286 (2)** — Taxation powers of State and fundamental rights. See Ibid, Art. 19 (1) (g) **AIR 1956 Assam 177 (DB).**

[Reversed on another point in AIR 1962 SC 107.]

——**Art. 286 (2) — 'In the course of Inter-State trade or commerce' — Meaning of — Purchase of tea in State for re-sale outside State.**

Per Ram Labhaya, J.:—The mere fact that a dealer purchases tea in the State for re-sale outside does not bring the purchaser within the exemption provided by Art. 286 (2) if the two transactions (purchase and re-sale) have absolutely no connection, as where the procedure normally adopted by the dealer in making sales of tea outside the State is that the tea meant for re-sale is booked in the name of the dealer, of which he is both the consignor and the consignee. When the tea arrives in Calcutta, the sample of tea is examined by the prospective purchaser, and if he approves, the bill of lading or the consignment note is endorsed in his favour on receipt of the price, and the purchaser then obtains delivery of the tea consigned: AIR 1952 SC 366, AIR 1953 SC 333, AIR 1956 SC 158, Foll. **ILR (1956) 8 Assam 384: AIR 1956 Assam 177 (183, 184) (Pt D) (Pr 28) (DB).**

[Reversed in AIR 1962 SC 107.]

——**Art. 286 (1) (b) and (2) — Applicability — Inter-State sale — Requirements of — Goods sold for export out of India — Exemption — Right to.**

A person claiming protection under Art. 286 (2) of the Constitution of India, that is, on the ground that the sale has taken place in the course of inter-State trade must necessarily plead and prove that the sale has occasioned movement of goods from one State to another for purposes of consumption in another State. Merely alleging and proving that goods sold have moved from one State to another would not render the sale an inter-State sale. If the object and purpose of the sale is to export goods out of India, it does not fall under Cl. (2) of Art. 286. Such a sale, to an exporter for exportation of goods out of India, is not also exempt from sales-tax, under Art. 286 (1) (b). **1961 Nag LJ (Notes) 69.**

——Art. 286, Sch. VII, List 1, Entry 42, List 2, Entry 54 — Sales-tax — Sales-tax Laws Validation Act (VII of 1956) — Validity — Legislative competence.

The Sales Tax Laws Validation Act (1956), is valid. The legislative function that Parliament was performing in passing this Act was not imposing any tax on sales or purchases, nor trespassing upon the State field put acting under Art. 286 (2) and providing by legislation that the restriction upon the competence of the State Legislature shall be removed & that the legislative competence, as it were, restored without this particular restriction. If Parliament could remove the restriction antecedent to the State legislation, equally so it could remove the ban retrospectively and validate a law which was only invalid because the ban had not been lifted and the restriction had not been removed.

It will be difficult to hold that by reason of the absence of Parliamentary legislation under Art. 286 (2) the State legislation was dead for all purposes. It did not operate to the extent that it imposed a tax not justified by the Constitution and when the ban was lifted that irregularity was set right and the law could operate to tax the sales with regard to which Parliament had passed the necessary legislation. **(1956) 7 STC 675 : 58 Bom LR 955 : ILR (1957) Bom 63 : AIR 1957 Bom 71 (73 to 75) (Pt A) (Prs 5 to 7, 9 to 11) (DB).**

[Overruled on another point in AIR 1958 SC 468.]

——Art. 286 (2) (Before Sixth Amendment) — Inter-State and intra-State sales — Tests — "Free delivery at Calcutta for outward despatch to consignee" outside the State — Sale does not become inter-State sale. See Sales Tax — Bengal Finance Sales Tax Act (VI of 1941), S. 5 (2) (a). **69 Cal WN 260 : (1965) 16 STC 478.**

——Art. 286 (2) — Scope — Sales Tax Laws Validation Act, S. 33 — Validity. See Sales Tax — Sales Tax Laws Validation Act (1956), S. 2. **AIR 1960 Cal 513.**

——Art. 286 (2) — Inter-State sales — Test — Transport of goods from one State to another must be integral part of contract of sales —No such express term in contracts — Term cannot be treated as implied from mere practice followed by assessee — Sales held not in course of inter-State trade — Even if they were inter-State sales ban under Art. 286 (2) was lifted during relevant period by Sales Tax Laws Validation Act (1956).

A sale cannot be said to be an inter-State sale unless there is movement of goods from one State to another under the contract of sale. It must be an integral part of the contract of sale that the goods shall cross the border from one State into another. It is not enough that the buyer takes delivery of the goods from the seller for the purpose of despatching them to another State nor is it enough that the seller pursuant to the instructions of the buyer despatches the goods across the border to another State. If the contract of sale provides for movement of the goods from one State to another as a necessary incident of its performance, the sale would be a sale in the course of inter-State trade or commerce. In such a case it would not be relevant to inquire where the property passes. The property may pass within the State which seeks to tax the sale, but the sale would nevertheless be an inter-State sale and, therefore, beyond the taxing power of the State. AIR 1955 SC 661 and AIR 1961 SC 1344 and AIR 1962 SC 107, Relied on

Held, on facts (i) that though the goods in the instant case moved from the State of Bombay to another State, such movement of the goods was not under the contracts of sale entered into by the buyers with the assessee. It was not an essential term of the contract of sale that the goods shall necessarily cross the border of the State of Bombay and go into another State. There was admittedly no such express term and in the absence of any custom of trade, from a mere practice followed by the assessee alone, no such term could be regarded to have been implied in the contracts of sale entered into by him with different buyers.

Even if a term were to be implied on the contracts of sale, that would not help the assessee, because under the contracts of sale the goods were not necessarily to go out of the State of Bombay into another State. The buyers had an option under the contracts of sale either to take actual delivery of the goods at their godowns within the State of Bombay or to direct the assessee to despatch the goods by rail to destinations outside the State of Bombay according as they required in each case. It is, therefore, impossible to hold on the facts and circumstances of the instant case that it was an integral part of the contracts of sale that the goods shall necessarily be transported from the State of Bombay to another State or that the movement of the goods from the State of Bombay to another State was a necessary incident of performance of the contracts of sale. The sales were, therefore, not sales in the course of inter-State trade or commerce.

(ii) (Obiter) That even if the sales effected by the assessee were inter-State sales that would not help the assessee because inter-State sales were exempt from tax under Art. 286 (2) but by the very terms of that Article, such exemption was given except in so far as Parliament might by law otherwise provide. By the Sales Tax Laws Validation Act, 1956, the Parliament otherwise provided by lifting the ban imposed by Art. 286 (2) retrospectively for the period 1st April, 1951 to 6th September, 1955. The result was that so far as inter-State sales effected during this period were concerned, there was no ban of Art. 286 (2) which operated to prevent the law of any State from imposing or authorizing the imposition of tax on such inter-State sales. AIR 1958 SC 468, Relied on. **(1964) 15 STC 885 : (1964) 5 Guj LR 961 : AIR 1964 Guj 219 (222, 223) (Prs 3 to 5) (DB).**

——Art. 286 (2) (before its amendment by Constitution (Sixth Amendment) Act (1956) — Scope — Clauses (1) (a) and (2) are independent — Explanation to Cl. (1) (a) is of no help in interpreting Cl. (2).

The ban imposed by Cl. (2) of Art. 286 of the Constitution, as it stood before its amendment in 1956 is an altogether independent ban which is in no way whittled down, qualified or excepted by the Explanation to Art. 286 (1) (a). Clauses (1) (a) and (2) of Art. 286 deal with two different topics without the one in any manner affecting or encroaching on the other. The explanation to Cl. (1) (a) of Art. 286 cannot, therefore, be projected into the interpretation or affect the scope and effect of Cl. (2) of that Article. Until the ban imposed by Art. 286 (2) is lifted, no State can impose a tax on inter-State sales or purchases. AIR 1953 SC 252, Held **overruled** by AIR 1955 SC 661, which is followed. **1962 Kash LJ 83: AIR 1962 J and K 89 (92) (Pt A) (Pr 5) (DB).**

[Partly **Reversed** on another point in AIR 1966 SC 1350.]

——**Art. 286(1) (a), Explu. and (2) (before its amendment in 1956)** — Sale — Part of ingredients of sale taking place in State — Its effect on inter-State sale — Transport of petrol from one State to another — Held, sale took place in course of inter-State trade. **1962 Kash LJ 83: AIR 1962 J & K 89 (93) (Pt C) (Prs 7, 8) (DB).**

——**Art. 286 (2) (before its amendment in 1956) — Transaction of sale — Different activities forming one integrated sale taking place in different States — If still remains inter-State trade.**

The entire activities beginning from the contract of sale and ending with the delivery of goods and the passing of property in them constitute an integrated whole called the transaction of sale. The property in the goods may pass in the State across whose borders the goods are transported to another State or it may pass in the delivery State; but whichever be the State in which property passes in a transaction of this kind the nature of the sale as one in the course of inter-State trade will remain unaffected. It is, therefore, not necessary that in order to constitute a sale in the course of inter-State trade the movement of goods must take place after the completion of sale by passing of property in the State from which the goods are moved to another State. **1962 Kash LJ 83: AIR 1962 J & K 89 (98) (Pt D) (Pr 10) (DB).**

[**Partly reversed** on another point in AIR 1966 SC 1350.]

——**Art. 286 (2) (before its amendment in 1956)** — Ban placed by — Lifting of ban by Sales Tax Validation Act (1956) — Such lifting of ban does not enable State to impose tax on sales in course of inter-State trade unless taxing statute of State expressly provides for it — Jammu and Kashmir Motor Spirit (Taxation of Sales) Act (V of 2005), S. 3 — This State Act does not contemplate imposition of tax on inter-State Sales. **1962 Kash LJ 83: AIR 1962 J & K 89 (93 to 95) (Pt E) (Prs 13, 14, 16) (DB).**

[**Partly reversed** in AIR 1966 SC 1350.]

——**Art. 286 (2) (before 1956 amendment)** — Petrol supplied from Pathankot Depot in Punjab to consumer in Jammu and Kashmir — Sale held to be in course of inter-State trade and commerce and immune from taxation. See Sales Tax — J. and K. Motor Spirit (Taxation of Sales) Act (2005), S. 3. **AIR 1962 J & K 48.**

——**Art. 286 (2) (as it stood before 6th Amendment of 1956)** — General Sales Tax Rules (1950), R. 6 — Sale or purchase in inter-State trade — Tax on them though authorised, they are not within purview of R. 6. See Sales Tax — General Sales Tax Act (Kerala) (XI of 1125), S. 3 (2). **1965 Ker LJ 755.**

——**Art. 286 (2) — Sale in course of inter-State trade — Test — Sale completed in State — Movement by buyer for better enjoyment — Sale not exempted — Sales Tax — General Sales Tax Act (T. C. Act XI of 1125), Ss. 2 (j), 3.**

To be a sale in course of inter-State trade exempted under Art. 286 (2) of the Constitution, the movement contemplated must be closely linked with the sale of goods and is not intended to cover later movement undertaken for the better enjoyment of goods after the title had passed. The principle, therefore, is that where the owner moves his own goods to outside State for their better enjoyment of what had been earlier acquired, the journey would not, in the commercial sense, form part of the flow or course of inter-State trade, and, therefore, the sale would not be exempted.

Thus where, under the agreement, a contractor had to supply sleepers to the Railway authorities at stations in the Kerala State, title in which passed with the delivery of sleepers at the railway stations, and the later movement was for the better enjoyment of the goods, in which title had already been acquired:

Held, that the agreement did not put the sleepers into the channel of inter-State trade, but the journey was started after the goods had been delivered and largely paid for. The sale was not therefore, exempted under Art. 286 (2). **ILR (1961) 2 Ker 238: 1961 Ker LT 659: 1961 Ker LJ 586: (1961) 12 STC 722: AIR 1962 Ker 69 (71, 72) (Prs 3, 4) (DB).**

——**Art. 286 (2) (before the sixth amendment) — 'In the course of inter-State trade or commerce'.**

The petitioner-firm were commission agents with authority to purchase on behalf of their non-resident constituents. The price was fixed and the purchase was made by the petitioners on behalf of the non-resident constituents. After the purchase, the petitioners took signed memos from the constituents confirming the purchase. Subsequently the goods were despatched to the purchasers by the petitioners. Transportation across the State frontier was not a term of the contract of sale.

Held, that in the absence of such a term the purchases could not be considered as purchases which took place 'in the course of inter-State trade or commerce'. View of Venkatarama Ayyar, J., in AIR 1955 SC 661, Foll. **1957 Ker LJ 783: 1957 Ker LT 906: ILR (1957) Ker 877: (1957) 8 STC 817: AIR 1958 Ker 280 (281) (Pr 6) (DB).**

——**Art. 286 (2) — Inter-State Sales — Power to tax — Sales Tax — M. B. Sales Tax Act (XXX of 1950) (as amended in 1955), S. 23-A — Validity — Sales Tax Laws Validation Act (VII of 1956), S. 2 — Effect of.**

Where the sale of goods takes place out of the State of Madhya Bharat but the goods are delivered in the State for the purpose of consumption as a direct result of the contract of sale, the sale has taken place in the course of inter-State trade or commerce. AIR 1955 SC 661, Foll. Assuming that S. 23-A, M. B. Sales Tax Act, applies to such transactions, it cannot be deemed to be invalid after the passing of the Sales Tax Laws Validation Act of 1956, where the impugned tax relates to the period specified in the Validation Act. (1956) 7 STC 675, Rel. on. **MBLR (1956) Civ 839: 1957 Jab LJ (MB) 57: AIR 1957 Madh B 139 (149) (Pt B) (Prs 95, 103) (DB).**

——Art. 286 (2) — Sales-tax in contravention of Cl. (2) — Validation of — Sales Tax — Sales Tax Continuance Order (1950).

By virtue of the Sales Tax Continuance Order, 1950, any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of the Constitution of India was to continue to be levied, notwithstanding that the imposition of such tax was contrary to the provision contained in Clause (2) of Art. 286 of the Constitution. **(1959) 10 STC 322 (Mad).**

——Art. 286 (2) — Effect of law being or being declared unconstitutional — Sales Tax Laws Validation Act (1956), S. 2 — Effect on Madras General Sales Tax Act (IX of 1939). See Ibid, Art. 13. **(1957) 2 Mad LJ 167: AIR 1957 Mad 368 (DB).**

——Art. 286 (2) — Sales Tax Laws Validation Act — Parliament held did not transgress its powers under Art. 286 (2). See Sales Tax — Sales Tax Laws Validation Act (1956), S. 2. **(1957) 2 Mad LJ 167: AIR 1957 Mad 368 (DB).**

——Arts. 286 (2), 245 and 246 and Sch. VII, List I, Item 41, List II, Item 54 — "Except in so far as Parliament may by law otherwise provide"— Interpretation of — Sale in course of inter-State trade — Power of Parliament to directly enact legislation — (Sales Tax Laws Validation Act (1956), S. 2).

It is not correct to draw any distinction between the normal power of legislation by Parliament with respect to matters in the Union list and the power conferred by the opening words of Art. 286 (2). Both of them are legislative powers. Therefore, the argument that though under Art. 286 (2) Parliament might by law make a provision permitting a State to impose a tax on the sale of goods, where such sales took place in the course of inter-State trade, the power of Parliament is restricted to lifting the ban and did not extend to directly enacting legislation (such as Sales Tax Laws Validation Act) which had the immediate effect of imposing such taxes is not acceptable. **70 Mad LW 186: (1957) 8 STC 177: (1957) 2 Mad LJ 167: AIR 1957 Mad 368 (371) (Pt A) (Prs 7, 8) (DB).**

——Art. 286 (2) — Madras General Sales Tax Act (IX of 1939), Ss. 3 and 2 (h) — Sale transaction — Transport of goods out of Madras State — Inter-State sale — Liability to sales-tax.

Where the sale transaction involves inter-State elements, i.e., where the transport from the Madras State across its border is an integral part of the sale, the sale would have been liable to tax prior to the Constitution by reason of the extended definition of "sale" introduced by the Madras Amending Act of 1947, which now figures as Explanation (2) to S. 2 (h) of the Madras General Sales Tax Act. Tax on such sales could have been lawfully levied even after the Constitution came into force by virtue of the President's Order. When the President's Order expired on 1st April, 1951, the levy of the tax became subject to the ban imposed by Art. 286 (2). This position continued, however, only until S. 22 was introduced into the Madras Sales Tax Act.

This provision, which incorporated the Constitutional ban had the effect of negativing the tax liability. This state of things, however, was to last only till Parliament by law otherwise provides. And in this respect the Sales Tax Laws Validation Ordinance (No. 3 of 1956), is not a law made by Parliament "providing otherwise". **(1956-57) 7 STC 691: 70 Mad LW 142: (1957) 1 MLJ 356: AIR 1957 Mad 362 (367, 368) (Pt D) (Prs 20, 21) (DB).**

——Art. 286 (2) — Scope — Sale to dealer within State — Delivery to dealer's agent — Transport of goods outside State for delivery to dealer — Transaction if within Article.

Held, that the sales fell outside the purview of the ban imposed by Art. 286 (2). AIR 1956 Mad 449, Foll. Observations of Bose, J. in AIR 1953 SC 252, Distinguished. **1957 Mad WN 50: 70 Mad LW 166: (1957) 8 STC 210: AIR 1957 Mad 263 (268) (Pt D) (Pr 23) (DB).**

——Art. 286 (2) — Scope — Goods consigned to dealers outside State.

Where goods consigned to the dealers are delivered to them outside the State and the consignments are effected by rail or steamer, the delivery arranged by the assessee is an integral part of the transaction of sale itself and the sale falls within the scope of inter-State trade or commerce for which Art. 286 (2), provides. **1957 Mad WN 50: 70 Mad LW 166: (1957) 8 STC 210: AIR 1957 Mad 263 (265) (Pt C) (Pr 10) (DB).**

——Art. 286 (2) — Validity of S. 11-A, Madras Commercial Crops Markets Act (XX of 1933). See Madras Commercial Crops Markets Act (XX of 1933), S. 11-A. **(1954) 1 MLJ 117: AIR 1954 Mad 621 (DB).**

——Art. 286 (2) — Levy under S. 11, Madras Commercial Crops Markets Act (XX of 1933). See Madras Commercial Crops Markets Act (XX of 1933), S. 11 (1). **(1954) 1 MLJ 117: AIR 1954 Mad 621 (DB).**

——Art. 286 — (Prior to its amendment by sixth amendment of 1956), Art. 286 (1) (a) and (2) — Applicability of — Burden is on the assessee to show that transaction comes within Art. 286 (1) — Sale for purpose of inter-State trade and sale in the course of inter-State trade — Distinction — Sale and subsequent transportation being two transactions — Art. 286 (2) not applicable. See Sales Tax — Orissa Sales Tax Act (XIV of 1947), S. 2 (g). **ILR (1961) Cut 622.**

——Art. 286 (2) — Applicability — Sale by dealer to buyer within State — Buyer selling to outside millers. See Sales Tax — Orissa Sales Tax Act (XIV of 1947), S. 4. **AIR 1958 Orissa 87 (DB).**

——Art. 286 (2) — Applicability — Conditions.

In order that the transactions may be brought within Cl. (2) of Art. 286 they must be in the course of inter-State trade or commerce. **ILR 1956 Cut 478: (1956) 7 STC 645: 22 Cut LT 208: AIR 1956 Orissa 145 (147) (Pt B) (Pr 8) (DB).**

——Art. 286 (2) — Inter-State sales — Tax on — Territorial nexus — Place of passing title and delivery of goods — Effect of — Bihar Sales Tax Act (XIX of 1947), Ss. 4 and 2 (g).

Where the goods sold by the assessee were manufactured by him in the factory at Monghyr, and the title to the property also passed from the manufacturing company to the purchaser company at Monghyr as soon as the goods were delivered to the carrier and also the orders for the supply of goods were received at Monghyr and the sale price of these goods was credited to the account of the purchasing Company at Monghyr, there was sufficient territorial nexus for the State of Bihar to give legislative jurisdiction to tax the sales. Authority of AIR 1953 SC 252, as regards the doctrine of nexus held not affected by AIR 1955 SC 661 and AIR 1953 SC 274, Applied. **1957 BLJR 631:**

(1956) 7 STC 745 : AIR 1957 Pat 288 (291) (Pt B) (Pr 4) (DB).

——**Art. 286** — Inter-State trade — Liability to pay sales-tax — Assessee doing business of supply of coal — Monopoly given to another company owning collieries — Coal supplied by collieries to State power houses at controlled rate — Volition held was lacking — Transactions held not sale — Even if sale it was in course of inter-State trade — Imposition of tax not validated under Sales-tax Validation Act — Assessment being composite must fail in toto. See Sales Tax — Rajasthan Sales Tax Act (29 of 1954), S. 2 (o). **1965 Raj LW 258.**

——**Art. 286** — Sales Tax Laws Validation Act (1956), S. 2 — Effect of assessment on imported quota and cloth held valid. See Sales Tax — Rajasthan Sales Tax Act (XXIX of 1954), S. 2 (f). **ILR (1961) 11 Raj 469.**

9. Clause (2), Proviso — Before Constitution (Sixth Amendment) Act, 1956.

■——**Art. 286 (1) (a), Explanation, Proviso — — President's Order issued under Proviso —Order if removed ban imposed by Art. 286 (1) and Explanation — Composite assessment of tax for pre-Constitution and post-Constitution period — Post-Constitution assessment invalid — Assessment if invalid in toto — (Sales-tax — Sales-tax Continuation Order (1950)) — (Sales-tax —C. P. and Berar Sales Tax Act (XXI of 1947), S. 2 (g), Explanation II).**

(Per Majority).— The terms of the proviso itself make it abundantly clear that the proviso is meant only to lift the ban under Art. 286 (2) and no other. The effect of the President's Order was to raise the ban in so far as it was imposed by the provisions of "this clause" in Art. 286 (2). The President's Order therefore, only lifted the ban in so far as the transactions took place in the course of inter-State trade or commerce and could not be projected into the sphere of any other clause of Art. 286. It had, therefore, not the effect of lifting the ban which was imposed by Art. 286 (1) (a) and the Explanation thereto, even though the transactions covered by the Explanation to Art. 286 (1) (a) by and large fell within the category of transactions which took place in the course of inter-State trade or commerce.

The appellants entered into agreements with several mills situated outside Madhya Pradesh by which they undertook to purchase kapas in the various markets in Madhya Pradesh as their agents on their accounts and on their behalf. The appellants worked as such agents for the period 1st October, 1949 to 30th September, 1950. The Assistant Commissioner of sales-tax included the kapas transactions in the appellants' turnover and ordered them to pay sales-tax on the said transactions.

Held, that so far as the post-Constitution period was concerned the assessment was invalid as the ban imposed by Art. 286 (1) (a) and the Explanation thereto could not be removed by the President's Order.

Held, further that as the assessment was one composite whole relating to the pre-Constitution and post-Constitution periods, it was invalid in toto, for when an assessment consists of a single undivided sum in respect of the totality of the property treated as assessable, the wrongful inclusion in it of certain items of property which by virtue of a provision of law were expressly exempted from taxation renders the assessment invalid in toto. 1951 AC 786, Foll.

(Per Contra).— Whether it is by Parliamentary legislation or by the Presidential action that the ban on taxing sales in the course of inter-State trade and commerce is lifted, the principle of harmonious construction of Art. 286 taken as an integral whole, requires that the lifting of the ban is to be construed as laying open for taxation the entire field covered by Art. 286 (2) and to carry with it the implication that no other overlapping ban will be operative. The result of construing the proviso and by parity of reasoning the saving clause, as merely removing the ban of a particular nature leaving another overlapping ban to operate would be to render both the saving clause in, and the proviso to, Art. 286 (2) virtually nugatory. The non obstante clause undoubtedly affirms the fact that the proviso is operative in respect of Art. 286 (2). But it does not purport to limit the effect of the proviso, which a reasonable construction thereof may justify. A non obstante clause does not normally add to or subtract from the main provision of which it is a part. It is often enough inserted by way of extra caution. But it does not have the effect of limiting the operation of the main provision. Ram Narain Sons Ltd. v. Asst. Commissioner of Sales Tax, **(1955) SCJ 803 : (1955) 6 STC 627 : (1955)2 SCR 483: 1956 SCA 111: 1955-2 MLJ (SC) 302: (1955) Andhra WR (SC) 556 : AIR 1955 SC 765 (769 to 771, 774, 775) (Pt A) (Prs 10, 14 to 16, 32, 33).**

■——**Art. 286 (2), Proviso — Scope — Extent of power of President.**

The only power, which the President has been granted under the proviso to Art. 286 (2), is to pass an order doing away with, for a temporary period ending on the 31st day of March, 1951, the ban imposed by clause (2), Art. 286 of the Constitution. No power has been granted to the President to dispense with the ban imposed by clause (1) (a) of Article 286 of the Constitution.

Held, that the order made by the President on 26th January, 1950, by which the President directed that the tax on sale or purchase of goods under the U. P. Sales Tax Act shall, notwithstanding that such imposition of tax was contrary to the provisions of Cl. (2) of Art. 286 of the Constitution, continue to be levied until the 31st day of March, 1951, could in no way authorise the Government of U. P. to impose sales-tax in contravention of the ban imposed by Art. 286 (1) (a) of the Constitution. **ILR (1956) 1 All 107 : 1955 All LJ 19 : (1955) 6 STC 77 : AIR 1955 All 99 (103) (Pt C) (Pr 6).**

——**Art. 286 (1) and (2) — Relative scope —Sales-tax Continuance Order, 1950 — Effect — (Sales Tax Continuance Order (1950)).**

The ban imposed under Art. 286 (1) (a) read with the Explanation is a ban independent of the ban imposed by Cl. (2) of Art. 286, although transactions falling within the latter clause may also fall within the category of transactions covered by the former. The President's Order could have the effect only of lifting the ban under Cl. (2) because the proviso which enabled the issue of such an order is a proviso only to that clause. **1958 Andh LT 816 : (1958) 2 Andh WR 428: (1958) 9 STC 761: AIR 1959 Andh Pra 36 (39) (Pt C) (Pr 10) (DB).**

[**Overruled** in (1960) 2 Andh WR 244 (FB).]

■——**Art. 286** — C. P. and Berar Sales Tax Act (1947), S. 2 (g), Expl. II — Goods delivered outside State — Sales before Constitution. See Sales-

tax — C. P. and Berar Sales Tax Act (1947), S. 2 (g), Expl. II. **AIR 1958 MP 220 (FB).**

——**Art. 286** — Sale taking place outside taxing State — Levy of tax on — President's Order C. O. No. 7, Sales Tax Continuance Order, 1950, dated 26-1-1950 under sub-Art. (2) of this Article does not enable the Government to continue to levy sales-tax until 31-3-1951 upon sales which had taken place outside the State notwithstanding that such levy offends sub-Art. (1) of this Article. **36 Mys LJ 606 : (1959) 10 STC 29 : ILR (1958) Mys 373 : AIR 1959 Mys 57 (61) (Pt F) (Pr 19) (DB).**

——**Art. 286 (2), Proviso — Scope of.**

The proviso under Art. 286 (2) of the Constitution governs only Cl. (2) and not the whole of the article. **1952 NLJ 373 : ILR (1953) Nag 332: (1952) 3 STC 343 : AIR 1952 Nag 378 (387) (Pt G) (Pr 52) (DB).**

——**Art. 286 — Sales involving inter-State elements — Effect of President's Order — (Sales tax — Orissa Sales Tax Act (XIV of 1947), S. 4).**

Where a transaction of a sale involves inter-State elements if the goods are delivered for consumption in a particular State that State alone can tax the sale by virtue of Clause (1) of that Article and by a legal fiction that sale becomes intra-State sale. Clause (2) of Art. 286 applies to those transactions of sale involving inter-State elements which do not come within the scope of Cl. (1) of that Article. Where the sales involve inter-State elements inasmuch as the buyers are outside Orissa, price is paid outside Orissa and goods are delivered for consumption outside Orissa, by virtue of Cl. (1) of Art. 286 the State of Orissa is not competent to tax such transactions of sale. Clause (2) of Art. 286 will not be of any help to the Department. The President's Order under the proviso to that clause would have only those classes of sales in the course of inter-State trade or commerce which do not come within the scope of Cl. (1) of that Article. AIR 1953 SC 252. Foll. **(1956) 7 STC 221: ILR (1955) Cut 267: 21 Cut LT 339: AIR 1955 Orissa 172 (175) (Pt D) (Pr 12) (DB).**

——**Art. 286** — Inter-State sales — Sale in course of import — Sale for consumption in Bihar — Goods delivered in Bihar — Liability to sales-tax under Bihar Sales Tax Act 1947, during period 21-6-1950 to 30-9-1951 — Goods imported into Bihar from outside India — Sales Tax Continuance Order 1950 — Sales Tax Validation Act 1956 — Sales held were not exempt from taxation under Art. 286 (1) (a) —Matter held came within ambit of S. C. decision in (1953) 4 STC 205 : AIR 1953 SC 333. **(1960) 11 STC 242 (Pat).**

[**Reversed** in AIR 1964 SC 584.]

——**Art. 286 (2) — Tax imposed for period from 26-1-1950 to 31-3-1951 — Legality — Effect of Sales-tax Continuance Order on assessment — (Sales-tax — Sales-tax Continuance Order (1950), Cl. 2).**

In view of the Sales Tax Continuance Order promulgated by the President, it is clear that the tax imposed upon the assessee for the period from 26th January, 1950 to 31st March, 1951, is not liable to attack on the ground that there is a violation of the provisions of Art. 286 (2) of the Constitution. **1959 BLJR 131: (1959) 10 STC 281 : AIR 1959 Pat 503 (503, 504) (Pr 5) (DB).**

——**Art. 286 (2) — Ban under — Effect of President's Sales Tax Continuance Order, 1950 — (Sales Tax — Sales Tax Continuance Order, 1950) — (Sales Tax Laws Validation Act, 1956).**

The ban imposed by Art. 286 (2) of the Constitution has been surmounted by the President's Sales Tax Continuance Order of 1950, which authorised the imposition of sales-tax contrary to the provisions of Art. 286 (2) of the Constitution with regard to the period from 26-1-1950 to 31-3-1951. AIR 1957 Pat 288. Foll. **(1958) 9 STC 173 : AIR 1959 Pat 30 (31) (Pt B) (Pr 6) (DB).**

——**Art. 286 — Bans under — Scope of — Sales Tax Continuance Order, 1950 — Effect — Inter-State sales — Assessment for period from 26-1-50 to 31-3-1950 — Legality.**

The bans imposed by the several clauses of Art. 286 with regard to the taxing powers of the States are independent and separate, and each one of the bans has to be overcome before the State legislature can impose a tax on the transaction of sale or purchase of goods.

It is true that the President's Continuance Order has lifted the ban so far as Art. 286 (2) is concerned. But that order cannot surmount or overcome the ban imposed by the Explanation to Art. 286 (1) (a). AIR 1955 SC 661 : 1955 SCJ 672. Foll. **1956 Pat LR 510 : 1957 BLJR 130 : (1956) 7 STC 776: ILR 35 Pat 1055: AIR 1957 Pat 112 (113) (Pt A) (Pr 4) (DB).**

10. Clause (2) — Inter-state sales — After Constitution (Sixth Amendment) Act, 1956.

——**Art. 286 (2)** — Madras General Sales Tax Act (1939), Ss. 2 (h), Expl. 2, 3, 22 (as amended in 1957) — Assessee manufacturing motor cars at its factory in Madras State — Sale in other States through its own dealers — Cars and spare parts supplied to dealers by rail or by road — Delivery of cars and spare parts to drivers of dealers at the factory — Goods intended to be sold outside Madras State — Sales held liable to tax — Scope and effect of S. 2 of Validation Act of 1956. See Sales Tax — Madras General Sales Tax Act (9 of 1939), (as amended in 1957), S. 2 (h), Expl. 2. **AIR 1961 SC 1433.**

——**Arts. 286, 269 and Sch. VII, List 1, Entry 92-A — Inter-State trade or commerce — Meaning — Test to determine — Power of State to tax — Central Sales Tax Act (1956), Ss. 3 and 4 — Bengal Finance (Sales Tax) Act (VI of 1941), S. 5 (2) (a) (v).**

The expression "Inter-State trade or commerce" is not confined to mean trade or commerce between a seller-State and purchaser-State. It is inter-State trade where goods sold or purchased under contracts of sale move from one State to another. The constitutional doctrine of free inter-State trade and commerce must not be understood to mean that inter-State trade and commerce is a privileged activity immune from all taxation. What the Constitution prohibits is multiple taxation of inter-State sale transactions, discrimination between States in imposing tax on such transactions and discriminatory taxes on goods imported into and exported out of the State. It is possible to have sale in the course of inter-State trade or commerce even if the title passes wholly within the State so long as the sale itself has occasioned the movement of goods. So also neither the appropriation nor the delivery to the buyer within the meaning of S. 23 (2) or S. 39 (1) of the Sale of Goods Act would prevent the transaction being a sale in the course of inter-State trade. Passing of goods through check posts would also not alter the

character of an inter-State sale since the check posts are mainly intended for customs and that by itself would not be a determination of what is meant by an inter-State sale.

According to S. 3 of the Central Sales Tax Act, the inter-State sales are those which occasion the movement of goods from one State to another or are affected by transfer of documents of title to the goods during their movement from one State to another. These sales are subject to taxation by the Union Government by reason of the amended Entry 92-A of List I of Seventh Schedule of the Constitution. Mere contemplation of movement at the time of sale without there being an actual movement or movements immediately after the completion of sale will not, however, make the sale an inter-State sale. Therefore, if the delivery of goods is given to the buyer and title passes to him within the State, the subsequent export out of the State by him would not render the previous sale inter-State, the movement being after the sale and the sale itself not having occasioned the movement of goods. AIR 1963 SC 980, Foll.

Held, on facts, on consideration of the terms of the contract that the origin of the contract and the placing of the purchase order with the petitioner showed that the goods were intended to be moved from Calcutta to Jamshedpur. The sale, therefore, occasioned the movement. The fact, that, the purchaser arranged for lorry in Calcutta in which the seller could load the goods or the fact that the seller was to be liable for loss or damages to the goods till delivery of the goods at the delivery point specified did not make the transaction any-the-less inter-State trade. This State Government could not tax such sale by reason of entry 92-A in List I of the Seventh Schedule of the Constitution read in the light of Art. 286 of the Constitution both before and after the amendment thereof and the sale was exempt from taxation under S. 5 (2) (a) (v) of the Bengal Finance (Sales Tax) Act, 1941. **AIR 1963 Cal 442 (450, 451, 453 to 455) (Prs 30, 33, 37, 41 to 43, 45).**

——Art. 286 (as amended in 1956) — Effect of amendment — Sale or purchase of goods taking place outside State cannot be taxed — Part of transaction taking place within State — J. and K. Motor Spirit (Taxation of Sales) Act not providing levy of tax on basis of theory of territorial nexus — Sale is not taxable within State.

The Constitution (Sixth Amendment) Act which amended Art. 286 came into force in the State of Jammu and Kashmir on 16th January, 1958, by the Constitution (Application to Jammu and Kashmir) Amendment Order, 1958. Under the amended Art. 286 a State is prohibited from levying a tax on the sale or purchase of goods, where such sale or purchase takes place outside the State. Where except the passing of property in the goods and the delivery of the goods, all the other necessary ingredients of sale take place outside the State, then unless the State taxing statute has proceeded to tax sales on the basis of the theory of territorial nexus, the sales are not taxable as having taken place inside the State. But there is nothing in the Jammu and Kashmir Motor Spirit (Taxation of Sales) Act, 1948 to indicate that if any of the essential ingredients of a sale is located in the State of Jammu and Kashmir, the sale should be deemed for purposes of taxation to have taken place within the State. Where, therefore, under the contract to supply the petrol it is bought at a place outside the State and transported and delivered at a place in the State during the period 16th January, 1958 to 22nd March, 1958, the sales of petrol cannot be taken to be inside sales which can legitimately be taxed under the Jammu and Kashmir Motor Spirit (Taxation of Sales) Act, 1948. **1962 Kash LJ 83 : AIR 1962 J & K 89 (95, 96) (Pt F) (Prs 19, 20, 21, 23) (DB).**

[**Partly reversed** on another point in AIR 1966 SC 1350.]

——Art. 286 (2) — Central Sales Tax Act (1956), S. 3 — Sale or purchase in the course of inter-State trade — What is — Orders by parties from outside State — Delivery of Goods F. O. R. railway station in State — Railway receipt in name of self but endorsed to buyer — Freight paid by buyer at destination — Sale held as inter-State sale and exempted from tax.

To be regarded as within the course of export a sale or purchase must be inextricably bound up with the export. A sale or purchase unconnected with the ultimate export as an integral part thereof is not within the exemption. It may thus be taken as settled that sales or purchases for the purpose of export are not protected unless the sales or purchases themselves occasion the export and are an integral part of it. AIR 1961 SC 315, AIR 1953 SC 333, AIR 1952 SC 366, Rel. on.

Held, on facts that, the connection between the F. O. R. sales at a railway station in this State for a destination outside this State and the movement that followed the delivery to the common carrier was so intimate and real that the movement was occasioned, caused, or brought about, by the sale, and therefore, the sales should be considered as sales in the course of inter-State trade or commerce. **ILR (1961) 2 Ker 404 : 1961 Ker LT 832 : 1961 Ker LJ 1281 : (1962) 13 STC 17 : AIR 1962 Ker 66 (67, 68) (Prs 7, 9, 10) (DB).**

——Art. 286 (1) (a) — Scope and object — Inter-State sale and outside sale — Sales Tax Laws Validation Act (1956) has not empowered States to levy tax on outside sales — Sales Tax — Sales Tax Laws Validation Act (1956), S. 2 —Scope of.

Art. 286 of the Constitution imposes a very clear ban on the States to impose a tax on sale or purchase of goods where such sale or purchase takes place outside the State. The ban imposed on the State to tax sale or purchase taking place outside the taxing State is absolute and independent of the other bans in the said Article. Once it is held that there is a ban on the State to tax, sale or purchase outside the State, the explanation by its own force cannot render even the fictional inside sale subject to taxation. The only way to reconcile Art. 286 (1) and (2) is to hold that Parliament may lift the ban in regard to taxation of 'inside sales' or what may be called 'explanation sales'. Any other interpretation is not merely inconsistent with the clear terms of the Constitution but also repugnant to the avowed principles and objects underlying the State's power to tax goods forming the subject-matter of inter-State sale or purchase. Neither the express terms of Art. 286 nor any implication therein can sustain the view that this absolute ban can be removed by the Parliament by appropriate legislation. The object is 'to maintain freedom of inter-State trade or commerce pari passu with the State's power to tax goods imported from sister States without discriminating them from local goods, that is, goods produced or manufactured in the taxing State.

Section 2 of the Sales-tax Laws Validation Act, 1956 only liberates the State Laws from the fetters placed on them by Art. 286 (2) and to

enable such laws to operate on their own terms. It only lifts the ban imposed on the States against taxing inter-State sales and it does not validate or ratify any such law. There is no decision of the Supreme Court which can be so construed as to lead to the conclusion that an inter-State sale or purchase outside the taxing State can be taxed by a State Law provided the Parliament permits it. The ban on the States' power to tax outside sales is permanent and irremovable and Art. 286 (2) has to be read as only enabling the Parliament to lift the ban on inside sale or purchase of the taxing State. AIR 1963 Mad 5, Ref. **(1963) 14 STC 923: ILR (1964) 1 Mad 367: (1965) 1 Mad LJ 411.**

●——**Art. 286** — Sales Tax — Central Sales Tax Act (1956), S. 8 (1) Proviso (before amendment by Act 31 of 1958) — Scope — Words "Is exempt from tax generally" in the proviso — Meaning of — Exemption intended relates to sale or purchase and not to goods sold. See Sales Tax — Central Sales Tax Act (1956), S. 8 (1) Proviso (before amendment by Act 31 of 1958). **(1962) 40 Mys LJ 570.**

11. Clause (3) — Sale of essential commodities.

●——**Art. 286 (3)** — Only modifies charging section of State Act — East Punjab General Sales Tax Act (XLVI of 1948), S. 5 — Central Sales Tax Act (1956), S. 15 (a). Modi Spinning and Weaving Mills Co., Ltd. v. Commr. of S. T. Punjab. **67 Pun LR 372: 1965 Cur LJ 322: (1965) 16 STC 310: AIR 1965 SC 957 (960) (Pt B) (Pr 8).**

●——**Art. 286 (3) (as it was in 1950) — Sales Tax — Imposition of sales-tax under provisions of M. B. Sales Tax Act, 1950 on goods manufactured from iron and steel — Declaration that iron and steel is essential for life of community made by Parliament by enacting Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952 — Cl. (3) of Art. 286 not retrospective— Validity of M. B. Act, 1950 cannot be challenged under Art. 286 (3).**

Clause (3) of Art. 286 of the Constitution of India, as it stood in the year 1950, provided that no law made by the Legislature of a State imposing, or authorising the imposition of a tax on the sale or purchase of such goods as have been declared by Parliament by law to be essential for the life of the community, shall have effect unless it has been reserved for the consideration of the President and has received his assent.

By a notification issued under S. 5 (2) read with S. 3 of the Madhya Bharat Sales Tax Act, 1950, the State of Madhya Bharat imposed sales-tax in the territory of Madhya Bharat on the sales of goods mnaufactured from iron and steel with effect from 1-5-1950. As from 9-8-1952, S. 2 read with Schedule to the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, declared iron and steel to be essential for the life of the community. The validity of the M. B. Act of 1950 cannot be challenged on the ground that it was not reserved for the consideration of the President and had not received his assent. The material words are that the sale or purchase of any such goods manufactured from iron and steel as have been declared by Parliament by law to be essential for the life of the community. Therefore, if the Parliamentary declaration follows the impugned enactment it cannot retrospectively affect the validity of the said enactment. AIR 1954 SC 311 and AIR 1958 SC 883, Rel. on. AIR 1957 Madh Bha 83, Affirmed. Indore Iron & Steel Registered Stock-holders Association (P.), Ltd. v. State of Madhya Pradesh, **(1961) 12 STC 622: (1962) 2 SCR 924: (1963) 1 SCJ 383: 1961 Jab LJ 1305: AIR 1962 SC 191 (192, 194) (Prs 4, 12, 13, 14, 15).**

●——**Art. 286 (3)** — Sales-tax — Madras General Sales-tax (Special Provisions) Act (XI of 1963), S. 2 (1) — Validity — Effect of declaration under Central Act LII of 1952 as regards hides and skins — Did not affect legislative competency of State to enact provision relating to pre-Constitution Act — Section not invalid for want of President's Assent. See Sales Tax — Madras General Sales Tax (Special Provisions) Act (XI of 1963), S. 2 (1). **AIR 1964 SC 1729.**

●——**Art. 286 (3)** — Applicability — Tax on essential commodities — Act LII of 1952. See Sales Tax — Hyderabad General Sales Tax Act (XIV of 1950 as amended by Act XXVII of 1952). **AIR 1958 SC 883.**

●——**Art. 286 (3) — 'Law' — Essential Supplies (Temporary Powers) Act (XXIV of 1946) — (The Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952)).**

Per Majority (Bose J. Contra): The law of Parliament declaring goods to be essential contemplated by cl. (3) of Art. 286 is a law making a declaration for the purposes of that clause. Any Act of Parliament declaring certain goods to be essential for its own purposes, as Act XXIV of 1946 does, is not an Act within the contemplation of Art. 286 (3). The Parliamentary Act, there contemplated has to be passed in exercise of the powers contained in it and must clearly be referable to it. Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act LII of 1952, came into force on 9th August, 1952. It cannot therefore be contended that in view of Art. 286 (3) no tax can be levied on the sale of a commodity (i.e., Groundnut) declared essential by Act XXIV of 1946. Konduri Buchirajalingam v. State of Hyderabad, **(1958) 9 STC 397: AIR 1958 SC 756 (760) (Pt D) (Pr 10).**

●——**Art. 286 (3)** — Mad. Gen. Sales Tax Act (1939), S. 22 (as applied to Andhra) — Imposition of tax on yarn, if hit by Essential Commodities Act (1952) read with Art. 286 (3) of Constitution — See Sales Tax — Madras General Sales Tax Act (as applied to Andhra) (9 of 1939) S. 22. **AIR 1958 SC 468.**

[**Held overruled** on another point by AIR 1959 SC 648 in AIR 1961 Mys 3].

●——**Art. 286 (3)** — Article contemplates Post-Constitution Act — Pepsu General Sales Tax Ordinance (XXXIII of 1006) — No inconsistency between S. 3, Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952), and relevant provisious of Constitution — No question arises whether Ordinance has become void since commencement of Constitution. Soma Singh v. State of Pepsu, **1954 SCJ 393: 1954 SCA 351: 1954 SCR 955: 56 Punj LR 282: AIR 1954 SC 311 (312) (Pr 2).**

●——**Art. 286 (3)** — U. P. Sales Tax Act (XV of 1948), S. 3-A (as amended by U. P. Act (XL of 1952) — Notification No. S. T. 117/X-923-1948 dt/-8-4-1948 — Validity — Validity of Amending Act not affected by Art. 286 (3) of the Constitution — U. P. Sales Tax (Amending) Act (XL of 1952), S. 8 — Applicability. See Sales Tax — U. P. Sales Tax Act (XV of 1948), S. 3-A (as amended by U. P. Act (XL of 1952)). **AIR 1965 All 24 (FB).**

——**Art. 286 (3) (before its amendment in 1956)** — State Act reserved for and receiving assent of President — Effect of — Date of operation of State Act — Not affected by date of assent — State Act making gur liable to sales tax from 1-4-1956 — Assent received on 9-5-56 — Taxation of turnover of gur from 1-4-1956 held legal — U. P.

Sales Tax Act (XV of 1948), S. 4 (as amended by U. P. Act XIX of 1956). **(1962) 13 STC 409: AIR 1963 All 16 (16, 17) (Prs 3, 5).**

——**Art. 286 (3)** — Sale of tobacco in the State — Power of State to levy tax on —Additional excise duty imposed under S. 7 of Act, LVIII of 1957 — Power of State not affected. See Sales Tax — Central Sales Tax Act (1956), S. 15. **AIR 1965 Cal 498.**

——**Art. 286 (3) (as amended in 1956) Sch. 7, List 2, Entry 54 — Cen. S. T. Act (1956) (as amended by Act XXXI of 1958), S. 15 — Levy of sale-tax on declared goods — Powers of State Legislature — Effect of Art. 286 (3) and S. 15 — Scope of Ss. 15 (a) and 15 (b) of the Central Sales Tax Act.**

The plain meaning of Clause (3) of Art. 286 of the Constitution as amended in 1956 was that if, after 11th September, 1956, Parliament (a) declared any goods to be of special importance to inter-State trade or commerce, and also (b) specified restrictions and conditions in regard to the imposition of sales tax on the sale or purchase of such goods, a State Legislature could, in exercise of its power to levy sales tax under Entry 54 of List II, impose sales tax on such declared goods only subject to such restrictions and conditions as Parliament may so specify.

Section 15 of the Central Sales Tax Act, 1956 as amended by Act XXXI of 1958 which came into force from 1st October, 1958 lays down three conditions subject to which sales tax may be levied by a State Legislature on the 'declared goods' namely (i) that such tax shall be levied only on the last sale or purchase inside the State; (ii) that the levy of such tax shall not exceed 2 per cent. of the sale or purchase price thereof, & (iii) that such tax shall not be levied at more than one stage. A violation of any of these three conditions would render the taxation of a declared goods ultra vires whether in fact, it is sold in the course of inter-State trade or not.

Clause (b) of S. 15 is independent of cl. (a) and imposes an additional condition. Clause (b) does not mean that the violation of any of the prohibitions which are mandatory shall not render the imposition ultra vires so as to enable an aggrieved assessee to seek relief from the Court to restrain the proceedings for any such assessment. **AIR 1965 Cal 498 (503, 504) (Pt D) (Prs. 27, 36, 37, 38).**

——**Art. 286 (3) (as amended in 1956) — Central Sales Tax Act (1956) (as amended by Act XXXI of 1958), S. 15 — Sales Tax on declared goods — Restrictions under S. 15 — When effective — Tax levied by Bengal Act of 1941 on sale of tobacco — Validity — Tax in excess of 2 per cent levied before 28th October, 1959 not valid.**

No tax could be levied on the declared goods such as tobacco under the Bengal Act of 1941 until S. 5(1) of that Act was amended with effect from 28th October, 1959, so as to incorporate the ceiling of 2 per cent, as required by S. 15 of the Central Sales Tax Act, read with Act, LVIII of 1957. The invalidity of the Bengal tax on this ground would, however, commence from 1st October, 1958, the date when S. 15 of the Central Sales Tax Act itself was given effect to. Unreported decision in C. R. 1125 of 1959 (Cal) decided in 1961, Rel. on. **AIR 1965 Cal 498 (504) (Pt E) (Pr 40).**

——**Art. 286 (3)** — Cotton fabrics declared goods of special importance — Imposition of sales-tax under S. 5 (1) of Bengal Act VIII of 1941, in excess of 2 per cent laid down in S. 15 of Central Act, was ultra vires, till the time the former section was amended to conform with latter section. See Sales Tax — Bengal Finance (Sales Tax) Act (VI of 1941), S. 5 (1) (as it stood prior to its amendment by Act XIII of 1959). **AIR 1965 Cal 203.**

——**Art. 286 (3)** — Notification imposing sales-tax on cereals — Imposition held not ultra vires. See Sales-Tax — Hyderabad General Sales Tax Act (14 of 1950), S. 4 as amended by Act 7 of 1955. **(1960) 11 STC 782 (Andh Pra).**

——**Art. 286 (3) — Goods essential for life of community — (Essential Supplies (Temporary Powers) Act (1946), S. 2).**

It cannot be said that the essential goods mentioned in the Essential Supplies (Temporary Powers) Act (1946) are the same as the essential commodities necessary for the life of the community mentioned in Art. 286 (3). The purpose of the Essential Supplies (Temporary Powers) Act is entirely different from the Act which would relate to the essential commodities for the life of the community. The Essential Supplies Temporary Powers Act is a law which relates to the regulation, control, production, supply and distribution of essential commodities, while what is contemplated under Art. 286 (3) of the Constitution of India is the prohibition against the levy of tax on goods which have been declared to be essential to the life of the community. Hence it cannot be said that inasmuch as food stuffs have been included among the essential commodities in the Essential Supplies (Temporary Powers) Act, the State legislature cannot pass any law which purports to levy tax on them which had been declared to be an essential commodity. **AIR 1954 Hyd 94 (94, 95) (Pt B) (Pr 4) (DB).**

——**Art. 286 (3)** — "Law" in Art. 286 (3) does not include previous law. See Sales Tax — Hyderabad General Sales Tax Act (XIV of 1950) (as amended in 1952), S. 1. **ILR (1954) Hyd 76: AIR 1954 Hyd 50 (DB).**

——**Art. 286 (3)** — Essential Goods (Declaration and Regulation of Tax on Sales and Purchase) Act (52 of 1952), Sch. Item 14 — Iron and Steel— Expression if includes articles made of iron and steel — Exemption of articles from taxability — Notification under M. B. Sales Tax Act, if inconsistent with Art. 286 (3) of Constitution. See Essential Goods (Declaration and Regulation of Tax on Sale and Purchase) Act (1956), Sch. Item 14. **AIR 1957 MB 83.**

——**Art. 286 (3) — Scope and effect of.**

The restrictive provisions of Art. 286 (3) hit the legislation made by the legislature of the State made subsequent to the declaration under Art. 286 (3) and the subordinate legislation made under a prior status is in no way affected. **1956 Madh BLJ 1575: AIR 1957 Madh B 83 (89) (Pt C) (Pr 54) (DB).**

——**Art. 286 (3) — Scope — Liability to tax under M. B. Act (XXX of 1950) if affected by Central Act (LII of 1952) — (Sales Tax — Madhya Bharat Sales Tax Act (XXX of 1950), S. 5) — (Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (1952), S. 3).**

The words 'made after the commencement of this Act' in S. 3 of Act LII of 1952 do not go beyond the legislative power of the Parliament and run counter to the provision of the Constitution as contained in Art. 286 (3). If one has regard to the words 'law made by the Legislature of a State' and 'as have been declared by Parliament by law' in Art. 286 (3) it is clear that the State legislation contemplated is a post-constitutional legislation. The words 'as have been declared' indi-

cate that the declaration must precede the impugned State legislation. It, therefore, follows that the said Act LII of 1952 will not affect a State legislation made prior to the coming into force of that Act. Moreover the declaration has to be made by Parliament. Declaration made of certain commodities as essential cannot be construed to be a declaration by Parliament regarding goods as being essential to the life of the community under Act LII of 1952: AIR 1954 SC 311 Foll.; AIR 1954 Hyd 50, Rel. on. The liability of a dealer to the tax under M. B. Act XXX of 1950 is not affected by the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act LII of 1952. **1956 Madh BLJ 667: Madh BLR 1956 Civ 204: AIR 1956 Madh B 214 (217, 218) (Pt A) (Prs 22, 23, 25, 28) (DB).**

——**Art. 286** — Scope — Development of Sales Tax Law in India — State of law in pre-Constitution and post-Constitution periods — C. P. and Berar Sales Tax Act (XXI of 1947), S. 2 (g), Expl. II. See Ibid, Art. 245. **AIR 1962 Madh Pra 225 (DB).**

——**Art. 286 (3)** — Madras Turnover and Assessment Rules, Rr. 15 and 16 — Act passed before Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act — Act did not require assent of President as required by Art. 286 (3) — Rules under Act being delegated legislation also do not require assent — Rules 15 and 16 are not ultra vires because they were not reserved for President's assent. See Sales Tax— Madras General Sales Tax Act (IX of 1939), S. 5. **(1960) 1 Mad LJ 240.**

——**Art. 286 (3) — 'Law imposing taxation' — Meaning of — Madras General Sales Tax Act, 1939 & Rules — Rules 15 and 16 — (Sales Tax —Madras General Sales Tax Act (IX of 1939), Ss. 3, 5) — (Sales Tax — Madras General Sales Tax (Turnover and Assessment) Rules (1939), Rr. 15, 16 (as amended in 1955) — (Sales Tax — Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (1952), S. 3).**

The Madras General Sales Tax Act is a 'law imposing the tax'. Under it the person who is liable to tax is the 'dealer'. The subject-matter of the tax is a transaction of sale or purchase of any commodity and the tax is laid on the total turnover of such dealer. The rate of tax is that laid down in the levy provision, S. 3 (1) and (2). The nature of the levy whether it is at a multiple point or at a single point is determined by the operation of S. 5. The rest of the Act contains merely machinery provisions for the assessment and collection of tax. The impugned Rr. 15 and 16 of the Turnover and Assessment Rules were subordinate legislation whose subject-matter was the prescription regarding assessment and collection of taxes 'imposed' by Ss. 3 and 5 of the Sales-tax Act and though without their existence, it could not have been possible to levy or collect the tax, they are not in themselves 'laws imposing the tax' within Art. 286 (3) or S. 3 of Act LII of 1952. **(1959) 10 STC 171: (1960) 1 MLJ 27: AIR 1959 Mad 317 (320 to 323) (Prs 16, 23 to 25).**

——**Art. 286 (3) — Sales-tax on groundnuts — Groundnuts not declared essential commodity during assessment year— Tax is not hit by Art. 286 (3) — (Sales Tax — Madras General Sales Tax (Turnover and Assessment) Rules (1939), R. 4).**

Article 286 (3) would apply to any law made by a Legislature of a State subsequent to the date on which the Constitution came into force. Even apart from that, the ban of Art. 286 (3) will fall only after Parliament declares by law any goods as essential for the life of the community. Where during the assessment year there was no declaration by Parliament by law that groundnut was an essential commodity, essential for the life of the community, its taxation to sales-tax during that period is not hit by Art. 286 (3). **67 Mad LW 784: ILR (1955) Mad 821: (1954) 2 MLJ 550: 1954 Mad WN 649: AIR 1955 NUC (Mad) 675 (DB).**

——**Art. 286 (3)** — Sales tax on groundnuts — Groundnuts not declared essential commodity during assessment year — Tax is not hit by Art. 286 (3) — (Sales Tax — Madras General Sales Tax (Turnover and Assessment) Rules (1939), R. 4). **AIR 1955 NUC (Mad) 674 (DB).**

——**Art. 286 (3)** — 'Oil seeds' includes coconut and copra — Tax on sale and purchase restricted to maximum provided in S. 15, Central Sales Tax Act — Further impost on such sales and purchases in Mysore State under S. 11, Madras Commercial Crops Markets Act is invalid. See Sales Tax — Central Sales Tax Act (1956), S. 14 (vi). **AIR 1962 Mys 1 (DB).**

——**Art. 286 (3) —Scope — Mysore Sales Tax Act (1948) — President's assent — Necessity.**

Clause (3) of Art. 286 does not affect pre-existing laws. The Mysore Sales Tax Act under which the tax is levied on hides and skins came into force in 1948 and not being a post-Constitutional law is exempted from the requirement of the President's assent for being effective. **35 Mys LJ 79: ILR (1956) Mys 266: (1957) 8 STC 205: AIR 1957 Mys 22 (23) (Pt A) (Pr 4).**

——**Art. 286 (3)**—Dealers of ginned and unginned cotton dealing only in one commodity -- Imposition of tax exceeding two per cent and at two stages — Contravention of S. 15 of Central Act — Sections held ultra vires — Dealers in oilseeds, non-ferrous metals and iron scrap —Liable to pay tax at two stages. See Sales Tax —East Punjab General Sales Tax (Amendment) Act (VII of 1958), S. 3 (1), (9). **ILR (1960) 1 Punj 852.**

——**Art. 286 (3) — Declared by Parliament by law to be essential for the life of the community — (Sales Tax — Travancore Cochin General Sales Tax Act (1125) — Validity) — (Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (1952) Ss. 2, 3) — (Essential Supplies (Temporary Powers) Act (1946), S. 2).**

Even on the assumption that jaggery and gur are identical there is no declaration by Parliament by law of jaggery to be essential for the life of the community prior to the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952. It should be clear from S. 3 of the Act that the declaration under S. 2 will affect only enactment made after the commencement of the Act and not those made prior to it, like the Travancore-Cochin General Sales Tax Act, 1125, which was made prior to the date of its commencement, namely, 9th August, 1952. Central Act (XXIV of 1946) is not an Act passed with a view to declare, in pursuance of Cl. (3) of Art. 286 of the Constitution, any goods to be essential for the life of the community; a definition clause like S. 2 of Central Act No. XXII of 1946, is not the same thing as the declaration contemplated by Art. 286 (3) of the Constitution and cannot do duty for such a declaration.

Hence, the Travancore-Cochin General Sales Tax Act, 1125, is not 'ultra vires' of Art. 286 (3) of the Constitution on the ground that it seeks to impose a tax on the sales of jaggery, a commodity alleged to have been declared by Parliament by law to be essential for the life of the community. **(1955) 6 STC 203: AIR 1955 Trav-Co 18 (18, 19) (Prs 1 to 3).**

12. Validity of sales-tax laws — Illustrative cases.

●——**Art. 286 and Part III** — Scope —Tax laws — Principles for determining its validity — Scope of Art. 265 — Tax laws are not outside Part III of Constitution. See Ibid, Art. 265. **AIR 1962 SC 1006.**

●——**Art. 286** — Bihar Sales Tax Act (XIX of 1947), Ss. 4 (1) and (2) (g), second proviso (as amended by Act (VI of 1949) — Validity). See Sales Tax — Bihar Sales Tax Act (XIX of 1947), S. 4 (1). **(1958) SCJ 818 : AIR 1958 SC 452.**

●——**Arts. 286, 245** — Theory of nexus as applied to sales-tax legislation —(Sales-tax— Bihar Sales Tax Act (19 of 1947), S. 2 (g), Second Proviso — Validity — Cases provided in second proviso whether constitute sufficient nexus. See Ibid, Art. 245. **AIR 1958 SC 452.**

●——**Art. 286** — Retrospective levy of sales-tax— If affects nature as sales-tax. See Sales Tax — Bihar Sales Tax Act (XIX of 1947), S. 4 (1). **1958 SCJ 818: AIR 1958 SC 452.**

●——**Art. 286** — Sales Tax legislation operating on non-resident persons — Validity considered. See Ibid, Art. 245. **(1955) 2 SCR 603: AIR 1955 SC 661.**

●——**Art. 286— Validity of tax — Inconvenience in recovering tax.**

The convenience or inconvenience of collecting a sales-tax or a purchase-tax is not a relevant consideration when one is considering the validity or otherwise of such a tax. AIR 1949 FC 18, Rel. on. Bengal Immunity Co., Ltd. v. State of Bihar. **(1955) SCJ 672 : ILR 34 Pat 965 : (1955) 6 STC 446 : (1955) 2 SCR 603 : 1955 SCA 1140 : (1955) 2 MLJ (SC) 168 : 1955 Andhra WR (SC) 422 : AIR 1955 SC 661 (710) (Pt Y) (Pr 110).**

●——**Art. 286** — Validity of Expl. 2 to S. 2 (g) of C. P. and Berar Sales-tax Act. See Sales Tax — C. P. and Berar Sales Tax Act (II of 1947, as amended by Act XV of 1949), S. 2 (g), Explanation 2. **(1954) 1 MLJ 690 : (1954) SCJ 445: 1954 SCR 1122 : 1954 SCA 654 : 67 LW 629 : AIR 1954 SC 403.**

●——**Art. 286** — Any law framed by a Provincial legislature relating to or based on the subjects of entry 27 or entry 29 of List II, Sch. VII, Govt. of India Act, the entry into or export from the province of any goods is prohibited or restricted, such a law will be invalid. See Government of India Act, 1935, S. 297 I (a). **1952 Cri LJ 1361: AIR 1951 SC 318.**

——**Art. 286** — U. P. Sales Tax Rules (1948), R. 2 (d1) — It is not ultra vires as being repugnant to Art. 286. See Sales Tax — U. P. Sales Tax Rules (1948), R. 2 (d1). **AIR 1956 All 445.**

——**Art. 286** — Madras General Sales Tax Act (9 of 1939) — Composite assessment — Part illegal — Assessment not severable — Whole is bad. See Sales Tax — Madras General Sales Tax Act (9 of 1939). **AIR 1958 AP 670.**

——**Art. 286 (2) — Scope— Sales tax held illegal — Economy of State — Remedy.**

In cases where the provisions relating to the sales-tax having been held illegal, the economy of the State and the sources of revenue on which it depends are seriously affected, the remedy of the State lies in Art. 286 itself and the President or the Parliament may, by law, provide for relief against hardship. **ILR (1956) 8 Assam 384: AIR 1956 Assam 177 (180, 181) (Pt C) (Pr 10) (DB).**

[**Reversed** on another point in AIR 1962 SC 107.]

——**Art. 286**— Bihar Sales Tax Act (XIX of 1947) — Tax on inter-State sales —Validity. See Government of India Act (1935), Sch. VII, List 2, Item 48. **AIR 1957 Bom 71 (DB).**

——**Art. 286** — Contravention of, constitutes infringement of fundamental right — Question of alternative remedy as a bar does not arise. See Ibid, Art. 226. **AIR 1965 Cal 236.**

——**Art. 286** — Taxation Law — (Kerala) General Sales Tax Act (XI of 1125), S. 5 (vii) — Levy of sales-tax on last purchase in Kerala State—Not violative of Arts. 301 and 304 (b). See Ibid, Art. 301. **AIR 1963 Ker 202.**

——Art. 286, Sch. VII, List II, Entry 54 — Sales Tax — M. B. Sales Tax Act (XXX of 1950), Ss. 3 and 2 — Constitutional validity — Works contracts — Electric installation contracts — Liability to sales-tax.

The word "sale of goods" in Entry 54 of List II of Sch. VII, Constitution of India, is wide enough to include works contracts of electric installations or sanitary fittings in which the element of supply of materials for money consideration is more predominant than the labour of affixing the same. (1955) STC 93, Rel. on. AIR 1954 Mad 1130, Dissent from. Therefore, the provisions of S. 3 read with S. 2 in the M. B. Sales Tax Act (XXX of 1950), are not beyond the legislative competence of the State Legislature under Entry 54 of the State List. **MBLR (1956) Civ 839 : 1957 Jab LJ (MB) 57 : AIR 1957 Madh B 139 (148, 149) (Pt A) (Prs 87, 91) (DB).**

——Art. 286, Sch. VII, List II, Entry 54 — Sales-tax — M. B. Sales Tax Act (XXX of 1950), S. 24— Rules under M. B. Sales Tax Rules, R. 8 — Validity.

It is futile to say that R. 8 of the Madhya Bharat Sales Tax Rules is made without any power for the purpose under the scheme of the main Act. But the artificial test laid down in the Act to determine sale price of goods in respect of 'contracts' as defined in the Act and the R. 8 prescribing the proportion between the value of the materials and value of works and labour part must be declared as ultra vires. (1955) 6 STC 93, Rel. on. **MBLR (1956) Civ 839 : 1957 Jab LJ (MB) 57 : AIR 1957 Madh B 139 (150) (Pt C) (Prs 116, 119) (DB).**

——**Art. 286** — Sales Tax Laws Validating Act (1956), S. 2 — Section had validated the laws of Part C State also — This is on basis that Art. 286 applies to Part C States also. See Sales Tax — Sales Tax Laws Validating Act (1956), S. 2. **AIR 1965 Madh Pra 11 (DB).**

——Arts. 286 and 19 (1) (f) and (g) — M. B. Sales of Motor Spirit Taxation Act (XX of 1953) — Act is not beyond the legislative competence of the State of Madhya Pradesh — Levy of tax not an infringement of fundamental rights under Art. 19.

The M. B. Sales of Motor Spirit Taxation Act (XX of 1953) being a statute which is not beyond the legislative competence of the State of Madhya Pradesh the levy of tax under that statute cannot be deemed to infringe the fundamental rights guaranteed by Art. 19 (1) (f) and (g).

Levy of a tax lawfully imposed under a statute within the competence of the legislature cannot be deemed to infringe the fundamental rights

guaranteed by Art. 19 (1) (f) and (g) : AIR 1958 SC 560. Rel. on.

The State of Madhya Pradesh had power to levy tax on sale or purchase of motor spirits and such power could be exercised in respect of sales traditionally so understood.

Section 2(k) of the Act defines a 'retail sale' as meaning 'a sale of motor spirit by retail dealer for the purpose of consumption by the person by whom or on whose behalf it is or may be purchased, and the expression 'sell in retail' shall be construed accordingly'. But there is nothing in the definition of S. 2 (k) 'retail sale' nor in the charging section (S. 3) which indicates that the Legislature had enacted legislation beyond its competence. **1963 MPLJ 485 : 1963 Mah LJ 493 : 1963 Jab LJ 508 : (1963) 14 STC 410 : (1964) 1 SCR 488.**

——**Art. 286 (2)** — Legislature and judiciary — Legislation to override effect of judicial decision — Whether bad as exercise of judicial power — Sales Tax Laws Validation Act (1956), S. 2 — Validity and effect — Injunction issued by Supreme Court, prior to passing of Act, restraining local Sales Tax Authorities from taxing transactions made in course of inter-State trade or commerce — Liability to sales-tax of such transactions after passing of Act. See Ibid, Art. 245. **AIR 1962 Madh Pra 245 (DB).**

——**Art. 286** — Taxation — Illegal, remedies for — Suit of refund — Assessment of sales-tax on turnover of works contract made under provision of Madras Act 9 of 1939 subsequently held to be ultra vires — Suit for refund held barred by S. 18-A. **1961 Mad WN 80: (1961) 12 STC 138: (1961)1 Mad LJ 163 : AIR 1961 Mad 322 (323) (Pt B) (Pr 6) (DB).**

——**Art. 286**— Scope — Madras General Sales-tax Act (IX of 1939) — Act is not void on ground of recognition of distinction between intra-State and inter-State sales. See Sales Tax — Madras General Sales Tax Act (IX of 1939), S. 3. **(1957) 2 Mad LJ 167 : AIR 1957 Mad 368 (DB).**

——**Art. 286** — Petitioner assessed to tax under Madras General Sales Tax Act — Petition under Art. 226 — Maintainability. See Ibid, Art. 226. **(1952) 3 STC 433 : AIR 1953 Mad 131 (DB).**

——**Art. 286** — Non-resident assessee — Principal place of business in Cochin State — Contract of sale executed in Madras State — Delivery of goods also made in Madras State — Assessee held was "dealer" within meaning of the Madras General Sales Tax Act and was liable to sales tax in respect of such sales. See Sales Tax — Madras General Sales Tax Act (9 of 1939), S. 2 (b). **(52) 1952 Mad WN 658: AIR 1953 Mad 86 (DB).**

——**Art. 286**— Amendment covering into tax that is not really tax — Amendment held unconstitutional. See Sales Tax — Mysore Sale Tax Act (XXV of 1957), S. 18 (3) (as amended in 1964). **AIR 1965 Mys 120 (DB).**

——**Art. 286** — Madras Commercial Crops Markets Act (20 of 1933), Ss. 6, 6-A — Validity of the Act — Regulates buying and selling within a State — Bearing on export outside State only incidental —Does not control inter-State commerce and hence not ultra vires State Legislature. See Madras Commercial Crops Markets Act (20 of 1933), S. 6. **ILR (1961) Mys 951.**

——**Art. 286 (1)** — Refund of tax if can be ordered, since tax is illegal according to new interpretation — Assessment becoming final — Effect. See Sales Tax — Orissa Sales Tax Act (XIV of 1947), S. 14. **AIR 1957 Orissa 240 (DB).**

——**Art. 286 (1)** — Sales Tax — Orissa Sales Tax Act (14 of 1947), S. 5 (2)(a) (ii) — Condition in certificate of registration broken by registered dealer-purchaser — Proviso to S. 5 (2) (a) (ii) of Orissa Act applies — Legislative competency in enacting such a provision in Act. See Ibid, Art. 246. **ILR (1956) Cut 478 : AIR 1956 Orissa 145 (DB).**

——**Art. 286 (1), Expl. (a)** — Illegal taxation — Certiorari, if and when can issue stated. See Ibid, Art. 226. **AIR 1953 Pat 78.**

——**Art. 286, Sch. 7, List 2, Entry 54 — Government of India Act (1935), Sch. 7, List 2, Item 48 — Sales Tax — West Bengal Sales Tax Act (as extended to Delhi State), S. 2 (g), Explanation 1 — Constitutionality — Power to tax hire-purchase agreements.**

In order that a transaction be taxable under Entry 48 in List 2 of Sch. 7 of the Government of India Act of 1935 there should be a completed sale under which there is transfer of property in the goods and not when there is a mere agreement to sell. The State Legislature has not the power to enlarge the meaning of the words 'sale of goods' defined in the Sale of Goods Act. In that view, Explanation (1) to S. 2 (g) of the West Bengal Sales Tax Act (as extended to Delhi) is unconstitutional inasmuch it seeks to bring within the meaning of the word 'sale' hire-purchase agreements which are not sales within the word as used in Entry 48 of List II of the Government of India Act, 1935. **(1956) 7 STC 586 : 58 Punj LR 399 : AIR 1956 Punj 177 (177, 178, 180, 181) (Pt A) (Prs 3, 19, 28, 30) (DB).**

——**Art. 286** — Constitutional remedies for illegal taxation indicated. See Ibid, Art. 226. **AIR 1956 Punj 177 (DB).**

ARTICLE 288

——Art. 288 — Northern India Canal and Drainage Act (VIII of 1873) and Pepsu Sirhind Canal and Western Jamna Canal (Enforcement and Validation) Act (IV of 1954) — Validity.

It is necessary that the legislation to fall within Art. 288 must be one which imposes, or authorises the imposition of, a tax. Charge of water-rate for the water supplied, made use of in an unauthorised manner or suffered to run to waste can, by no stretch of reasoning, be regarded as a tax. It is neither a compulsory exaction of money nor an imposition for public purpose, the two essential ingredients of a 'Tax'.

Hence, it cannot be urged that the Canal Act VIII of 1873 and also the Validation Act IV of 1954 are bad and inoperative since they were not reserved for and did not receive the assent of the President as required by Art. 288 of the Constitution. AIR 1954 SC 282, Foll. **AIR 1956 Pepsu 40 (47) (Pt E) (Pr 25) (DB).**

ARTICLE 289

——Art. 289 — Road Transport Corporation Act (LXIV of 1950), Ss. 28, 29, 30 and 38 — Income of Andhra Pradesh Road Transport Corporation established under the Act, is not exempt from Union taxation.

The income derived from its trading activity by the Andhra Pradesh Road Transport Corporation, which is established under the Road Transport Corporation Act, 1950, by a notification issued by the Andhra Pradesh Government, is not the income of the State of Andhra Pradesh within the meaning of Art. 289 (1) of the Constitution and hence it is not exempt from Union taxation. AIR 1963 SC 1241 and (1950) 1 KB 18, Rel. on

(1939) 83 Law Ed. 927 and (1923) 68 Law Ed. 328 (331) Distinguished.

The general proposition flows from Cl. (1) of Art. 289 that ordinarily the income derived by a State both from governmental and non-Governmental or commercial activities shall be immune from income-tax levied by the Union provided the income in question can be said to be the income of the State. Clause (2) provides an exception. If clause (1) had stood by itself, it may not have been easy to include within its purview income derived by a State from commercial activities but since Cl. (2) in terms empowers the Parliament to make a law levying a tax on commercial activities carried on by or on behalf of a State, the conclusion is inescapable that these activities were deemed to have been included in Cl. (1) and that alone can be the justification for the words in which Cl. (2) has been adopted by the Constitution. Clause (3) then empowers the Parliament to declare by law that any trade or business would be taken out of the purview of Cl. (2) and restored to the area covered by Cl. (1) by declaring that the trade or business is incidental to the ordinary functions of Government. In other words Cl. (3) is an exception to the exception prescribed by Cl. (2).

From the relevant provisions of the Road Transport Corporation Act, 1950, there is no doubt that the bulk of the capital is contributed by the State Government and a small proportion by the Central Government and in that sense the majority of shares are at present owned by the State Government. There is also no doubt that the Corporation is a State controlled Corporation. But it is clear that all other citizens may be admitted to the group of shareholders and from that point of view the Act contemplates contribution of the capital for the Corporation not only by the State Government and Central Government but also citizens. Far from making any provision which would make the income of the Corporation the income of the State, all the relevant provisions emphatically bring out the separate personality of the Corporation and proceeds on the basis that the trading activity is run by the Corporation and the profit and loss that would be made as a result of the trading activity would be the profit and loss of the Corporation. The Corporation though statutory has a personality of its own and this personality is distinct from that of the State or other shareholders. Hence, prima facie the income derived by the trading Corporation cannot be claimed by the State which is one of the shareholders. Andhra Pradesh State Road Transport Corporation v. I. T. Officer, B. I. B. Ward, Hyderabad, **(1964) 7 SCR 17 : (1964) 52 ITR 524 : (1964) 34 Com Cas 473 : (1964) 1 ITJ 738 : (1964) 2 MLJ (SC) 33 : (1964) 2 Andh WR (SC) 33 : (1964) SC J 167 : AIR 1964 SC 1486 (1491, 1492, 1493) (Pt A) (Prs 14 to 17, 19, 21).**

■ **——Arts. 289 (1), 285 (1), 245, 366 (28) and 265, Sch. 7, List 1, Items 83, 84, 41 and 42 — Immunity of property and income of States from Union taxation — Scope and extent of — Levy of customs duties (export or import) and excise duties by Union on property of State — Levy not covered by exemption and can be validly imposed — Sea Customs Act (1878) S. 20 (2) — Central Excises and Salt Act (1944), S. 3 (1-A).**

Per Sinha, C. J., Gajendragadkar, Wanchoo, Shah and Ayyangar, JJ.: (Das, Sarkar, Das Gupta and Hidayatullah, JJ., Contra) :— The immunity granted to the States in respect of Union taxation under Art. 289 (1) does not extend to duties of customs including export duties or duties of excise. The provisions of Art. 289 of the Constitution therefore, do not preclude the Union from imposing, or authorising the imposition of customs duties on the import or export of the property of a State used for purposes other than those specified in Clause (2) of that Article.

Nor do the provisions of Art. 289 of the Constitution of India preclude the Union from imposing or authorising the imposition of excise duties on the production or manufacture in India, of the property of a State used for purposes other than those specified in Clause (2) of that Article. In this view sub-section (2) of S. 20 of the Sea Customs Act, 1878, and sub-section (1-A) of S. 3 of the Central Excises and Salt Act 1944, as sought to be amended by the proposed Bill of the Sea Customs and Central Excises (Amendment) Act, will not be inconsistent with the provisions of Article 289 of the Constitution.

Per Sinha, C. J., Gajendragadkar, Wanchoo, Shah and Ayyangar, JJ. :— Whereas all taxes on income other than agricultural income are within the exclusive power of the Union, taxes on agricultural income only are reserved for the States. All customs duties, including export duties, relating as they do to transactions of import into or export out of the country are within the powers of Parliament. The States are not concerned with those. They are only concerned with taxes on the entry of goods in local areas for consumption, use or sale therein, covered by Entry 52 in the State List. Except for duties of excise on alcoholic liquors and opium and other narcotic drugs, all duties of excise are leviable by Parliament. Hence, it can be said that by and large, taxes on income, duties of customs and duties of excise are within the exclusive power of legislation by Parliament.

Reading Article 289 and its complementary Art. 285 together the intention of the Constitution-makers was that Art. 285 would exempt all property of the Union from all taxes on property levied by a State or by any authority within the State, while Art. 289 contemplates that all property of States would be exempt from all taxes on property which may be leviable by the Union. Both the Articles are concerned with taxes directly either on income or on property and not with taxes which may indirectly affect income or property. The contention therefore, that these two Articles should be read in the restricted sense of exempting the property or income of a State in one case and the property of the Union in the other from taxes directly either on property or on income as the case may be, is correct.

The provisions of Art. 289 (1) being in the nature of an exception to the exclusive field of legislation reserved to Parliament, the exception has to be strictly construed and therefore, limited to taxes on property and on income of a State. In other words, the immunity granted in favour of States has to be restricted to taxes levied directly on property and income. Therefore, even though import and export duty or duties of excise have reference to goods and commodities, they are not taxes on property directly and are not within the exemption in Art. 289 (1).

That S. 20 of the Sea Customs Act was recast and amended by Act XLV of 1951 and that sub-sec. (2) thereof has borrowed most of its words from the provisions of Clause (2) of Art. 289, and therefore, Parliament itself has understood Cl. (2) of Art. 289 in the broader sense does not conclude the matter, for the Court has to construe the provisions of the Constitution in their proper setting and it is entitled to come to the conclusion that Parliament may not have been correct in so interpreting the words of Clause (2) of Art. 289.

Per Das, Sarkar and Das Gupta, JJ.: Contra.: The true scope and effect of Arts. 245, 285, 289 and 366 (28) of the Constitution is that the State property must be exempt from imposition of any tax or impost, whether general or local or special, by the Union. In the matter of the extent of the immunity therefore, the distinction drawn between a tax on property as such or in relation to property is really of no materiality as both the taxes affect property.

Sub-section (2) of S. 20 of the Sea Customs Act, 1878 and sub-S. (1-A) of S. 3 of the Central Excises and Salt Act, 1944 (Act I of 1944) as sought to be amended by the proposed Bill of the Sea Customs and Central Excises (Amendment) Act will be inconsistent with the provisions of Art. 289 of the Constitution of India. Interpreting Art. 289 (1) with the key furnished by Art. 366 (28), it would be impossible to stretch or prevent the language of the Article which in the clearest of terms says that the property and income of a State shall be exempt from any impost, whether general or local or special, by the Union. Parliament cannot legislate to take away the exemption given by Art. 289 (1) nor can a State Legislature legislate to take away the exemption given by Art. 285 (1).

Looking to the context of Art. 289, particularly Cls. (2) and (3) thereof, it becomes manifest that there is nothing in Art. 289 which restricts the comprehensive meaning to be given to the word 'taxation' in Art. 289. Similar is the position with regard to Cl. (2) of Art. 285. That again creates an exception to Cl. (1) of Art. 285 and saves any tax on any property of the Union to which such property was immediately before the commencement of the Constitution liable or treated as liable to tax, so long as that tax continues to be levied in that State.

The Union's power to legislate to regulate foreign trade contained in the legislative list is subject to the provisions of the Constitution one of which is contained in Art. 289 (1). The Union cannot in view of Art. 289 (1) impose a customs duty on things imported by the State and seek to justify it as an exercise of its power to regulate foreign trade. The power in List I to regulate foreign trade cannot be exercised by imposition of a tax. That has to be done otherwise and without the imposition of a tax.

Per Hidayatullah, J., Contra: (agreeing with Das, Sarkar and Das Gupta, JJ.):— The provisions of Art. 289 of the Constitution preclude the Union from imposing, or authorising the imposition of, customs duties on the import or export of the property of a State used for purposes other than those specified in Cl. (2) of that Article, if the imposition is to raise revenue but not to regulate external trade. Sub-section (2) of S. 20 of the Sea Customs Act, 1878, and sub-S. (1-A) of S. 3 of the Central Excises and Salt Act, I of 1944, as proposed to be amended by the Bill is inconsistent with the provisions of Art. 289 of the Constitution.

If the law were framed to regulate and even to prohibit the importation, by the State Government in common with others, of certain goods or classes of goods, such a law would not offend the exemption in Art. 289. Section 20 of the Sea Customs Act, and S. 3 of the Central Excises and Salt Act, are provisions for raising revenue in much the traditional English way. Whatever little pretence there might be is shed completely by the proposed amendment which is a "measure designed to put the States on the tax collector's List". There is no difference in this respect between excises and customs. The case of excises is similar and a fortiori, because the goods produced in the States by the States for their ordinary functions of Government and not for trade or business, are property of the States and directly within their ownership. If such property is taxed it is directly hit by Art. 289 (1). It follows, therefore, that neither customs duties nor excise duties can be levied on goods properly belonging to a State if the goods are imported or produced not for the purpose of trade or business but for purposes incidental to the ordinary functions of Government. It also follows that the sections of the two Acts as they stand to-day reflects the true position under the Constitution. If the Union Government desires to put a curb on the excessive importation of goods by the States the power to regulate external trade is available and it is unaffected by Art. 289. A measure designed to achieve regulation by a system of controls, would not be affected by the exemption contained in the Article. But a pure taxing measure which seeks to tax property used for State purpose is within the exemption. In re Sea Customs Act, (1878), S. 20 (2). **(1964) 1 ITJ 671 : (1964) 3 SCR 787 : (1964) 2 SCJ 51: (1964) 2 SCA 97: AIR 1963 SC 1760 (1770 to 1777, 1780, 1781, 1787, 1791, 1803 to 1807) (Pt A) (Prs 9, 10, 13, 16, 21, 25, 26, 29, 31, 39, 40, 43, 62, 70, 71, 108, 111, 113, 115, 119, 120, 121).**

●——**Art. 289** — "Executive power" — Meaning of — Right of State Government to provide buses for passenger transport for hire— Nationalisation of Transport business if executive Act. See Ibid, Art. 53 (i). **AIR 1951 All 257 (FB).**

——**Art. 289 — Andhra Pradesh Road Transport Corporation — If a State-owned Corporation is exempt from tax liability.**

Unless the trade or business is incidental to the ordinary functions of Government or has been declared to be so by Parliament, the income of that trade or business will not escape tax. Corporation under a statute is a body corporate and is an independent legal entity apart from the Government. It is not necessarily owned by Government though it may contribute its capital. It can sue and be sued in its name. The mere fact that the State is given power to say what proportion should be set apart for depreciation, reserve and other funds, does not take it out of the category of assessees carrying on business, profession or vocation taxed under S. 10 of the Income-tax Act in respect of profits or gains arising out of the trade or business carried on by it. The supervision of the Government by appointing Chairman and Chief Officers or by sanctioning the budget or having the accounts audited or directing the provision for depreciation and other funds does not make it a State-owned Corporation, nor can it be said that the income belongs to the State. Therefore, the Andhra Pradesh Road Transport Corporation is not a State-owned Corporation nor a Corporation carrying on business on behalf of the Government within the scope of Art. 289 of the Constitution. **(1961) 2 Andh WR 393: (1963) 47 ITR 101: AIR 1962 Andh Pra 323 (330, 331) (Pt E) (Pr 12) (DB).**

——**Art. 289** — Road Transport Corporations Act (1950), S. 3 — Corporation established under — Status of — Not State-owned corporation — Business not carried on on behalf of Government — Held liable to pay income-tax on its profits. See Road Transport Corporations Act (1950), S. 3. **AIR 1962 Andh Pra 323.**

——**Art. 289 (3) — Scope of Cl. (3).**

Clause (3) of Art. 289 contemplates that any trade or business may be incidental to the ordi-

nary functions of Government. When the State engages in any such trade or business, the income or profits thereof are immune from taxation. This clause does not mean that the State cannot engage in such trade or business unless sanctioned by an Act of Parliament. All that it means is that if Parliament by law declares any such trade or business to be incidental to the ordinary functions of Government, it shall not be liable to be taxed by the Union. **ILR (1955) 459: AIR 1955 Nag 177 (179) (Pt D) (Pr 9) (DB).**

——**Art. 289** — Functions of State — It can carry on the business of plying motor vehicles for hire on commercial basis. See Ibid, Art. 38. **AIR 1956 Pepsu 3.**

——**Arts. 289, 39, 19 and 298** — State can do transport business on commercial basis without legislative sanction. See Ibid, Art. 38. **AIR 1956 Pepsu 3.**

——**Art. 289 — Scope** — Function of State-Motor Transport business — State, whether can carry on business or trade like other individuals —Legislative sanction if and when necessary. See Constitution of India, Art. 19. **ILR (1956) Patiala 77.**

——**Arts. 289 (1) and 298** — Road Transport Corporation is not State Department — It is taxable as 'individual' under S. 3, I. T. Act — Corporation has not been established for any religious or charitable purpose — Writ jurisdiction cannot be invoked as regards claim in regard to remainder of net profits which have to be made over to State Government for road development — Interpretation of exemption provisions of I. T. Act. See Road Transport Act (1950), S. 3. **AIR 1964 Punj 178 (DB).**

ARTICLE 291.

——**Arts. 291, 363** — Madhya Bharat covenant —Nature of — It is an act of State — Guarantee for payment of privy purse under Art. 11 (1) of Covenant — Obligation cannot be enforced in Municipal Courts — Its sanction is political and not legal. Nawab Usmanali Khan v. Sagar Mal, **1965 MPLJ 864: (1965) 2 SCWR 656: 1965 Jab LJ 1028: 1965 Mah LJ 776: AIR 1965 SC 1798 (1802) (Pt D) (Pr 11).**

——**Arts. 291 and 366 (2)** — Ruler of erstwhile State of Bastar — Whether proprietor within S. 2 (m), Cl. (ii) — Ex-Ruler, meaning of — Effect of Merger Agreement — Whether made him a 'Ruler' for purposes outside the Constitution — Maufidar, meaning of. See Tenancy Laws — M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act (1 of 1951), S. 2 (m) (ii). **(1961) 1 SCJ 639: AIR 1961 SC 775.**

——**Arts. 291, 362, 363** — Orissa Merged States (Laws) Act (4 of 1950) — Orissa Agricultural Income Tax Act extended to merged State — Assessment of property of Ex-ruler of merged State — Personal privileges granted by merger agreement held did not extend to personal property — Ex-ruler is a 'person' within the meaning of S. 2 (i) of the Orissa Agricultural Income Tax Act — Resistance to payment of tax, held amounted to enforcement of merger agreement, which he could not do by virtue of Art. 363 of the Constitution. See Orissa Merged States (Laws) Act (4 of 1950). **AIR 1961 SC 196.**

——**Arts 291, 294 and 295** — Applicability of Art. 363 — Expenditure-tax on expenditure made out of amount of privy purse — Liability disputed by virtue of Arts. 291, 294 and 295 — Dispute falls under Art. 363 and is not justiciable. See Ibid, Art. 363. **AIR 1963 Guj 98 (DB).**

——**Art. 291 — 'Taxes on Income' — Meaning of — Expenditure-tax under Expenditure-tax Act, 1957 — Not tax on income — Amount of privy purse under covenant to be free of all taxes — Explanation 'free of all taxes' — Meaning of.**

Although the words 'taxes on income' in Art. 291 have to be construed in a broad sense, the expenditure-tax levied under the Expenditure-tax Act, 1957, cannot be regarded in any sense as a tax on income. A provision in a covenant that the amount of the privy purse, shall be free of all taxes does not mean that it shall be free from all taxes relating not merely to the receipt of the amount of the privy purse but from all taxes when the same is expended. The expression 'free of all taxes' is intended to mean free of all taxes which would be payable because of the receipt of the amount of the privy purse. **(1962) 3 Guj LR 479: AIR 1963 Guj 98 (103, 104, 105) (Pt B) (Prs 9, 10) (DB).**

——**Art. 291** — Political pension — Privy purse paid to Ex-Rulers of Covenanting States not a political pension within S. 60 (1) (g). See Civil P. C. (1908), S. 60 (1) (g). **AIR 1962 Madh Pra 320 (DB).**

——**Arts. 291, 362, 363, 19 (1) (f), Sch. 7 List I, Entry 34, List II, Entry 22 — C. P. Court of Wards Act (XXIV of 1899) (as modified by Adaptation of Laws Order, 1950), S. 41 — Validity.**

In a petition under Arts. 226 and 227, proceedings commenced for assuming superintendence of the estate of the Ruler of the erstwhile princely State of Rajgarh under C. P. Court of Wards Act, XXIV of 1899, as modified by the Adaptation of Laws Order, 1950, were sought to be quashed. It was contended that any law affecting the petitioner's privy purse and enjoyment of his private property guaranteed by the Covenant of merger would offend Arts. 291, 362 and 363 of the Constitution:

Held, negativing the contention, that the Covenant guaranteed payment to the petitioner of his privy purse and afforded protection to his private property so that it could not be subsequently claimed by the State. The guarantee or assurance was not absolute and did not go beyond what is guaranteed to all the citizens under Art. 19 (1) (f) of the Constitution. AIR 1952 SC 252 and AIR 1958 SC 239, Rel. on. The position was also implicit in the power of Parliament to make laws with respect to 'Court of Wards for the estates of Rulers of Indian States' contained in Sch. VII, List I, Entry 34. **ILR (1960) Madh Pra 993: 1960 Jab LJ 1197: 1961 MPC 12: 1961 MPLJ 164: AIR 1961 Madh Pra 197 (198) (Pt A) (Pr 4) (DB).**

——**Arts. 291, 362 and 363 — Scope — Merger agreement with Maharaja of Manipur — Manipur Constitution Act (1947), Ss. 8, 7 — Manipur Courts Acts (1947 and 1955) — C. P. Code (1908), Ss. 82 and 87-B — Civil suit upon contractual obligation against Maharaja — Maintainability.**

The Merger Agreement and the Indian Constitution have taken away the prerogative rights of the Maharajah of Manipur. Whatever special rights which the Maharajah enjoys at present are the rights under the Merger Agreement which have been recognised in the Indian Constitution. Under the Merger Agreement and the Indian Constitution the Maharajah is exempt from the jurisdiction of the Civil Courts. The Manipur State Constitution Act, 1947 exempts only the jurisdiction of the State Courts. There are no longer any state Courts. The Courts existing in Manipur at present are courts under the Manipur State Courts Act, 1947, as amended in 1950 and later continued under the Manipur Courts Act, 1955 by authority

of Parliament. The Maharajah cannot exercise his prerogative rights over the said Courts. Article 7 of the Merger Agreement exempts only the civil liability for acts done or omitted to be done by the Maharaja during his administration of the State as Ruler and not acts done or omitted to be done after he ceased to administer the State nor acts done or omitted to be done in his personal capacity by way of contractual obligations with citizens of the State. What has been guaranteed or assured are only such personal rights, privileges and dignities which have been given under the Merger Agreement which is referred to in Art. 291 of the Constitution, which deals with what is called the privy purse of the Maharajah. The personal rights, privileges and dignities will not include exemption from civil liability by way of proceedings in Courts. This will be again apparent from Ss. 82 to 87-B of the C. P. Code. **AIR 1961 Manipur 40 (42) (Pt B) (Prs 9, 10 11).**

——**Arts. 291, 362** — Agreement between the ruler of a former native State and the Dominion of India transferring the administration of the State to Dominion — Special privileges granted to the ruler — His status held was that of a subject and not of a sovereign, for there cannot be two sovereigns in a State. AIR 1962 SC 1305 and 1955 SC J 523: AIR 1955 SC 504, Rel. on. **1963 BLJR 570: AIR 1963 Pat 475 (477) (Pt B) (Pr 5) (DB).**

——**Arts. 291, 294 (a), 362, 363 and 366 (22)** — The paramountcy which the British Crown enjoyed vis-a-vis the Indian States is not now enjoyed by Central Government. AIR 1954 SC 447, Rel. on. **AIR 1963 Punj 461 (467) (Pt A) (Pr 21).**

——**Art. 291** — Report of Indian Finances Enquiry Committee — Recommendations accepted by President and Rajpramukh — Report did not acquire force of law — Courts will take cognizance of agreement so far as it relates to matters specified in Arts. 278, 291, 295 and 306 of Constitution. See Ibid, Art. 278. **AIR 1960 Raj 92 (DB).**

——Arts. 291, 131 — Art. VII (3) of Covenant of State of Rajasthan and Qanoon Mal Mewar (5 of 1947), S. 107 — Validity.

When Rajasthan Administration Ordinance No. 1 of 1949 came into force, there was no S. 107 of Qanoon Mal Mewar left in which the Rajpramukh of the present State of Rajasthan could be substituted for the Ruler. Section 107 must be deemed to have been abrogated by Art. VII (3) of the Covenant of the present State of Rajasthan. There was thus no power in the Rajpramukh to pass an order recognising succession to a jagir under Qanoon Mal Mewar. The power could only arise under Art. VII (3) of the Covenant, and that came to an end on 25-1-1950. (S) AIR 1955 Raj 185 (FB), Foll. **AIR 1955 Raj 203 (205) (Pt A) (Pr 6) (DB).**

——Art. 291 — Covenant of State of Rajasthan, Arts. VI (2) and VII (3) — Succession to jagir.

Rights, authority and jurisdiction have to be exercised as provided by the covenant, and there is a specific provision in Art. VII (3) how the right to recognise succession would be exercised. Hence in the face of that specific provision, it is not possible to take recourse to the general provision of Art. VI (2). Besides Art. VI (2) gives a power to the United States. It does not mention the power of the Rajpramukh, which is specifically mentioned in Art. VII (3). Hence it cannot be said that the Rajpramukh had power under Art. VI (2) of the Covenant of the present State of Rajasthan to make a decision regarding succession to jagir. **ILR (1955) 5 Raj 995: AIR 1955 Raj 203 (205) (Pt B) (Pr 7) (DB).**

——**Arts. 291 Cl. (1), 362, 72(1)** — Travancore Cochin Covenant — Art. 21 — Maharaja of Cochin cannot invoke powers of suspension, remission or commutation of death — Sentences reserved to him under Art. 21, after commencement of Constitution. See Travancore-Cochin Covenant, Art. 21. **ILR (1955) Trav-Co 788.**

——**Art. 291** — Scope — See Ibid Art. 362. **ILR (1955) Trav-Co 788.**

ARTICLE 294.

——**Arts. 294, 278 and 295** — Scope — Agreement dated 7-4-1947 by former Ruler of Gwalior State to grant exemption from payment of tax to certain corporation — Contractual obligation devolving on Part B State of Madhya Bharat due to constitutional changes and ultimately on Government of India by virtue of Art. 295 (1) (b) — Art. 295 (1) (b) does not cast any constitutional obligation on Government of India to fulfil it and it can be effected by law validly passed by Parliament — Agreement dated 25-2-1950 between President of India and Madhya Bharat with regard to continuance of such privileges and immunities — Effect of — Income-tax Act (1922), S. 60-A — Finance Act (1950), S. 13 — Part B States (Taxation Concessions) Order (1950), Cl. 16 — Effect of, is to supersede agreement dated 7-4-1947 — Company held not entitled to claim exemption from payment of Income-tax by virtue of that agreement — AIR 1960 Madh Pra 350. **Reversed.** See Ibid, Art. 278. **(1964) 53 ITR 466: (1964) 9 Fac LR 124: (1965) 2 SCJ 41: (1964) 7 SCR 892: AIR 1964 SC 1903.**

——**Art. 294 (b)** — Validity of Bombay Personal Inams Abolition Act (XLII of 1953) — Argument based on immutability of sanad rejected — Act held valid. See Bombay Personal Inams Abolition Act (XLII of 1953), S. 1. **(1961) 1 SCJ 614: AIR 1961 SC 291.**

——**Arts. 294 (b), 31-A, 245, 246 and 363** — Scope — Powers of State Legislature to legislate — Extent of, indicated — Bombay Merged Territories and Areas (Jagirs Abolition) Act (39 of 1954) was intra vires the State Legislature notwithstanding terms of guarantee contained in Cl. 5 of Letters of Guarantee accompanying merger agreement. See Ibid, Art. 31-A. **(1955) SCJ 472: AIR 1955 SC 540.**

——**Art. 294** — Grant of right to run ferry without any interest in lands appertaining thereto by East India Company in 1781 — Valid unless destroyed by some valid law — Grant binding on Republic of India. **1957 All WR (HC) 425: 1957 All LJ 276: AIR 1957 All 455 (457) (Pt C) (Pr 7).**

——**Art. 294** — Criminal P. C. (1898), S. 514, Sch. V, Form 42 — Undertaking to pay penalty to 'King Emperor' —Effect of Art. 294 of Constitution is to make rights of King the rights of Government of India — Surety bond executed to the King before the Constitution — Bond can be forfeited for default after Constitution has come into force. See Criminal P. C. (1898) S. 514. **AIR 1955 NUC (All) 4433.**

——Art. 294 (b) — If prevents State from acquiring taluqdari property in Oudh.

Prior to the 26th January, 1950, the rights of taluqdars in land granted to them under a sanad

were subject to such laws as might from time to time be passed by an Indian Legislature acting within its appropriate field. Art. 294, clause (b) does not alter position. The effect of that Article is merely to declare that the rights, liabilities and obligations of the Government of the Dominion of India and of each Governor's Province, shall devolve respectively on the present Govt. of India and the Government of each corresponding State. The effect of Art. 294, clause (b) is not to confirm for ever the rights of taluqdars in land granted to them by the British Government. Raja Surya Palsingh v. U. P. Government, **ILR (1952) 2 All 46: 1951 All LJ 365: 1951 RD (HC) 122: 1951 All WR 317: AIR 1951 All 674 (692) (Pt U) (Pr 92) (FB).**

——Arts. 294 (b), 295 (1) (b) and 300 — Loss of goods by Nizam State Railway — Suit for damages against then Hyderabad Government — Maintainability— Union Government —Liability of as successor Government.

Articles 294 (b) and 295 (1) (b) must be read with the provisions of Art. 300 (1). If the Dominion Government or the former Hyderabad State could not be sued at all, the Union Government cannot be proceeded against concerning matters which arose during the period of 1947 to 1950. Apart from Art. 300 (1) the Constitution has no retrospective operation, and the same result will follow if the Dominion or the Government of the former Indian States could not be sued in law Courts. For an obligation that could not be enforced against a State would be equally unenforceable against the successor.

After the lapse of paramountcy but before the inauguration of the Constitution, no suit could be filed against the then Hyderabad State without permission. When the cause of action had arisen against the railway owned by the then Hyderabad Government for the suit for damages for loss of goods by the railway, still as the permission to file a suit was not obtained, the Hyderabad Government could not be sued and the Union Government cannot also be proceeded against. **ILR (1957) Andh Pra 320: AIR 1958 Andh Pra 394 (395, 396) (Prs 5, 6).**

——Art. 294 — Article if primarily concerned with continuance of pre-Constitution rights and liabilities including right of priority of Crown debts.

The object of the Article appears to be to provide for an adjustment of the properties, rights and liabilities as between the Centre and the provinces and not to enact a provision for their continuation. The continuance is referred to necessarily and incidentally, but cannot be read as primarily or directly concerned with the maintenance or continuance of the pre-Constitution rights and liabilities including the right of priority in regard to Crown debts. **ILR (1957) 2 Cal 897: 59 Cal WN 1119: (1955) 28 ITR 797: 96 Cal LJ 194: AIR 1956 Cal 26 (31) (Pt E) (Pr 13) (DB).**

——Arts 294 (b), 300 — Agreement before partition on behalf of Governor-General in Council for purposes of project within Dominion of India — Agreement must be deemed to have been made on behalf of Dominion of India — Liabilities under it including liability to suffer arbitration became liabilities of Union of India — Liability cannot be avoided by Union of India on ground that it was not party to said agreement — (Indain Independence (Rights, Property and Liabilities) Order (1947), Art. 8 (1) (b)). **AIR 1955 NUC (Cal) 2912 (DB).**

——Arts. 294, 363, 291 and 295 — Applicability of Art. 363 — Expenditure-tax on expenditure made out of amount of privy purse — Liability disputed by virtue of Arts. 291, 294 and 295 — Dispute falls under Art. 363 and is not justiciable. See Ibid, Art. 363. **(1962) 3 Guj LR 429: AIR 1963 Guj 98 (DB).**

——Art. 294 — Liabilities of Sirmur Darbar under contract — Subsequent merger of Sirmur State in the Dominion of India — Transfer of liability to Indian Union.

The merger of the former Sirmur State in the Dominion of India was not an act of State. It was not a case of cession or annexation. It follows therefore that broadly speaking the Union of India, as the legal successor of the Sirmur State would be bound by all lawful obligations, liabilities and commitments entered into by the Darbar except in so far as the same can be avoided under any law in force. **AIR 1958 Him Pra 20 (22, 23) (Pt A) (Pr 8)**

——Art. 294 — Scope — Income-tax Act, S. 34 (1-A) — If ultra vires. See Income Tax Act (1922), S. 34 (1-A). **AIR 1958 Mad 220 (FB).**

——Art. 294 — Civil P. C. (1908) Ss. 100-101, O. 8, R. 2 — New point that suit by Union af India is not maintainable in view of S. 172 (1). Government of India Act (Art. 294 of the Constitution) involving mixed question of law and fact cannot be raised in second appeal. See Civil P. C. (1908) Ss. 100-101. **AIR 1960 Patna 410.**

——Arts. 294, 300 and 375 — Suit against East Indian Railway in name of Dominion of India — Appeal — Name of Union of India substituted due to constitutional changes — Special power of attorney executed in favour of B by General Manager, East Indian Railway — Authority given to B by the authorised agent should be taken as having ceased to have any legal effect after transfer of power from Dominion of India to Union of India —(Railways Act (1890), S. 145). **AIR 1956 Pat 511 (517) (Pt D) (Pr 10) (DB).**

——Arts. 294 and 300 — Liability of Crown for acts of its servants — Present position in India — Immunity of State for tortious acts — Exceptions to — See Torts. **AIR 1954 Pat 513.**

——Arts. 294 (a), 291, 362, 363 and 366 (22) — The paramountcy which the British Crown enjoyed vis-a-vis the Indian States is not now enjoyed by Central Government. See Ibid, Art 291. **AIR 1963 Punj 461.**

——Art. 294 — Principle of priority — After enforcement of Constitution situation has not undergone any change. **AIR 1961 Punj 292.**

——Art. 294 (b) — Scope of — Contract of carriage of goods by Railways — Goods passing through Pakistan for delivery in India — Liability of Union of India. See Indian Independence (Rights, Properties and Liabilities) Order (1947), Art. 8. **AIR 1961 Raj 162.**

——Arts. 294, 295 and 14 — Scope — Agreement between Government of former Jodhpur State and plaintiff for setting up mill by latter — State agreeing to exempt plaintiff from payment of excise duty — Validity — (Contract Act (1872), S. 56) — (Rajasthan Excise Duties Ordinance (1949), S. 30).

The Government of the former Jodhpur State entered into an agreement with the plaintiff for setting up a cloth mill by the plaintiff in the State. By Cl. 6 of the agreement it was inter alia provided that the State would exempt or remit State or Federal excise duty on goods

manufactured in the mill. In August, 1946, the State acceded to the Dominion of India and became part of the United State of Rajasthan. The Central Excises and Salt Act, 1944, was extended to Rajasthan. The Union Government started recovering excise duty from the plaintiff. In a suit filed by the plaintiff against the State of Rajasthan and the Union of India, and on appeal by plaintiff. Held, (1) that the agreement, dated 17th April, 1941, was not enforceable against the respondents. (2) that the contract did not become void under Art. 14 of the Constitution. **ILR (1959) 9 Raj 984 : 1960 Raj LW 44 : AIR 1960 Raj 92 (96, 97, 99, 100)(Pt A) (Prs 23 to 25, 27, 42, 44) (DB).**

ARTICLE 295

● ——**Arts. 295, 278 and 294** — Scope — Agreement dated 7-4-1947 by former Ruler of Gwalior State to grant exemption from payment of tax to certain corporation — Contractual obligation devolving on Part B State of Madhya Bharat due to Constitutional changes and ultimately on Government of India by virtue of Art. 295 (1) (b) — Art. 295 (1) (b) does not cast any constitutional obligation on Government of India to fulfil it and it can be effected by law validly passed by Parliament — Agreement dated 25-2-1950 between President of India and Madhya Bharat with regard to contiunance of such privileges and immunities — Effect of — Income-tax Act (1922), S. 60-A — Finance Act (1950), S. 13 —Part B States (Taxation Concessions) Order (1950), Cl. 16 — Effect of, is to supersede agreement dated 7-4-1947 — Company held not entitled to claim exemption from payment of Income-tax by virtue of that agreement — AIR 1960 Madh Pra 330 **Reversed.** See Ibid, Art. 278. **(1964) 53 ITR 1166 : (1964) 9 Fac LR 124 : (1965) 2 SCJ 41 : (1964) 7 SCR 892 : AIR 1964 SC 1903.**

● ——**Art. 295 — Claim against former Indian State — Recognition of, by successor Governments may be express or implied — Proof.**

Recognition of the claim made against the former Indian State by the successor State or the Union can be proved by the claimant either by express acknowledgment or recognition or may even be established on relevant facts and circumstances which may lead to the inference of such recognition. In other words, recognition of such a claim can be either express or implied and in the latter class of cases the inference as to recognition may be drawn legitimately from facts and circumstances which reasonably support such an inference. Amar Chand Butail v. Union of India. **67 Pun LR 90: 1965 Mad LJ (Cri) 107: (1965) 1 SCJ 243 : AIR 1964 SC 1658 (1662) (Pt D) (Pr 15).**

● ——**Arts. 295 (2), 363 (1) — Merger of several sovereign States by stages to form a new State — At each stage covenants keeping old laws in force and new State taking over assets and liabilities of component States — New State not repealing old laws by its legislation — Liabilities of component States continue to be enforceable — A subject thereof can enforce his rights by a suit against the new State —Rajasthan Adminstration Ordinance (I of 1949), S. 3(1).**

Held, after reviewing the process of merger of former Rajasthan States by different stages to form into the Part B State of Rajasthan and the Covenants entered into by the States and the Union State at each time, that there was recognition of liability by the new State throughout this process and under the circumstances the suit was maintainable against the Part B State of Rajasthan in view of Art. 295 (2) of the Constitution. AIR 1958 SC 816 and AIR 1963 SC 953, **Distinguished.** Held further that S. 3 of the Rajasthan Administration Ordinance, 1949 also led to the same conclusion that the new State recognised the rights of the subjects of the old States flowing from the old laws and was prepared to undertake the liability that may lie on it in consequence thereof. State of Rajasthan v. Shyam Lal. **(1965) 1 SCJ 458 : (1964) 7 SCR 174 : AIR 1964 SC 1495 (1499,1500, 1501) (Prs 10 to 12).**

● ——**Art. 295 (1) (b)** — Law — Meaning of — Distinction between agreement and law — Agreement entered into on 17th April, 1941, by Ruler of Jodhpur State with a Company exempting excise duty and income-tax in respect of goods produced by the Company — **Held,** agreement could not be considered law within Art. 372—Agreement not affirmed by United State of Rajasthan — Company had no enforceable right against Union Government — Parliament not prohibited under Art. 295 from altering terms of contract under which liability of Government arose — Liability of Govt. of India was subject to agreement entered into by Government of the State — Such agreement entered into on 25th February, 1950 — Company could not invoke Art. 19 or Art. 31 to its aid having no enforceable rights on 26th January, 1950. See Ibid, Art. 372. **AIR 1963 SC 953.**

● ——**Art. 295** — 'Assessment' — If includes reassessment — Effect of recommendations of Finance Inquiry Committee — Recommendations do not bring S. 13 (1) into conflict with Arts. 278 and 295 of Constitution — S. 13 (1) not void. See Finance Act (1950), S. 13 (1). **1958 SCJ 1023: AIR 1958 SC 795.**

——**Arts. 295 (1) (b), 300 and 294 (b)** — Loss of goods by Nizam State Railway — Suit for damages against then Hyderabad Government — Maintainability of suit— Union Government — Its liability as successor Government. See Ibid, Art. 300. **AIR 1958 Andhra Pra 394.**

——**Art. 295** — Applicability of Art. 363 — Expenditure-tax on expenditure made out of amount of privy purse — Liability disputed by virtue of Arts. 291, 294 and 295 — Dispute falls under Art. 363 and is not justiciable. See Ibid, Art. 363. **AIR 1963 Guj 98 (DB).**

——**Arts. 295, 264, Sch. VII, List 2, Item 18 — Jagir grants — Variation by executive — Legality — Effect of Constitution on Nizam's prerogatives.**

The prerogatives of H. E. H. the Nizam have been determined by the Constitution and put an end to and the State Legislature is fully competent to legislate, and the executive to grant, land revenue or compensation for jagirs under the provisions of Arts. 264, 295 and Item 18 of List II in Schedule VII of the Constitution. An order granting guzara passed by the Revenue Minister was not, therefore invalid on the ground of lack of jurisdiction. **ILR (1956) Hyd 1 : AIR 1956 Hyd 164 (167) (Pt D) (Pr 11) (DB).**

——**Arts. 295 and 300** — Act of State — Formation of State of Travancore-Cochin was act of State but not formation of Kerala State — Plaintiff's claim to annuity recognised by State of Travancore-Cochin — Suit for such claim against Kerala State entertainable by municipal Court. See Ibid, Art. 3. **AIR 1964 Ker 123 (DB).**

——**Art. 295 (2)** — Family grant by Travancore State continued by United State of Travancore-Cochin — Grant not repudiated by successive

states till Constitution came into force— Kerala State bound to pay the grant — Right to adjudicate and enforce payment of grant of municipal Court — Defence of act of State when available —Travancore-Cochin Covenant, Art. III b. See States Reorganisation Act (1956), S. 91 (a). **1960 Ker LJ 1461.**

——Art. 295 — Wrongful dismissal of employee of Scindia State Railway — Suit against Union of India after transfer of Railway — Maintainability.

The liability of Madhya Bharat in respect of the Scindia State Railway became the liability of the Government of India, after the transfer of the Scindia State Railway to the Central Government on 1-4-1950. Hence, a suit for wrongful dismissal of an employee of Scindia State Railway before its transfer lies after transfer against the Union of India. **1957 Jab LJ (MB) 121 : AIR 1957 Madh B 108 (111) (Pt E)(Pr 17).**

■ **——Art. 295 (1)** — Obligation to maintain irregular forces, i.e., Shiledars of erstwhile Scindia State, if at all constitutes a statutory right of the Shiledars, rests, in view of the correspondence between the Union and the State of Madhya Bharat, on the State of Madhya Bharat and not upon the Union. Madharao Ramrao v. State of Madhya Bharat, **ILR (1954) Madh Bha 211 : AIR 1953 Madh B 257 (259) (Pt A) (Prs 15, 16) (FB).**

[Reversed on another point in AIR 1961 SC 298.]

——Art. 295 (1) (b) — Order of Ruler of Gwalior under S. 30, of Gwalior State Places of Worship and Religious Endowments Aid and Administration Act of taking over administration of endowment properties and further order to continue such control until position improved in certain respects, is in substance administrative order and not law within Art. 372 — Art. 295 (1) (b) is not attracted. See Ibid, Art. 372. **AIR 1965 Madh Pra 183 (DB).**

■ **——Art. 295** — Merger of Rewa State in Vindhya Pradesh — Order of Maharaja of Rewa fixing pension of its servant prior to merger — Order has effect as private Act — Binding nature on new State — Vindhya Pradesh Application of laws Ordinance (4 of 1948), S. 2 — Ordinance continues to be binding. **AIR 1961 Madh Pra 154 (FB).**

——Art. 295 (1) (b) — Scope — Order, dated 18-1 1947 of Maharaja of Gwalior exempting certain industries of petitioner-company from taxation— Effect of — Madhya Bharat Regulation of Government Act (I of 1948), Ss. 3 and 4 and Madhya Bharat Covenant, Art. 6 — Effect of.

The Maharaja of Gwalior made an order on 18-1-1947 exempting from any form of taxation for a period of twelve years the income of certain industries and factories. After the formation of Madhya Bharat, the petitioner-company was assessed to tax for three assessment years commencing from 1950-51. The assessee-company claimed exemption by virtue of the agreement with the former Ruler of Gwalior.

Held, (i) that the order of the Ruler of Gwalior State exempting the petitioner from taxation had the effect of law. AIR 1955 SC 352 and AIR 1956 SC 60, Foll. (ii) that by virtue of Ss. 3 and 4 of the Madhya Bharat Act No. I of 1948 the petitioner's right to get the exemption received legislative recognition. The State of Madhya Bharat was bound to discharge the obligation undertaken by the Ruler of the Gwalior State which devolved on it; (iii) that it was this obligation of the Madhya Bharat Government that devolved on the Government of India under Art. 295 (1) (b) and became a constitutional obligation of that Government; and (iv) that on a true construction of the relevant provisions of the Income-tax Act, S. 13 of the Finance Act of 1950, and paragraph 16 of the Taxation Concessions Order, 1950, they do not repeal the specific exemption granted to the petitioner by special 'statutory provisions', and that, therefore, the petitioner's claim for exemption from taxation was well founded. **1960 Jab LJ 581: 1960 MPLJ 789: (1961) 43 ITR 184 : 1960 MPC 387 : AIR 1960 Madh Pra 330 (336, 339, 340, 341, 344) (Pt A) (Prs 9, 13, 16, 23) (DB).**

[Reversed in AIR 1964 SC 1903.]

——Art. 295 (2) — Scope of — Orders passed by Ruler of Ratlam — Enforceability against State of Madhya Bharat after coming into force of Constitution — Bar under Art. 363. See M. B. Regulation of Government Act (1 of 1948), S. 4. **AIR 1958 Madh Pra 71(DB).**

——Art. 295 — Grant sanctioned by former Indian State — State subsequently merged in Indian Dominion— Arrears of grant upto 18-9-1951 paid to claimant by State Government on 30-7-1951, while question of continuance of grant was under consideration of Government — State Government by notification, dt. 21-3-52, stopping all grants but ordering payment of arrears upto 18-9-1951 — Payment cannot be deemed to be in recognition or acknowledgment of claim. AIR 1964 SC 1658, Foll. **AIR 1965 Punj 354 (355, 356) (Pt B) (Prs 7, 8, 9) (DB).**

——Arts. 295, 296 — Escheat — Rule of — Applicability — Occupancy tenant in former Indian State (Faridkot) dying heirless after its merger —Land reverts to successor State. See Ibid, Art. 296. **AIR 1961 Punj 200.**

——Art. 295 — Scope and effect of. See Patiala Recovery of State Dues Act (IV of 2002 B.K.), S. 5. **AIR 1959 Punj 440 (DB).**

[Reversed on another point in AIR 1963 SC 222.]

——Art. 295 — Companies Act (1956), S. 155 — Shares allotted to Government of erstwhile Kotah State — Merger of Kotah State into Rajasthan — Forfeiture of shares by Company — Application under S. 155, filed by State of Rajasthan — Application was competent in view of Art. 295 of the Constitution according to which all the rights of the merged Kotah State devolved upon the State of Rajasthan. See Companies Act (1956), S. 155. **ILR (1965) 15 Raj 639 : AIR 1966 Raj 136 (DB).**

——Arts. 295 (1) (b) and 372 — Law in force — Distinction between agreement and law — Agreement entered into by State of Jaipur with a company exempting income-tax and sales-tax in respect of goods produced by the company — Merger of State with United State of Rajasthan— Extension of Income-tax Act and application of Sales-tax Act — Obligation whether devolves on succeeding State under Art. 295 (1) (b)—Agreement held not law within meaning of Art. 372— Agreement held not a legislative contract — Parliament can under Art. 295 alter terms of agreement — Company held could not claim exemption under agreement as it was not saved by S. 13, Finance Act, 1950 — Contractual obligations could not override law passed by Union Government —It was for State Government to grant exemption from sales-tax if found expedient. AIR 1963 SC 953, Foll. **ILR (1965) 15 Raj 375 : 1965 Raj LW 188 : AIR 1965 Raj 162 (165 to 168) (Pt A) (Prs 11, 12, 15 to 17, 19, 22) (DB).**

——**Art. 295 & Sch. VII, List I, Entry 31** — Contract to instal radio transmitter — Contract executed on 4th October, 1947 by Government of Bharatpur State — Suit by contractor to recover money due under contract — Suit filed against State of Rajasthan and Union of India — Validity of contract — Frustration of contract — Extension of Telegraph Act, 1885, to former Indian State of Bharatpur — Its effect on maintainability of suit — Liability of Union Government under Art. 295 to pay arrears of charges arising under contract —Notice to Union Government under S. 80, C. P. Code — Its validity. **ILR (1964) 14 Raj 667: 1964 Raj LW 313: AIR 1964 Raj 205 (209, 212 to 216) (Pt A) (Prs 13, 27, 32, 33, 37, 39, 41, 44, 45) (DB).**

●——**Arts. 295, 300, 363, 372 — United State of Rajasthan Covenant, Art. VI — Rajasthan Administration Ordinance (1 of 1949), S. 3— Force of.**

Under S. 3 of the Rajasthan Administration Ordinance 1 of 1949 suits to enforce contractual liabilities of the former Dholpur State could be brought against the United State of Rajasthan. After the Constitution came into operation, by virtue of Art. 295 (2) of the Constitution, the State of Rajasthan can be said to have incurred the liabilities of the Dholpur State, as the successor of the United State of Rajasthan: AIR 1954 SC 680, Rel. on.; AIR 1958 SC 816, Disting.

The laws covenanting in force in any State continuing by virtue of Art. 372 of the Constitution, operated not only vis a vis the subject and the subject but also vis a vis the subject and the State. After the merger, the new Sovereign has by unequivocal declaration recognized the operation of the laws already in force in the Covenanting territories, thereby granting as it were a charter of rights and liberties to the subjects and the modes of securing them in the manner provided by these laws. State of Rajasthan v. Shamlal, **1960 Raj LW 257: ILR (1960) 10 Raj 652 : AIR 1960 Raj 256 (259, 260, 262 to 265, 275, 276) (Pt B) (Prs 2, 7 to 9, 36) (FB).**

●——**Art. 295 (2) — 'Corresponding Indian State' — Meaning — United State of Rajasthan with its component units — If included.**

The Part B State of Rajasthan succeeded to the rights, liabilities and obligations of the other Covenanting States which went to form the United State of Rajasthan before the Constitution came into operation, and the expression 'Government of the corresponding Indian State' used in Art. 295 (2) of the Constitution with reference to Rajasthan means not only the Government of the United State of Rajasthan, but the United State of Rajasthan including its covenanting Units. Modi J.'s observation in AIR 1960 Raj 138, Dissented from. State of Rajasthan v. Shamlal, **1960 Raj LW 257 : ILR (1960) 10 Raj 652 : AIR 1960 Raj 256 (279) (Pt D) (Pr 48) (FB).**

——**Art. 295 — 'Corresponding Indian State', meaning of.**

Per Modi, J.— The phrase 'corresponding Indian State' in Art. 295 connotes the United State of Rajasthan and not any of the Covenanting States constituting the United States. The old Bikaner State had lost its separate or independent existence altogether. The only State in existence, the rights, liabilities or obligations whereof were under Art. 295 of the Constitution to devolve by succession of the Part B State of Rajasthan, were the rights, liabilities and obligations of the United States of Rajasthan. **ILR (1959) 9 Raj 1217: AIR 1960 Raj 138 (145 to 147) (Pt D) (Prs 18, 19) (DB).**

[These observations of Modi J. were Dissented from in AIR 1960 Raj 256 (FB).]

——**Art. 295** — Report of Indian Finances Enquiry Committee — Recommendations accepted by President and Raj Pramukh — Report did not acquire force of law. See Ibid, Art. 278. **AIR 1960 Raj 92 (DB).**

——**Arts. 295, 294 and 14** — Agreement between Government of former Jodhpur State and plaintiff for setting up mill by latter — State agreeing to exempt plaintiff from payment of excise duty — Agreement not enforceable against State of Rajasthan or Union of India. See Ibid, Art. 294. **ILR (1959) 9 Raj 984 : 1960 Raj LW 44 : AIR 1960 Raj 92 (DB).**

●——**Arts. 295 (1) and 277—Cotton excise duties in Rajasthan — (Central Excises and Salt Act (1944), S. 1).**

The Central Excises and Salt Act, 1944, was extended to the State of Rajasthan by S. 11, Finance Act (25 of 1950), from 1-4-1950 and the necessary rules under that Act also came into force from the said date.

Article 295 has to be read along with Art. 277. As Art. 277 allows duties to be levied for purposes of the State even though such duties may be mentioned in the Union List till such time as Parliament provides to the contrary (which it did by S. 11, Finance Act, 1950). As stated above the cotton excise duties levied formerly continue to be levied by the State of Rajasthan for its own purposes up to 31-3-1950. Therefore, if there were any arrears of these duties due to the State of Rajasthan for a period before 1-4-1950, those arrears were for purposes of the State of Rajasthan, even after the commencement of the Constitution and up to 31-3-1950. It cannot in consequence be said that they became assets or rights under Art. 295 (1) which could be taken over by the Union Government as after 26-1-1950 they could only be used for purposes of the Union. Maharaja Kishangarh Mills, Ltd. v. Union of India, **ILR (1953) 3 Raj 128 : 1953 RLW 381 : AIR 1953 Raj 145 (148) (Pt B) (Prs 9, 10) (FB).**

[**Reversed** on another point in AIR 1961 SC 683.]

●——**Art. 295**—Recovery of arrears of cotton cloth excise duty in Rajasthan, held in stock or manufactured by mill before 1-4-1950 — Union of India not entitled to levy and recover by virtue of Arts. 270 and 295 and agreement entered into between President or India and Raj Pramukh of Rajasthan on 25-2-1950. See Ibid, Art. 278. **AIR 1953 Raj 145 (FB).**

[**Reversed** in AIR 1961 SC 683.]

——**Art. 295 (2)** — Acts of Government servant— Immunity of State — Exception —Illegal confiscation and release of grain on orders of State — Damage to grain due to negligence — Liability of State — Presumption of negligence. See Tort — Acts of Government Servant. **AIR 1956 Sau 65.**

——**Art. 295 (2)— Saurashtra Covenant, Art. 6 — Retired servant of former Nawanagar State — Liability of Nawanagar State to pay full pension only existing from particular date — Liability of Saurashtra Government after merger — Extent of.**

The plaintiff who had retired from the service of the former Nawanagar State on 1-2-1938 was granted his full pension with effect from 1-2-48 under the order of His Highness the Jamsaheb. Prior to this he was not getting his full pension

under the orders passed from time to time. After the merger of the Nawanagar State into Saurashtra the Government of Saurashtra also agreed to pay him at the full rate. The plaintiff brought a suit against the Saurashtra Government for declaration of his right to receive the full pension from the date of his retirement.

Held, that the only liability of the Saurashtra Government was to pay the pension in accordance with the orders of His Highness. As the plaintiff could not have sued the former Nawanagar State for arrears of his pension in view of the Pension rules of the State, the Saurashtra Government could not be held liable for those arrears by reason of Art. 295 (2), Constitution of India and Art. 6 of the Covenant. **AIR 1953 Sau 21 (24) (Pt C) (Pr 8) (DB).**

——**Arts. 295, 278** — Power to be reassessed is saved by S. 13, Finance Act — There is nothing in Arts. 278 and 295 or agreement between President of Union and Raj Pramukh of Travancore-Cochin which militates against this — (Finance Act (1950), S. 13) — (Words and Phrases — "Levy, assessment and collection" includes "reassessment"). See Travancore Income Tax Act (1121), S. 47. **AIR 1957 TC 303.**

ARTICLE 296

——**Art. 296** —Scope — Property of dissolved company — Applicability of doctrine of bona vacantia — Absence of express provision—Effect. See Companies Act (1956), S. 560. **1959 Cri LJ 964 : 63 Cal WN 889 : AIR 1959 Cal 493.**

——**Art. 296** — Succession — Hindu dying without any heirs — Government takes the property by escheat. See Hindu Law — Succession. **AIR 1950 Cal 473 (DB).**

——**Art. 296 — Nazool law in erstwhile Patiala State — Escheat of property to State (Escheat).**

Property can escheat to the State only if the owner of it has died without leaving any heir or a reversioner within the degree recognised by law and not otherwise. If an owner leaves the village and goes away and his property is taken possession of either by some other person or by the State, he may lose his title because of the adverse possession, but the nazool can have no application to a case of that kind. AIR 1954 Pepsu 33, Rel. on. **ILR (1953) Patiala 375 : AIR 1954 Pepsu 34 (35) (Pt A) (Pr 4) (DB).**

——**Arts. 296, 295 — Escheat — Rule of — Applicability — Occupancy tenant in former Indian State (Faridkot) dying heirless after merger — Effect.**

Escheat is a species of reversion, and it is a right, which now vests in the Crown or in the State as ultimus haeres upon the failure, natural or legal, of the last tenant. Originally it was an incidence of Feudal Law whereby a fief reverted to the lord, when the tenant died seised without heir, in which event the land lapsed to the Lord of the manor, or to the Crown. This Feudal rule has been accepted in India with this difference that the land left by an heirless tenant lapsed as bona vacantia to the State.

Where an occupancy tenant of land belonging to the former State of Faridkot died heirless after that State had merged in the State of Pepsu:

Held, that the land reverted to the Raja of Faridkot in his capacity as the sovereign head of the State and the rights acquired by the Raja of Faridkot by reversion had passed on to the successor State of Patiala and East Punjab States Union into which the Faridkot State had merged. **AIR 1961 Punj 200 (201, 202) (Prs 4, 7, 8) (DB).**

——**Art. 296 — Escheat — Power of Panchayat to take proceedings — (Rajasthan Panchayat Act (XXI of 1953)).**

A property in a place in Rajasthan can, by escheat, only accrue to the State of Rajasthan. There is nothing in the Rajasthan Panchayat Act which vests in the Panchayat any property by lapse or escheat or for want of a rightful owner; nor is there any provision in the Panchayat Act to take proceedings for taking property by lapse or escheat in the absence of the rightful owner. **1957 Raj LW 11 : ILR (1957) 7 Raj 83 : AIR 1957 Raj 43 (43) (Pr 4) (DB).**

ARTICLE 297

——**Arts. 297 and 298** — Scope — State Government issuing notification reserving mining area for public sector — Validity — Right of Government to carry on trade. See Ibid, Art. 73. **AIR 1959 Andh Pra 485.**

——**Art. 297 — Scope — Lands and other things underlying the ocean within the territorial waters of Indian Union — Vesting in the Union —Chank fisheries — Outside the ambit of Art. 297 — Chank fishery rights in the territorial waters of Sivaganga — Exclusive property of Native Rulers — Appropriation by Rulers from time immemorial — Exclusive rights of Rulers not affected by Fisheries Act (4 of 1897) — Act merely regulatory — Abolition of Sivaganga estate by Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948) — All rights vest in the State Government — Chank fisheries vest in the State —State has the power to lease out rights — Precedent— Decision rendered in ignorance or disregard of statute — No binding force.**

Both in England and India, before the Constitution, a right to fish belonged communis juris to the subjects only in so far as it had not otherwise been appropriated by the Sovereign. The authorities make it clear that the Crown or some subject could acquire a property or ownership exclusive of the public right and in such a case, the exclusive right should prevail over the public.

So far as the chank fisheries along the sea coast of Southern India are concerned, there is ample authority both historical and judicial, to the effect that the Native Sovereigns throughout the ages, Pandivas, Navaks and Nawabs of Arcot and later the East India Company had regarded them as a fruitful source of revenue and held the fisheries of pearls and chanks as their exclusive property. They had either farmed out the right to fish the chanks and oysters in consideration of periodical payments on lease, or other arrangement or directly worked the chank and pearl fisheries. The indisputable historical evidence points out that from time immemorial, Native Rulers exclusively appropriated from and held the chank fishery right in the territorial waters of Ramanathapuram. It is seen that at least from 1914 the Government had taken the chank fishery on lease from the Zamindar of Sivaganga. When the last lease in favour of the Provincial Government was subsisting the estate of Sivaganga was notified on 7th September, 1949, under the provisions of Madras Act XXVI of 1948 and as a result, the Sivaganga estate including chank fishery vested in the Government absolutely on and from that date. Sivaganga had originally formed part of the Zamindari of Ramanathapuram and, therefore, the observations of the Division Bench in (1904) 14 MLJ 248 : ILR 27 Mad 551 relating to the

title of the Rajah of Ramanathapuram to the chank fisheries equally apply to the chank fisheries in the territorial waters of Sivaganga. Consequent upon the abolition of the estate of Sivaganga and its vesting in the Province of Madras, and now the State of Madras, it must be held, therefore, that the State Government is exclusively entitled to the chank fishery in the territorial waters of Sivaganga. It follows that the petitioners either as fishermen or members of the public have no common right to fish chanks in those waters and appropriate the same for themselves.

There is no doubt that in principle a decision rendered by even the highest judicial authority will have no binding force as a precedent if it was rendered in total ignorance or disregard of a relevant statute or statutory rule.

The provisions of the Indian Fisheries Act and the Rules framed thereunder, as amended in Madras entirely left untouched the exclusive rights of fishery, their incidence and exercise subject to limited regulation with the written consent of those entitled to such rights and conferred no rights upon the general public in derogation of such exclusive rights. The petitioners cannot, therefore, claim that either the Indian Fisheries Act or the Rules framed thereunder gave them or recognised in them as members of the public or fishermen, any right to dive or otherwise fish and catch chanks in the Sivaganga waters and appropriate the same for themselves. Chank fisheries are not within the ambit of Art. 297. What it vests in the Union is what underlies the ocean within the territorial waters of India and not the territorial waters themselves. For the purpose of the vesting under the Article, the dividing line appears to be between the bed of the ocean and the waters above it. What does not underlie the bed of the ocean is, clearly outside the purview of Art. 297. Chanks cannot, in any sense, be regarded as underlying the bed of the sea but are fish gathered or taken not from underneath the bed but from the sea bed. The chank fishery in the territorial waters of Sivaganga is not by virtue of Art. 297 vested in the Union Government but continues to be exclusive property of the State Government, and as its proprietor it is competent for it to grant the lease of the right to fish chanks in those waters and the petitioners have no common or other right to fish chanks in the waters or to question the lease. **(1965) 2 MLJ 35.**

——**Art. 297** — Provisions affecting rights in sea fisheries — Madras Estates (Abolition and Conversion into Ryotwari) Act is not ultra vires — State legislature has jurisdiction to legislate regarding fisheries within territorial waters which do not vest in Union Government. See Tenancy Laws — Madras Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948), S. 20. **(1953) 2 MLJ 587 : AIR 1954 Mad 291 (DB).**

ARTICLE 298

●——**Art. 298** — Laws — Notification by President under Art. 258 (1) of the Constitution held to have force of law — Commissioner appointed under notification under Art. 258 (1) could appoint Additional Special Land Acquisition Officer as Collector for purposes of S. 5-A, Land Acquisition Act. See Bombay Reorganisation Act (1960), S. 87. **AIR 1964 SC 648.**

●——**Arts. 298 and 300** — Carries on business — Application to Government — Running of Railways — Is a business even in hands of Government — Profit motive not necessary — Principal place of railway administration is place of business for S. 20 Civil P. C. See Civil P. C. (1908), S. 20 (a). **AIR 1963 SC 1681.**

●——**Art. 298 and Sch. VII, List III, Entries 21, 35, List II, Entry 26 — Interpretation of grant of monopolies — Powers under entry 21 not restricted by entry 26 in State List — Ch. IV-A of Motor Vehicles Act — Validity of — Effect of Art. 19 (6).**

The expression 'commercial and industrial monopolies' is wide enough to include grant of monopolies to the State and citizens as well as control of monopolies.

Further, Entry No. 26 of List II of the Seventh Schedule which invests the States with exclusive authority to legislate in respect of trade and commerce within the State, subject to the provision of entry No. 33 of List III, does not derogate from the authority conferred by Entry 21 of List III concurrently on the Parliament and the State Legislatures to grant or create by law commercial or industrial monopolies.

Chapter IV-A introduced by the Parliament by Act C of 1956 enables the State transport undertaking, to exclude private operators. The chapter could, therefore, competently be enacted by the Parliament under entry No. 21 read with entry No. 35 of the Concurrent List. The right of the State to carry on trade or business is recognised by Art. 298; authority to exclude competitors in the field of such trade or business is conferred on the State by entrusting power to enact laws under Entry 21 of List III of the Seventh Schedule, and the exercise of that power in the context of fundamental rights is secured from attack by Art. 19 (6). The scheme framed under S. 68-C may property be regarded as 'law' within the meaning of Art. 19 (6) made by the State excluding private operators from notified routes or notified areas, and immune from the attack that it infringes the fundamental right guaranteed by Art. 19(1) (g). H. C. Narayanappa v. State of Mysore, **(1960) 3 SCR 742 : (1961) 1 MLJ (SC) 5 : (1961) 1 Andh WR (SC) 5 : 1961 SCJ 7 : AIR 1960 SC 1073 (1078, 1079) (Pt B) (Prs 10 to 12).**

——**Art. 298** — Scope — Competency of Government to make grants of land to particular persons — Grant to political sufferers — Whether discriminatory — G. O. No. 1142, dated 18th June, 1954 — Nature of whether gives any person a legal right under it — Board's Standing Orders, Order No. 15 — Permanent assignment of land — Procedure — Notice of assignment to temporary assignees before making a permanent assignment — Necessity. See Ibid, Art. 14. **(1960) 2 Andh WR 272.**

——**Art. 298** — Legislation interfering with contracts with Govt. — Electrical energy supplied by Government. See Madras Essential Articles Control and Requisitioning (Temporary Powers) Act (XXIX of 1949) (as amended by Andhra Act I of 1955), S. 3. **(1959) 2 Andh WR 156: AIR 1959 Andh Pra 538 (DB).**

——**Arts. 298, 73, 162 and 297** — Scope — State Government issuing notification reserving mining area for public sector — Validity — Right of Government to carry on trade. See Ibid, Art. 73. **AIR 1959 Andh Pra 485.**

●——**Arts. 298, 258, 73 (1) Proviso, Sch. 7, List 3, Item 42 (as amended by Constitution (Seventh Amendment) Act, 1956)** — Acquisition of land within State area for purposes of Union — Delegation of power by Central Governmnt to State Government under Art. 258 — Validity — Scope of Arts. 73 (1) Proviso, 298 — Land within State area needed for construction of food-grains ga-

down by Central Government — Whether Union purpose or State purpose — Notifications under Ss. 4 and 6, Land Acquisition Act, issued by State Government — Validity. See Ibid, (as amended by Constitution (Seventh Amendment) Act, 1956), Art. 258. **AIR 1961 Assam 133 (FB).**

——**Arts. 298, 226** — Applicability of Art. 226 — State Government as lessor resuming leased property in terms of lease — Article 226 cannot apply. See Ibid, Art. 226. **AIR 1961 Assam 20.**

——**Arts. 298, 154 (2), 162, 53, 73** — M. B. Panchayat Act (Smt. 2006) (58 of 1949), S. 9 — M. B. Panchayat Rules, (Sm. 2008), Rr. 11, 21 — Collector fixing dates for election — Subsequent postponement of election on Government directive — Legality — Executive powers of Government — Extent of. See Panchayats — M. B. Panchayat Act (58 of 1949) S. 9. **AIR 1956 MB 163.**

——**Art. 298** — Road Transport Corporation Act (1950), S. 47-A — Commercial activity carried on by State — Profit motive not essential feature — Mysore Government Road Transport Department is commercial undertaking of Mysore State Government within meaning of S. 47-A of Act of 1950. W. P. No. 72 of 1960 (Mys) Foll. **AIR 1963 Mys 66 (73) (Pt B) (Pr 17) (DB).**

——**Arts. 298, 299 and 77** — Industrial Employment (Standing Orders) Act (20 of 1946), Ss. 2 (b), 5 — Sindri Fertilisers and Chemicals Ltd. — Industrial establishment is under control of Central Government within meaning of S. 2 (b) — Labour Commissioner of Bihar has no jurisdiction to certify drafts standing order of company. See Industrial Employment (Standing Orders) Act (20 of 1946), S. 2 (b). **AIR 1959 Pat 36.**

——**Art. 298** — State can do transport business on commercial basis without legislative sanction. See Ibid, Art. 38. **AIR 1956 Pepsu 3.**

——**Art. 298** — Function of State — Motor Transport business — State whether can carry on business or Trade like other individuals — Legislative sanction if and when necessary. See Ibid, Art. 19. **ILR (1956) Patiala 77.**

——**Arts. 298, 289(1), 226** — Road Transport Corporations Act (64 of 1950), Ss. 3, 30 — Income-tax Act (1922), Ss. 3, 4 (3) (i) — Road Transport Corporation is not State Department — It is taxable as "individual" under S. 3, I. T. Act — Corporation has not been established for any religious or charitable purpose — Writ jurisdiction cannot be invoked as regards claim in regard to remainder of net profits which have to be made over to State Govt. for road development — Interpretation of exemption provisions of I. T. Act. See Road Transport Act (1950) S. 3. **ILR (1963) 2 Punj 636: (1964) 51 ITR 441: AIR 1964 Punj 178 (DB).**

——**Art. 298 (as amended by the Constitution Seventh Amendment) — State carrying on banking business — Not illegal.**

There is nothing in the Constitution to debar a State Government from owning or running a bank in the exercise of its ordinary executive power. The amendment to Art. 298 has not added anything new to the Constitution but has merely stated explicitly what was previously implicit. **ILR (1959) Punj 1384; AIR 1959 Punj 440 (446) (Pt H) (Pr 14) (DB).**

[**Reversed** on another point in AIR 1963 SC 222]

——**Arts. 298, 1, 239 and 300** — State of Vindhya Pradesh is a legal entity capable of suing and being sued. See Ibid, Art. 1. **AIR 1956 Vin Pra 1.**

ARTICLE 299

SYNOPSIS

(Constitution of India (1950), Art. 299)

1. Analogous law.
See Government of India Act (1935), S. 175.
2. Scope and applicability.
3. Contract must be executed by proper authority.
4. Oral contracts.
5. Formal document, whether necessary.
6. Contract by correspondence — Validity.
7. Non-compliance — Effect.
8. Relief under Contract Act, S. 65.
9. Relief under Contract Act, S. 70.
10. Ratification.
11. Contracts made in the exercise of executive power.
12. Contracts of service.
13. Immunities in favour of the President, Governor or Rajpramukh.

1. Analogous law.

See Government of India Act (1935), S. 175.

2. Scope and applicability.

■——**Art. 299 (1) — Scope — Contract Act, S. 230 (3).**

The provisions of Art. 299 (1) were not inserted for the sake of mere form. They are there to safeguard Government against unauthorised contracts. If in fact a contract is unauthorised or in excess of authority it is right that Government should be safeguarded. On the other hand, an officer entering into a contract on behalf of Government can always safeguard himself by having recourse to the proper form. In between is a large class of contracts probably by far the greatest in numbers, which, though authorised are for one reason or other not in a proper form. It is only right that an innocent contracting party should not suffer because of this and if there is no other defect or objection Government will always accept the responsibility.

Held, that the Chairman of the Board of Administration acted on behalf of the Union Government and his authority to contract in that capacity was not questioned. There can equally be no doubt that both sides acted in the belief and on the assumption, which was also the fact that the goods were intended for Government purposes, namely amenities for the troops. The only flaw was that the contracts were not in proper form and so, because of this purely technical defect, the principal could not have been sued. But that is just the kind of case that S. 230 (3) of the Contract Act designed to meet.

It would be disastrous to hold that the hundreds of Government Officers who have daily to enter into a variety of contracts, often of a petty nature, and sometimes in an emergency, cannot contract orally or through correspondence and that every petty contract must be effected by a ponderous legal document couched in a particular form. It may be that Government will not be bound by the contract in that case, but that is a very different thing from saying that the contracts as such are void and of no effect. It only means that the principal cannot be sued; but there would be nothing to prevent ratification, especially if that was for the benefit of Government; when a Government Officer acts in excess of authority Government is bound if it ratifies the excess. The

contracts in question were not void simply because the Union Government could not have been sued on them by reason of Art. 299 (1). 8 Moo Ind. App. 529 (P. C.), Rel.on. Case law discussed. Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram. **1954 SCJ 315: 1954 SCA 373: 1954 SCR 817: 1954 Andh LJ (W.) SC 1: AIR 1954 SC 236 (243) (Pt H) (Prs 40, 41).**

——**Art. 299 (1)** — Contracts by Government — Procedure. See Government of India Act (1935), S. 175 (3). **AIR 1960 All 420 (DB).**

——**Art. 299** — Contract with Government — Government cancelling offer even before contract was concluded — Aggrieved party cannot claim any right to maintain writ petition — Proper course is to proceed under general law. See Ibid, Art. 226. **AIR 1965 Andh Pra 425.**

——**Art. 299 —Scope and object of.**

Article 299 of the Constitution was not enacted as a matter of mere form but was put in only to safeguard the Government against unauthorised acts. Though they could not be enforced against the Government, they could not be regarded as void contracts. AIR 1954 SC 236 Rel. on. **1958 Andh LT 1078: (1959) 1 Andh WR 31: ILR (1958) Andh Pra 618: AIR 1959 Andh Pra 116 (122, 123) (Pt F) (Pr 24) (DB).**

——**Art. 299 — Applicability.**

Where there was no contract in winding between the plaintiff and the State Government and there was no suggestion by any of the parties that there was any contract in the exercise of the executive authority of a province or State, the provisions of Art. 299 of the Constitution or S. 175 (3), Government of India Act, 1935, can have no application. **(1960) 1 Assam LR 96: AIR 1961 Assam 64 (66) (Pt A) (Pr 4).**

——**Art. 299** — Contracts by or on behalf of Government — Requirements — Mandatory nature of provisions. See Government of India Act (1935), S. 175 (3). **AIR 1955 Assam 86 (DB).**

——**Art. 299 — Appeal under R. 190, Assam Land Revenue Manual — Appellant not asking for remedy for breach of executive contract — Applicability of Article — (Assam Land Revenue Manual, R. 190).**

Where in an appeal under R. 190 of the Assam Land Revenue Manual the appellant has not as a matter of fact asked for any remedy for breach of an 'executive contract' but the appeal is confined only to the validity of the order of cancellation of the settlement of the fishery with the appellant and the settlement thereof with the respondents, Art. 299 has no application. **AIR 1952 Assam 76 (78) (Pt C) (Pr 14).**

——**Art. 299** — Arbitration Act (10 of 1940), Ss. 2 (a), 20 and 39 (IV) — Contract by tender containing provision for sole arbitration — Document held, satisfied the conditions of Art. 299 though it came into existence before the contract was concluded — Tenderer stating in tender that there should be unattached arbitrator — Contract concluded as per terms of contract form — Arbitration agreement held was valid — Application for filing of arbitration agreement—Court holding it as modified and appointing another arbitrator — Order amounted to refusal to direct filing of arbitration agreement — Appointment of substituted arbitrator not proper — Appeal could lie from such order — AIR 1962 Cal 254, **Reversed.** See Arbitration Act (1940) S. 2 (a). **AIR 1965 Cal 404.**

——**Art. 299** — Contract by Union Government — Provisions for alteration of rates, in case of change in specifications — Alteration made without change in specification — Alteration is de hors original contract in both respects — Fresh compliance with S. 175 (3) necessary. See Government of India Act (1935), S. 175 (3). **AIR 1965 Cal 191.**

——**Art. 299** — Filing of arbitration agreement — Sufficient cause for not filing same — What is — Complete abrogation of arbitration agreement or competent reference under arbitration clause necessary — Invalid reference does not amount to waiver or estoppel — Government party to agreement — Art. 299 to be complied with in matter of alteration of agreement. See Arbitration Act(1940), S. 20. **AIR 1962 Cal 82.**

——**Art. 299 — Execution of contracts by Government officers — Strict compliance with formalities —Estoppel against Government — (Evidence Act (1872), S. 115).**

In India the law insists that where contracts or engagements are required to be in particular forms with particular officers of authority to sign them that must be strictly complied with in order to bind the Government. For obvious reasons the Government and the administration cannot, like an ordinary person, be estopped by the acts of its numerous agents and officers. AIR 1954 SC 236; AIR 1955 Cal 626; (1951) AC 837 (845), Rel. on. **62 Cal WN 278: ILR (1959) 1 All 140: AIR 1958 Cal 203 (205, 206) (Pt B) (Pr 9).**

——**Art. 299 — Object of.**

Article 299 has been inserted in the Constitution to safeguard the interests of the Government. **AIR 1957 Him Pra 1 (5) (Pt B) (Pr 11).**

——**Art. 299** — Arbitration agreement — Acceptance — Document — Drawing up of — — Agreement clause wide enough to cover requirements of Art. 299. See Arbitration Act (1940) S. 34. **AIR 1965 J and K 114.**

●——**Art. 299** — Contract — Auction of forest held under conditions notified — Implied contract — Breach of conditions by successful bidder at auction — Re-auction held — Loss to State — Auction purchaser committing breach is liable to to pay loss as per conditions — Forest Contract Rules, Rules 28 & 29 — Applicability — To such an implied contract neither Art. 299 of Constitution nor Rules 28 and 29 of Forest Contract Rules, apply. See Forest Act (1927), S. 82. **AIR 1962 Madh Pra 102 (FB).**

[**Reversed** in AIR 1967 SC 203].

——**Art. 299** — Person bidding on terms of auction — Bid accepted — Formal contract deed not drawn — Bidder plaintiff is bound by conditions — He became liable to pay all instalments which on default could be recovered as arrears of land revenue — Art. 299 of Constitution has no application — AIR 1960 MP 152: 1960 MPLJ 195, Foll. Suit simpliciter for declaration did not lie without prayer for injunction prohibiting the State to recover the dues. **1962 MPLJ (Notes) 142.**

——**Art. 299 (1) — Scope — Act 1 of 1951 — Effect of.**

Under S. 7 of Act I of 1951, Deputy Commissioners were authorised to take charge of all lands and interests vesting in the State under S. 3. The power to take charge obviously included the powers to manage and dispose of. In exercise of the powers conferred by sub-s. (3) of S. 175 of the Government of India Act, 1935, the Governor of the Central Provinces and Berar was pleased to make rules prescribing the classes of contract and assurances of property made in the exercise of the executive authority of the province and the authorities entitled to exercise them. These

rules have been kept alive under Art. 372 (1), read with Cl. (10) of Art. 366 of the Constitution of India. The management and disposal of the forests that vested in the State under S. 8, Act I of 1951, accordingly fell within the ordinary jurisdiction of the Deputy Commissioners of their respective districts. Hence where indentures were executed by the Deputy Commissioner, there was no breach of Art. 299 (1). **ILR (1959) Madh Pra 513: 1960 MPLJ 195: 1960 Jab LJ 321: AIR 1960 Madh Pra 152 (154) (Pt C) (Pr 10) (DB).**

——**Art. 299** — Settlement of land in favour of A by Khasmahal for agricultural purposes — No document executed — Rent accepted by Khasmahal — A became occupancy raiyat — Government cannot cancel settlement by subsequent order — No formal document necessary — Art. 299 of Constitution or S. 175 (3) of Government of India Act (1935), not applicable. See Tenancy Laws — Orissa Tenancy Act (II of 1913), S. 3 (9). **ILR (1961) Cut 595.**

——**Art. 299** — No plea as to whether S. 175 (3), Government of India Act, was complied with — Question whether can be raised in appeal. See Government of India Act (1935), S. 175 (3). **AIR 1960 Pat 139.**

——**Art. 299** — Essentials of contract enforceable against Government — Held, there was no such contract — (Contract Act (1872), S. 10). See Govt. of India Act (1915), S. 30. **AIR 1952 Pat 393 (DB).**

[Reversed on another point in AIR 1954 SC 165]

——**Arts. 299 and 300** — Government transferring premises to purchaser — Latter to hold them as absolute owner — Premises cannot be said to be public premises — Government cannot resume premises by reference to S. 4 — Purchaser cannot be evicted in exercise of executive power. See Houses and Rents — Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959), S. 2 (3). **ILR (1965) 1 Punj 215.**

——Art. 299 — Object of Art. 299.

The reason for enacting Art. 299 of the Constitution of India is that in order to bind a Government there should be a specific procedure enabling the agents of the Government to make contracts. The public funds cannot be placed in jeopardy by contracts made by unspecific public servants without express sanction of the law. It is a provision made essentially in the interest of the Government so that Government may not be committed by any and every public servant. AIR 1954 SC 236, Rel. on. **AIR 1963 Punj 372 (374) (Pt A) (Pr 7).**

——Art. 299 (1) — Strict compliance is necessary.

Clause (1) of Art. 299 is a mandatory provision calling for strict compliance and the infraction to the provision results in avoidance of contract. **AIR 1963 Punj 372 (374) (Pt B) (Pr 7).**

3. Contract must be executed by proper authority.

——**Art. 299** — Proper authority to execute contract — Special authority in respect of particular contract may be validly given to officer other than notified officer. See Government of India Act (1935), S. 175 (3). **(1962) 2 SCJ 479: AIR 1962 SC 113.**

——**Art. 299 — Contracts with Government.**

It is well settled that Government can only be bound by contracts that are entered into in a particular way and which are signed by the proper authority. Thawardas Pherumal v. Union of India, **1955 Mad WN 782: (1955) 2 MLJ (SC) 23: (1955) Andhra WR (SC) 277: 1955 SCJ 445: 1955 SCA 862: 57 Punj LR 369: 34 Pat 359: (1955) 2 SCR 48: AIR 1955 SC 468 (476) (Pt C) (Pr 25).**

——**Art. 299 (1)** — Contract executed by person not authorised. See Government of India Act (1935), S. 175 (3). **AIR 1955 Assam 33 (DB).**

——Art. 299 — Formal document embodying terms of contract — If can come into existence before acceptance of terms by other contracting party.

Article 299 only requires that the terms of a contract, in order that it may bind the Government, must be agreed to by the proper authority and must be evidenced by an instrument executed by an officer duly empowered. There is nothing to prevent the Government from offering a contract by a formal document in compliance with Art. 299 for the other contracting party to accept and conclude the deal. **AIR 1959 Cal 526 (531) (Pt C) (Pr 14).**

——**Arts. 299, 298 and 77** — Industrial Employment (Standing Orders) Act (20 of 1946), Ss. 2 (b), 5 — Sindri Fertilisers and Chemicals, Ltd. — Industrial establishment is under control of Central Government within meaning of S. 2 (b) — Labour Commissioner of Bihar has no jurisdiction to certify draft standing orders of company. See Industrial Employment (Standing Orders) Act (20 of 1946), S. 2 (b). **AIR 1959 Pat 36.**

4. Oral contracts.

——**Art. 299** —Contract executed on behalf of Governor or Governor General has to be in writing —R. 377, Vol. VI of the Financial Handbook and General Instructions in the Instructions on Accounts, on page 13 also clearly indicate that the contract has to be in writing — Original contract in writing on prescribed form — Normally one would expect second contract enhancing the rates in the original contract would also be in writing —Oral contract cannot be enforced against Government. See Government of India Act (1935), S. 175 (3). **1964 All LJ 1092.**

——**Art. 299 (1)** — Verbal agreement — Validity. See Contract Act (1872), S. 230 (3). **AIR 1955 NUC (Cal) 4499.**

——Art. 299— Scope.

The word "executed" in Art. 299 (1) indicates that the contract must be in writing. An oral contract to which the State is a party is not recognised under the Constitution. **ILR (1952) Trav-Co 960: AIR 1953 Trav-Co 146 (154) (Pt D) (Pr 18) (DB).**

5. Formal document, whether necessary.

——**Art. 299** — Contract between Government and private individual — Form of — S. 175 (3) is mandatory — Formal document is necessary — Interpretation of Statutes. See Government of India Act (1935), S. 175 (3). **(1962) 2 SCJ 479: AIR 1962 SC 113.**

——Art. 299 — Government of India Act (1935), S. 175 (3) — Contract with Government — Formal document not necessary — Contract evidenced by letters — Requirement that contracting party was Governor-General need not appear in express terms.

A formal bilateral instrument is not imperative under S. 175 (3) of the Government of India Act. It can very well be evidenced by letters, provided it is clear that the authority entering into the contract is the Governor-General in Council and

the document is signed for and on behalf of the Governor-General by a duly authorised agent. This can very well be done by letter as well. AIR 1934 Bom 277, Dissent. from; AIR 1938 Bom 168 and (1949) 2 MLJ 156 : AIR 1950 Mad 194, Rel. on; AIR 1959 Cal 526, Foll. Where the contract is evidenced by letters, the requirement that the contracting party is the Governor-General may not appear in the letter in express terms. **AIR 1961 Cal 620 (622, 623) (Pt B) (Prs 9, 11).**

6. Contract by correspondence — Validity.

——**Art. 299 (1)** — Contract cannot be spelled out of correspondence — It requires execution of formal document. See Government of India Act (1935), S. 175 (3). **AIR 1964 All 128.**

——**Art. 299** — Existence of contract to be found out from correspondence — Rule — Applicability to contract evidenced by document in compliance with Art. 299 of Constitution. See Contract Act (1872), S. 2 (h). **AIR 1959 Cal 526.**

——**Art. 299 (1)** —Contract with Government— — Tender submitted by contractor — Offer accepted by Government — Acceptance communicated to contractor by proper Government Authority under the Ministry's abbreviated telegraphic address — Acceptance by telegram is valid. **AIR 1963 Punj 372 (375) (Pt C) (Pr 12).**

7. Non-compliance — Effect.

●——**Art. 299** — Government of India Act (1935), S. 175 (3) — Non-compliance — Effect— Agreement between Superintending Engineer and private party excluding land of latter from factory area and giving supply of water for irrigation of the land permanently — Agreement fell outside Bombay Irrigation Act — Agreement was made in executive authority of Province —As it did not comply with S. 175 (3) it was void. See Government of India Act (1935), S. 175 (3). **AIR 1964 SC 1714.**

●——**Art. 299 — Government of India Act (1935), S. 175 (3) — Contract with Union of India —Non-compliance with S. 175 (3) — Effect — Relief under Contract Act, S. 70.**

A contract entered into by A with the Government of India for the supply of coal to the Railway Administration in contravention of the provisions of S. 175 (3) of the Government of India Act, 1935 is void and unenforceable. But if in pursuance of the said void contract, A has performed his part and the Government of India has received the benefit of the performance of the contract by A, S. 70, Contract Act, would apply and the Government of India was bound to make compensation to A in the form of the value of the said coal under that section. AIR 1962 SC 779, Foll.; 65 Cal WN 441, **Reversed** in so far as it held that S. 70, Contract Act, was inapplicable. New Marine Coal Co. (Bengal) Private Ltd. v. Union of India, **(1964) 1 SCA 491: 1964 SCD 595 : (1964) 2 SCR 859 : AIR 1964 SC 152 (155) (Pt A) (Pr 6).**

●——**Art. 299** — Scope — Provisions are mandatory — Non-compliance makes contract invalid. See Government of India Act (1935), S. 175 (3). **AIR 1962 SC 779.**

——**Art. 299 (1)** — Assessee coming to arrangement with Collector and agreeing to pay amount of tax in instalments — Contract was not in compliance with Art. 299 (1) of Constitution — O. 20, R. 11 (2) Civil P. C., also would not apply to such case. See Contract Act (1872), S. 2 (b). **(1965) 16 STC 701 (All).**

——**Art. 299 (1) — Contracts not made in name of President or Governor — Validity.**

Contracts, which are not expressed to be made in the name of the President or the Governor, are not void. Such contracts are not enforceable against the Union or the State Government. They would become enforceable against the Union or the State Government if they are ratified by them. 1954 SCJ 315; AIR 1954 SC 236, Followed. **1960 All LJ 193 : 1960 All WR (HC) 164 : ILR (1959) 2 All 561 : AIR 1960 All 420 (425) (Pt G) (Pr 21).**

——**Art. 299** — Suit for damages against Government for breach of contract — Facts alleged in plaint disclosing contract did not comply with requirements of Art. 299 of the Constitution — Defendant not taking such plea in written statement but only in appeal — Still Court should refuse to enforce the contract. See Civil P. C. (1908), O. 8, R. 2. **AIR 1963 Assam 197 (DB).**

——**Art. 299** — Government of India Act (1935), S. 175 (3) — Scope — Contract on behalf of Government not in accord with S. 175 (3), Government of India Act (1935) — If binding on Government. See Government of India Act (1935) S. 175 (3). **(1959) 63 Cal WN 907 : AIR 1961 Cal 663 (DB).**

——**Arts. 299, 154, 166** — Executive action in administration of Government property — Non-compliance with formalities under Art. 166 — Effect — Third party cannot challenge validity even if there is violation of Art. 299—Violation of Art. 299 is a matter concerning contracting parties. See Ibid, Art. 154. **64 Cal WN 1017 : 1960 Cri LJ 1436 : AIR 1960 Cal 668.**

——**Art. 299 — Non-compliance with — Effect.**

The provisions of Art. 299 are mandatory and not directory and as such a contract which does not comply with the formalities prescribed by Art. 299 is unenforceable in law. AIR 1954 SC 236, Foll. **AIR 1959 Cal 526 (531) (Pt D) (Pr 15).**

——**Art. 299 (1)** — Contract not expressed to be made by Governor-General — It is not binding on the Union of India — Arbitration clause contained there is not binding — Applicability of S. 230 (3). See Government of India Act (1935), S. 175 (3). **AIR 1959 Cal 287 (DB).**

——**Art. 299 (1)** — Non-compliance — Contract alleged to be not in accordance with the manner required by law — Burden of proof. See Government of India Act (1935), S. 175 (3). **AIR 1959 Cal 287 (DB).**

——**Art. 299 (1)** — Government of India Act (1935), S. 175 (3) — Agreement not in form prescribed by section — Agreement is unenforceable and void. See Government of India Act (1935), S. 175 (3). **AIR 1956 Cal 138.**

●——**Art. 299 (1) — Government of India Act (1935), S. 175 (3) — Non-compliance with — Suit brought on contract by State Government — Applicability of doctrine of mutuality — State Government fully executing its part of contract — Suit brought by it against other contracting party is maintainable even though there is no compliance with Art. 299 (1) — Such suit is maintainable also under S. 65, Contract Act.**

The provisions relating to the contracts made by a State Government contained in S. 175 (3) of the Government of India Act, 1935 and Art. 299 (1) of the Constitution of India are meant for the protection of the State. Hence, no suit against any State Government based on an alleged contract entered into with the State can be enforced

against such Government in a Court of law if the contract is not embodied in an agreement entered into by the Governor and executed on behalf of the Governor in the manner prescribed and by the authority empowered to do so. AIR 1962 SC 110 and AIR 1962 SC 113 and AIR 1954 SC 236 and AIR 1962 SC 779, Rel. on.

Similarly the State Government will, in a case where there is no compliance with the above statutory provisions, not be able to maintain an action on contract against the other contracting party, the reason being that such a course would offend the rule of mutuality. But there is no violation of the doctrine of mutuality in cases where the State Government has fully executed its part of the contract and then sues for enforcing the promise of the other contracting party. In such an action the plea that the contract is not binding on the State Government is not available to the defendant. And there can be no infringement of the doctrine of mutuality. (1883) 8 AC 517 and (1843) 134 ER 510, Rel. on; ILR 27 Bom 618 and ILR 30 Mad 290, Disting.; AIR 1927 Cal 465 and AIR 1930 Mad 600, Not Foll. Further, a suit instituted by the State Government is sustainable even if the contract is void, as S. 65 of the Contract Act, 1872, applies to such a suit. AIR 1962 SC 779, Applied. A. K. T. K. M. Sankaran Namboodiripad v. State of Kerala, **ILR (1963) 1 Ker 361 : 1963 Ker LJ 316 : 1963 Ker LT 393 : AIR 1963 Ker 278 (282 to 285) (Prs 10, 14, 16, 19) (FB).**

——**Arts. 299 (1), 226** — "For any other purpose" — Existence of legal right is essential for exercise of jurisdiction under Art. 226 — Claim to enforce right under contracts with State — Contracts not complying with Art. 299 (1) — Right cannot be enforced under Art. 226. See Ibid, Art. 226. **ILR (1956) Madh Bha 1: AIR 1955 Madh B 188 (DB).**

——**Art. 299** — Scope of — Contract not satisfying requirement of Art. 299 — Contract not binding on Government — Person aggrieved can have no remedy under Art. 226. See Ibid, Art. 226. **AIR 1961 Madh Pra 364 (DB).**

——**Art. 299** — No formal contract as per Art. 299 entered into between the Government, the seller of goods and the buyer, a private party — Suit by Government for recovery of unpaid price — Counter-claim by buyer for damages for breach of contract not sustainable in absence of formal contract. **1964 Mad WN 178 : 77 Mad LW 224 : (1964) 2 Mad LJ 263 : AIR 1964 Mad 508 (512) (Pt B) (Pr 7).**

——**Art. 299 (1)** — Representation of the People Act (1951) (as amended by Act LVIII of 1958), S. 7 (d) — Essentials under — There must be valid subsisting contract — Contract not complying with Art. 299 (1) — Cannot be considered for S. 7 (d). See Representation of the People Act (1951) (as amended by Act LVIII of 1958), S. 7 (d). **AIR 1964 Pat 431 (DB).**

——**Art. 299 (1)** — Government of India Act (1935), S. 175 (3) — Non-compliance with — Effect — Void contract — Payment of damages made under —It cannot be recovered — Obligation arising under such contract cannot be enforced. **AIR 1963 Pat 254 (257, 261) (Pt A) (Prs 10, 49) (DB).**

——**Art. 299** — Government of India Act (1935), S. 175 (3) — Contract not in strict compliance with S. 175 (3) — Not enforceable against Government but binding upon officer making it. See Government of India Act (1935), S. 175 (3). **AIR 1962 Pat 372 (DB).**

——**Art. 299** — Scope — If mandatory — Non-compliance — Effect. See Government of India Act (1935), S. 175 (3). **AIR 1958 Pat 203 (DB).**

——**Art. 299 (1)** — Scope — Mandatory — Non-compliance — Effect. See Government of India Act (1935), S. 175(3). **AIR 1957 Pat 586 (DB).**

——**Art. 299 (1)** — Government of India Act (1935), S. 175 (3) — Non-compliance with section — Effect — Provisions of S. 175 (3) are mandatory. See Government of India Act (1935), S. 175 (3). **AIR 1957 Pat 586.**

——**Art. 299** — Appeal against order setting aside award — Objection to arbitration agreement on the basis that contract containing same did not comply with requirements of S. 175 (3), Government of India Act cannot be raised for first time at time of argument when claimant had no opportunity to adduce evidence upon question. See Arbitration Act (1940), S. 39 (1). **AIR 1955 Punj 240.**

——**Art. 299** — State Government granting mining lease of land containing sandstone — State Government giving notice to lessee to execute lease deed within specified time as required by law — Default by lessee — Lease can be validly revoked by Government. See Rajasthan Minor Mineral Concession Rules (1959), R. 18 and Sch. IV. **1964 Raj LW 380.**

——**Art. 299** — Transactions between State Bank and its constituents — Form of — Need not be in the name of Governor — Every executive act need not be clothed in the particular form referred to in Art. 299 and a transaction does not become invalid by not being so expressed. **ILR (1959) Punj 1384: AIR 1959 Punj 440 (447) (Pt J) (Pr 16) (DB).**

(**Reversed** on another point in AIR 1963 SC 222).

8. Relief under Contract Act, S. 65.

——**Art. 299** — Government of India Act (1935), S. 175 — Government arranging for distribution of salt through certain person— Loss due to decontrol — Liability of Government. See Government of India Act (1935), S. 175. **AIR 1956 Assam 23.**

——**Art. 299** — Agreement with Government not satisfying statutory requirements — Applicability of S. 65, Contract Act. See Contract Act (1872), S. 65. **AIR 1955 Assam 86 (DB).**

——**Art. 299 (1)** — Agreement hit by S. 175 (3), Government of India Act — Compensation under S. 65, if can be allowed. See Contract Act (1872), S. 65. **AIR 1955 Assam 33 (DB).**

——**Art. 299** — Agent failing in his duty — Principal's remedies. See Contract Act (1872), S. 211. **AIR 1955 Assam 33 (DB).**

——**Art. 299** — Civil P. C. (1908), S. 80 and O. 6, R. 2; O. 7, R. 7 — Suit against Union of India solely on basis of contract and on allegation of failure of consideration — Plea for relief under S. 65, Contract Act — Whether can be raised by plaintiff — Plea whether introduces fresh cause of action — S. 80, Civil P. C., whether operates as bar — (Contract Act (1872), S. 65). ILR 30 Cal 36, Not Foll. See Civil P. C. (1908), S. 80. **AIR 1959 Cal 585.**

——**Art. 299 (1) — Contract on behalf of Government entered into by Government Officer — Government's responsibility.**

It is only right that an innocent contracting party should not suffer because a contract on behalf of the Government is entered into by an Officer of the Government and if there is no

other defect or objection, Government will always accept the responsibility. AIR 1954 SC 236 : 1954 SCJ 315 (SC), Foll. **AIR 1955 Manipur 49 (54) (Pt C) (Pr 18).**

——**Art. 299** — Government of India Act (1935), S. 175 (3) — Contract though not complying with sub-s. (3) otherwise valid for all purposes — It is quite enforceable in law and binding between parties — Assuming it is not so or it is voidable, defendant must restore under S. 65, Contract Act, any benefit derived by him on the basis of the contract. See Government of India Act (1935), S. 175. **(1961) 27 Cut LT 397.**

——**Art. 299 (1)** — Government of India Act (1935), S. 175 (3) — Non-compliance with — Effect — Void contract — Contract — Contract Act (1872), Ss. 70 and 65 — Goods delivered in pursuance of such contract — Party accepting such goods has to compensate for them — Advantage received under such contract has to be restored. AIR 1962 SC 779 and AIR 1962 Pat 336 (FB), Foll.; (1842) 134 ER 364, Rel. on. **AIR 1963 Pat 254 (256, 257, 261) (Pt B) (Prs 9, 10, 49) (DB).**

——**Art. 299** — Scope — Plaintiff supplying goods to Military department under oral agreement — Non-compliance with S. 175 (3), Government of India Act —Effect of. See Contract Act (1872), S. 65. **AIR 1958 Pat 203 (DB).**

——Art. 299 (1) — Government of India Act (1935), S. 175 (3) — Contracts on behalf of the Union or State — Form of contract is mandatory — Contract not in form as required by S. 175 (3) — It cannot be enforced — Section 65, Contract Act, is of no help.

The provisions relating to the form of contract made in the exercise of the executive power of the Union or of a State are mandatory. Where therefore, a contract is not made in the form required by S. 175 (3) of the Government of India Act, 1935 or Art. 299 (1) of the Constitution of India, it cannot be enforced at the instance of a party to the contract. The Union of India, therefore, cannot be sued for compensation for the breach of contract nor can an arbitration clause contained in such a contract be enforced. AIR 1962 SC 113, Foll.

Section 65 of the Contract Act, 1872, does not help the party in recovering the compensation as it is relevant only when the contract is in proper form and between the parties to the suit. **64 Punj LR 438: AIR 1962 Punj 423 (424, 425) (Pt A) (Prs 5, 6, 8).**

9. Relief under Contract Act, S. 70.

——**Art. 299** — Non-compliance with — Effect — Contract is void and cannot be ratified —Government paying money to agent for procuring food grains — S. 70, Contract Act, does not apply in such a case — Interest not allowed for mere retention of money in absence of any damages. See Government of India Act (1935), S. 175 (3). **AIR 1964 Pat 555 (DB).**

——**Art. 299** (1) — Government of India Act (1935) S. 175 (3) — Contract with Government — Not in compliance with provisions — Is not merely unenforceable but void — Government however is liable to make compensation under S. 70, Contract Act, if goods have been delivered or services rendered to the Government in pursuance of the void contract. AIR 1962 SC 110 and AIR 1962 SC 113 and AIR 1962 SC 779, and AIR 1962 Pat 336 (FB), Rel on. **AIR 1963 Pat 153 (155, 156) (Pt A) (Pr 6) (DB).**

——**Art. 299** — Provisions are mandatory — Suit, for damages in respect of lease of footpath over railway bridge and ferries — Suit in respect of lease of footpath held was not governed by Bengal Ferries Act, but by S. 175, Government of India Act — Non-compliance with Section 175 — Suit not maintainable — S. 70, Contract Act, was also not applicable. See Government of India Act, (1935), S. 175. **AIR 1962 Pat 485 (DB).**

——**Art. 299 (1)** — Government of India Act (1935), S. 175 (3) — Non-compliance with — Contract is void and cannot be ratified by Government — Goods delivered in pursuance of such void contract — Conditions of S. 70, Contract Act, complied with — Government liable to compensate : ILR 35 Pat 1067, **Overruled.** See Government of India Act (1935), S. 175 (3). **AIR 1962 Pat 336 (FB).**

10. Ratification.

——Art. 299 (1) — Contract with Government signed by officer not having authority — Not void — Contract is enforceable against the officer — Ratification by conduct of Government —Effect— Arbitration clause in contract modified — Government taking part in proceedings — Ratification implied.

An agreement not in conformity with Art. 299 (1) of the Constitution is not void contract, though it may be unenforceable against the Government. Such a contract is like the contract entered into by an agent on behalf of a disclosed principal without the principal's authority and though unenforceable against the Government it can be enforceable against the particular officer who purported to sign on behalf of the President without authority. Such contract is also enforceable against Government if ratified by it and ratification can be made in express terms by a formal order of the Government or by the conduct of the Government. AIR 1954 SC 236, Rel. on.

Where the Government one of the parties to a contract, entered into an agreement for modifying the original arbitration clause, in the contract, took part in the arbitration proceedings, and made an application to the Court for extension of time to file the award :

Held, that the Government must be taken to have ratified the contract by its own conduct, and was precluded from challenging the authority of the officer who entered into agreement for modifying the original arbitration clause. **AIR 1963 Cal 456 (459, 460) (Pt A) (Pr 18).**

——Art. 299 (1) — Contract not expressed in form prescribed —Effect — Government's power to ratify.

Article 299 (1) of the Constitution of India although mandatory is only intended to safeguard the interest of Government. Even by acceptance of a bid by the State Government or its authorised servants a contract binding on the person offering the bid is created by operation of law. The Government has the power to ratify a contract not in proper form and even where it is ratified by acceptance of the bid and nothing more, the Court would be entitled to enforce it at will. AIR 1954 SC 236 and 1953 SCJ 429: AIR 1953 SC 309, Foll.; AIR 1956 Cal 138, Diss. from. **1960 MPLJ 195: ILR (1959) Madh Pra 513: 1960 Jab LJ 321: AIR 1960 Madh Pra 152 (154) (Pt D) (Prs 12, 13) (DB).**

——Art. 299 — Government of India Act (1935), S. 175 (3)— Contract Act (1872), Ss. 197 and 199 — Contract for supply of goods to Government— Person signing on behalf of Government not authorised by rules — Government not bound — Pay-

ment for some of goods supplied does not amount to ratification.

It is the duty of the person entering into contract with officers of the Government acting on behalf of the Government to enquire and ascertain whether they had the authority and the power and satisfy himself. A contract for supply of goods to Government, entered into on behalf of the Government by an officer or a person not authorised by the rules is not binding on the Government even though the person who supplied the goods on such order might have been induced to believe that he will be paid. AIR 1962 SC 113, Rel. on. The fact that the Government paid for some of the goods received by them under the order will not amount to ratification of the contract. **1962 Mad WN 521 : 75 Mad LW 633 : AIR 1963 Mad 140 (141, 142) (Prs 8, 9).**

——**Art. 299 —Scope — Mandatory — Estoppel or ratification.**

A contract, in order to be binding and enforceable against the State Government must be made in strict conformity with the formalities prescribed by Art. 299 (1) of the Constitution. If these formalities are not complied with, the contract is void and not enforceable against the Union Government. The constitutional provisions embodied in Art. 299 are mandatory and there is no question of estoppel or ratification in a case of this character. **1959 BLJR 649 : AIR 1960 Pat 159 (159, 160) (Prs 3, 4) (DB).**

——**Art. 299 (1) — Scope of — Contract not in conformity with — Validity — Ratification — Acceptance of benefit by Government not sufficient — (Government of India Act (1935), S. 175 (3)).**

In case of contracts which do not conform to the provision of Art. 299 (1) or, for the matter of that, S. 175 (3) of the Government of India Act, acceptance of the benefit by the Government is not sufficient in point of law to constitute ratification so as to validate the contracts. The important question for consideration is whether or not the constitutional provisions with respect to the execution of the contracts have been strictly followed. If not, the contracts must be declared unenforceable against the Government. (1883) 8 App. Cas 517, Rel. on. There is no question of estoppel or ratification in such a case. **1957 Pat LR 198: ILR 36 Pat 633: AIR 1957 Pat 586 (604) (Pt K) (Pr 38) (DB).**

[**Reversed** on another point in AIR 1962 SC 113.]

——**Art. 299** — Government of India Act (1935), S. 175 (3) — Ratification — Contract entered into by Government Official not complying with provisions of S. 175 (3) Government of India Act (1935) — Subsequently Government agreeing to accept goods at reduced rate from the contractor in pursuance of terms of contract and entering into arbitration with him dragging on for a long time — Arbitrators not objecting on ground of non-compliance with S. 175 (3) — Such objection raised after a very long time — Facts held amounted to ratification of the contract— Plea of ratification held involved not only question of law but also question of fact — Plea not raised — Defect of non-compliance with S. 175 (3) held not cured by reason of ratification. See Contract Act (1872), S. 196. **AIR 1961 Punj 5.**

11. Contracts made in the exercise of executive power.

——**Art. 299 (1) — Government of India Act (1935), S. 175 (3) — Contracts entered into by Government — Conditions of — Authority to execute contract — Conferment of — Mode in which authority may be conferred.**

Under Section 175 (3) of the Government of India Act, 1935 a contract entered into by the Governor of a province must satisfy three conditions. It must be expressed to be made by the Governor; it must be executed; and the execution should be by such persons and in such manner as the Governor might direct or authorise. S. 175 (3) does not prescribe any particular mode in which authority must be conferred on a person to execute a contract. There is nothing in the section itself to preclude authorisation being conferred ad hoc on any person, and when that is established, the requirements of the section must be held to be satisfied. ILR 35 Pat 1067, Affirmed. State of Bihar v. Karam Chand Thapar and Brothers, Ltd., **1961 SCD 815: ILR 41 Pat 1: 1962 BLJR 64 : (1962) 2 SCJ 17 : (1962) 1 SCR 827 : AIR 1962 SC 110 (111 to 113) (Pt A) (Prs 3, 5, 6).**

——**Art. 299** — Applicability — Contracts on behalf of railway administration — If exempt. See Government of India Act (1935), S. 175. **AIR 1957 Pat 586 (DB).**

——**Art. 299 — Transactions between State Bank and its constituents — Form of.**

Every executive act need not be clothed in the particular form referred to in Art. 299 and a transaction does not become invalid by not being so expressed. Thus a transaction of mortgage between a State Bank and its constituent though in exercise of the executive power of the State, need not be expressed to have been made in the name of the Governor. **ILR (1959) Punj 1384: AIR 1959 Punj 440 (447) (Pt J) (Pr 16) (DB).**

[**Reversed** on another point in AIR 1963 SC 22.]

12. Contracts of service.

——**Arts. 299, 309, 311, 320 — Government servants — Contract of employment — Fundamental Rules, R. 49 —Bombay Civil Services, Conduct, Discipline and Appeal Rules, R. 33 — Order appointing employee to post communicated by Deputy Secretary by and in name of Governor — Order published in Government Gazette and communicated to employee — Order amounts to contract of employment — Order is not invalid because sanction of Public Service Commission was not obtained.**

If the proper authority issues an order appointing a person to a post and that person accepts it and joins his duties, then he is a person employed and is governed by all the rules and contract of service must be regarded as having been made out.

Where an order appointing a person to a post for a fixed period was signed by the Deputy secretary to the Government by order and in the name of the Governor of Bombay and was also published in the Bombay Government Gazette and communicated to the employee and he worked in obedience to it, it becomes a contract of employment and the employee must be held to have been employed for the period between the two dates. AIR 1953 Cal 319 and AIR 1954 Cal 335, Dissented from.

A notice by the Head of the Department to the employee informing him that his services were liable to be terminated without mentioning any date and a Government Resolution containing only a direction that certain person should relieve the employee are inadequate to terminate his

employment and he must be deemed to be in service until the force of the order appointing him is completely exhausted.

Even if it is assumed that the services of the employee were terminated before the date upto which he was appointed, the termination of his service is contrary to R. 49 of the Fundamental Rules, R. 35 of the Bombay Civil Service, Conduct, Discipline and Appeal Rules and Art. 311 of the Constitution.

The fact that while making the appointment of the employee, the procedure of referring the matter to Public Service Commission was not followed does not make the order appointing him an invalid order nor is the order subject to sanction being accorded by the Public Service Commission thereafter. **64 Bom LR 446 : 1962 Nag LJ 569 : ILR (1962) Bom 532 : (1963) 2 Lab LJ 563 : AIR 1963 Bom 13 (14 to 16) (Pt A) (Prs 7, 9, 10, 13, 14, 15).**

——**Art. 299** — Contract of employment —Need not comply with formalities prescribed by section — Contract concluded by an offer of competent authority and acceptance by civil servant concerned creates a binding and valid contract —Suit on basis of such contract can well be maintained in law. See Government of India Act (1935), S. 175 (3). **AIR 1962 Cal 349.**

——**Arts. 299, 309, 310 and 311** — "Appointing authority" in respect of Railway Servant in non-gazetted post — Railway Establishment Code and contract of service — Question as to who is appointing authority to be determined by Rules and not by service contract — President of India is not appointing authority in such cases. See Ibid, Art. 311 (1). **(1961) 3 Fac LR 344 (Cal).**

——**Art. 299 — Government servant — Formal contract — Necessity.**

The origin of Government servant is contractual. There is an offer and acceptance in every case. Once appointed, however, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by Statutory Rules framed and altered unilaterally by the Government. The Constitution framers never intended that there must be a formal contract of employment in the case of every Government servant and such formal contract must comply with the formalities prescribed by Art. 299 of the Constitution. The word 'contract' in Art. 299 must be given a restricted meaning so as to leave out the case of Government employees. AIR 1937 Bom 449; AIR 1953 Cal 319, Dissented from; AIR 1953 Pepsu 196 & Observation of Vivian Bose, J. in his dissenting judgment in AIR 1958 SC 36, Rel. on. **(1959) 1 Lab LJ 128 : ILR (1960) 1 Cal 136 : 62 Cal WN 622 : (1958) 1 Cal LJ 175 : AIR 1958 Cal 551 (553 to 556) (Pt D) (Prs 11, 13).**

——**Art. 299** — Service agreement of the person not in conformity with requirements of S. 175 (3) of Government of India Act or Art. 299 of Constitution — Not a servant of Union of India — Art. 311 (2) not applicable. See Ibid, Art. 311(2). **AIR 1953 Cal 319.**

——**Art. 299 — Applicability — Appointment of Government servants — 'Contract' — Meaning of.**

The expression 'contract' in Art. 299 of the Constitution and in S. 175 (3) of the Government of India Act must be given a restricted meaning so as to exclude the case of Government servants whose employment though originating in contract is regulated after appointment by statutory rules and regulations not by contract. AIR 1958 SC 36, Rel. on. The employment of a Government servant does not require a formal document in writing as prescribed by Art. 299 of the Constitution. The expression 'Contract' in Art. 299 applies only to commercial contracts and not to contracts of employment of Government servants. In the case of covenanted servants and in a very small number of cases there is employment on special terms. AIR 1937 Bom 449 and AIR 1953 Cal 319, Dissent. from. **1960 Pat LR 254 : (1961) 1 Lab LJ 196 : ILR 39 Pat 811 : (1960) 1 Fac LR 138 : 1960 BLJR 312 : AIR 1960 Pat 366 (369) (Pt B) (Prs 7, 8) (DB).**

——**Art. 299** — Contract of service — 'Employment' and 'appointment' — Distinction. See Ibid, Art. 16. **AIR 1957 Pat 617.**

——**Art. 299 — Scope.**

When a Government offers a job to a person, and the latter accepts it or when a person applies for a job and the Government agrees to appoint him on that job, there comes into existence a sort of agreement between the Government on one hand and the person concerned on the other but it is doubtful whether such an agreement would come within the purview of the term "contract" used in Art. 299. The operation of Art. 299 is limited to contracts relating to property, etc., and in case of persons who join regular service of the Union or a State it is not necessary at all that they should enter into any kind of contract. The object of a contract is to regulate the mutual rights and duties of the parties and as regards persons who are in regular service of a Union or a State their rights and duties are laid down in the Constitution and the rules of service framed by the Government under the powers given to them by the Constitution. **ILR (1953) Patiala 588 : AIR 1953 Pepsu 196 (199) (Pt C) (Pr 5).**

13. Immunities in favour of the President, Governor or Rajpramukh.

——**Arts. 299 and 300** —Contract between contractor and Union of India but entered into in name of President of India —Arbitrator by mistake passing award against President — Mistake held could be corrected by Court under S. 15. See Arbitration Act (1940), S.15. **AIR 1964 Cal 91.**

——**Art. 299** — Government contract in the name of President as required by Art. 299 (2) of the Constitution — Dispute referred to arbitration— Counter statement of facts filed by Union of India — Everbody proceeding on basis that the liability, if any, was that of the Union — Arbitrator making award against President — Held, what the arbitrator really meant was to make the Union liabie — There was obvious error in award in directing President to pay amount — Court had power under S. 15 to correct such an error in award. See Arbitration Act (1940), S. 15. **AIR 1963 Cal 307.**

——**Arts. 299 (2), 300 and 361 (1), Proviso 2 — Scope.**

In suits maintainable against the State, the State is impleaded as a party therein in accordance with Art. 300 of the Constitution of India. The article when read with Art. 299 (2) of the Constitution, which does create certain immunities in favour of the President, the Governor and the Rajpramukh, suggests that the framers of the Constitution did not intend to create any immunity in favour of the State from any consequential proceeding against it in a suit wherein the State is a party and which is maintainable in law against it.

Article 300 read with the second proviso to Art. 361 (1) makes it clear that the Government of a State may be sued even in respect of official acts in certain circumstances. **ILR 33 Pat 603: 1954 Cr LJ 1953: AIR 1954 Pat 513 (521, 524) (Pt C) (Prs 26, 27, 39) (DB).**

ARTICLE 300

SYNOPSIS

(Constitution of India, Art. 300)

(1) Scope, object and applicability.
(2) In what cases suit will be against Government — General principles.
(a) Maintainability of suit.
(b) Vicarious liability.
(c) Suit against new State.
(d) Principal and agent.
(e) Extent of State liability.
(3) Suit on contracts.
(4) Suit on torts.
(5) Act of State.
(6) "Can sue or be sued".
(7) Writ proceedings.
(8) Contempt of Court.
(9) Proceedings pending at commencement of the Constitution.
(10) States.
(11) Personal exemption of President or Governor.
(12) State as juristic person.
(13) Crown, when bound by statute.
(14) Duty of the executive to obey the law.
(15) Suit against the railway.
(16) Local jurisdiction.

1. Scope, object and applicability.

——Art. 300 (1) — Scope — Suits by or against Government.

Article 300 (1), of the Constitution consists of three parts. The first part, deals with the question about the form and the cause-title for a suit intended to be filed by or against the Government of India, or the Government of a State. The second part provides, inter alia, that a State may sue or be sued in relation to its affairs in cases like those in which a corresponding Province might have sued or been sued if the Constitution had not been enacted. In other words, when a question arises as to whether suit can be filed against Government of a State, the enquiry has to be: could such a suit have been filed against a corresponding Province if the Constitution had not been passed? The third part of the article provides that it would be competent to the Parliament or the Legislature of a State to make appropriate provisions in regard to the topic covered by Art. 300 (1). But when no such law has been passed by the Government concerned, the liability of the Government concerned would have to be determined by the second part as mentioned above. Kasturi Lal Ratia Ram Jain v. State of U. P., **1965 (2) Cri LJ 144: ILR (1965) 2 All 175: (1965) 1 SCWR 995: (1965) 2 SCJ 318: (1965) 2 Mad LJ (SC) 15: (1965) 2 Andh WR (SC) 15: 1965 Mad LJ (Cri) 571: (1965) 1 SCA 809: AIR 1965 SC 1039 (1040) (Pt B) (Pr 14).**

——Art. 300 — Contract by Government of Vindhya Pradesh a Part C State — Suit against Government —Form of — Proper defendant was State of Vindhya Pradesh and not Union of India as S. 79 (a) C. P. C. did not apply to a Part C State. See C. P. Code (1908), S. 79. **(1961) 2 SCJ 549: AIR 1962 SC 145.**

——Art. 300 — State's liability for own acts or acts of its officers — Liabilities of the Government of India were the same as those of East India Company. See C. P. Code (1908), S. 79. **AIR 1957 Cal 617 (DB).**

——Art. 300 — The State in India claims no exemption from liability to be sued in its own Courts when the cause of action arises, either in contract or tort against a State Railway. See Letters Patent (Cal) Cl. 12. **90 Cal LJ 25: AIR 1953 Cal 1.**

——Art. 300 — Applicability — Applies to proceedings by way of suit against the State or the Union of India — Does not apply to contempt proceedings against the State. **ILR (1953) 1 Cal 355: 56 Cal WN 387: 1953 Cri LJ 136: AIR 1952 Cal 919 (921, 922, 926, 927) (Pt A) (Prs 5, 6, 28, 29) (DB).**

——Art. 300 — Right of suit against State —Sovereign acts — Government of India Act (1858), S. 65 — Government of India Act (1915), S. 32— Government of India Act (1935), S. 176.

When Crown took over the Government of India from the hands of the East India Company, it was provided by S. 65 of the Government of India Act, 1858, that every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company, if the Government of India Act, 1858, had not been passed. This provision was reproduced in S. 32 of the Government of India Act, 1915 and the Government of India Act of 1935, also mentioned that position mutatis mutandis, and the present Constitution makes no departure therefrom. The doctrine of immunity of the Sovereign had been extended to the East India Co in respect of its 'sovereign acts'. The East India Company was held not to be liable for acts done by the Company or its servants, in the exercise of its 'sovereign powers', and, consequently, the Company's successor, which was the Secretary of State for some time and the Indian Union of the States subsequently, is entitled to the same privilege. **26 Cut LT 392: AIR 1961 Orissa 124 (127, 128) (Pt B) (Pr 5) (DB).**

——Art. 300 — S. 70 of Contract Act — Supply of hard coke by plaintiff to Military Department of Government of India — Supply rejected as being not up to specification — Direction as to its disposal given by Deputy Coal Commissioner — Suit by plaintiff to recover price is governed not by S. 70, Contract Act, but by Rr. 8 and 10-A Colliery Control Order, 1945 — Frame of suit — Suit brought against Union of India is not competent. See Contract Act (1872) S. 70. **AIR 1959 Pat 347.**

——Art. 300 — Liability of Crown for acts of its servants — Present position in India — Immunity of State for tortious acts — Exceptions to — See Torts. **AIR 1954 Pat 513.**

——Art. 300 — Scope. See Ibid, Art. 299 (2). **1954 Cri LJ 1593: AIR 1954 Pat 513 (DB).**

——Art. 300 — Scope — Suits by or against Government — Maintainability.

The Government can sue and be sued in Courts of law in the same way as ordinary persons sue and are sued, although there may in certain cases be limitations and reservations or exceptions specifically provided by the legislature. Art. 300 of the Constitution contains the legal authority for the Government of India or the

Government of any State to sue or be sued. State of Punjab v. Okara Buyers Syndicate, Ltd. **60 Punj LR 546: ILR (1958) Punj 2201: AIR 1958 Punj 456 (457) (Pt B) (Pr 7) (FB).**

——**Art. 300** — State or Government — If person — Capacity of State to sue and be sued — It is true that the State is capable of suing and being sued but that is not because the State is a person but because Art. 300 of the Constitution has made an express provision in that behalf. See Ibid, Art. 14. **AIR 1957 Punj 150 (DB).**

——**Art. 300 — Suits against Government — Maintainability — Part B States — Position in United State of Rajasthan including Kotah State — Rajasthan Administration Ordinance (I of 1948), S. 17 — Hidayat Gair Mansookh Shuda Seege Diwani (Kotah) Hidayat No. 22 (as amended in 1947).**

Under Art. 300, the position of the States which formed part of British India before Independence and that of the Union of India remained the same as it was under S. 176 of the Government of India Act, 1935, S. 32 of the Government of India Act, 1919 and S. 65 of the Government of India Act, 1858. Suits could be filed against the East India Company in matters in which no suit lay under the Common Law of England against the Crown. The position, in this connection, of an Indian State, however, is different for the reason that S. 176 of the Government of India Act, 1935 and the corresponding sections of the earlier Government of India Acts did not apply to them. The United State of Rajasthan could sue and be sued under Art. 300. Thus the position of the State of Rajasthan to sue and be sued cannot be determined on the basis of the position of the East India Company before the year 1858. AIR 1957 Raj 305 held not dealt with properly in the light of law applicable to it.

A Sovereign State cannot be sued in its own Courts or in any other without its consent, but it may waive this privilege. S. 17 of Rajasthan Administration Ordinance No. 1 of 1948, contains a specific provision about the consent of the United State of Rajasthan for being sued in its own courts. In this provision, unlike Art. 300, no limitation whatsoever has been provided as regards the nature of the suits which might be brought against the State.

After the repeal of Hidayat 22, and the substitution of a new provision in 1947, suits could be filed against the Kotah State or its departments after serving a notice under S. 80 of the Civil Procedure Code without obtaining permission of the Darbar. The laws in force in Kotah State were continued by S. 3 of Rajasthan Ordinance No. 1 of 1948. By the provision of S. 17 of Ordinance No. 1 of 1948 the same position was reiterated and extended throughout the territories of the United State of Rajathan. **1960 Raj LW 225: ILR (1960) 10 Raj 784: AIR 1961 Raj 64 (67, 68, 69) (Pt A) (Pr 12) (DB).**

——**Art. 300 — Suit against State Government for wrongful act of Government servant — Parties — Government servant need not be impleaded where no relief is sought against him.**

In a suit against the State Government for compensation for wrongful detention, it is not necessary to implead as a party the Government servant under whose orders the plaintiff was detained when no relief is sought against him. It is open to the plaintiff to sue the servant and the master both or only one of them. **1960 Raj LW 225: ILR (1960) 10 Raj 784: AIR 1961 Raj 64 (69) (Pt B) (Pr 13) (DB).**

2. In what cases suit will lie against Government — General principles.

(a) Maintainability of suit.

(b) Vicarious liability.

(c) Suit against new State.

(d) Principal and agent.

(e) Extent of State liability.

2. In what cases suit will lie against Government — General principles

■ ——**Art. 300** — Regulations — Contravention of — Right of action in Court — Executive orders passed after enquiry — Variation of — Effect — Birth date fixed for service book — Not a date for all departments. See Travancore Service Regulations. **AIR 1958 Ker 1 (FB).**

2 (a). Maintainability of suit.

——**Art. 300 —Suit against Union of India —Maintainability — C.P.C. (1908), S. 9 — Government of India Act (1935), S. 176 — Government of India Act (1915), S. 32.**

The Union of India is liable to be sued for all acts arising out of breaches of the Municipal law in the same way as a private individual. Case law discussed.

In this view, the Union of India can be sued for conversion of a large quantity of earth dug and removed from the land belonging to the plaintiff and laid on the railway track. **ILR (1951) 3 Assam 279: AIR 1952 Assam 141 (145) (Pt D) (Pr 26) (DB).**

——**Arts. 300 & 311 — Civil servant — Wrongful dismissal from service — Suit for damages against Government — Maintainable — Measure of damages.**

A Civil servant wrongly dismissed from service in breach of S. 240 (3) of the Government of India Act, 1935, or Art. 311 (2) of the Constitution of India is entitled to maintain a suit for damages for wrongful dismissal. The measure of damages is the loss suffered by reason of such dismissal. AIR 1958 Cal 407, Rel. on. **AIR 1962 Cal 349 (359, 360) (Pt C) (Prs 35, 36).**

——**Arts. 300 (1) and 310** — Suit by member of Armed Services against termination of service — Maintainability. See Patiala State Forces Regulation (1930), Regulation 39. **ILR (1965) 1 Punj 752: 67 Punj LR 504: 1965 Cur LJ 269.**

——**Arts. 300 and 310 (1) — Suit by railway servant against Union of India for arrears of salary — Maintainability — Railway Establishment Code, Vol. I, Form No. 1 in Appendix 24 and Vol. II, Paragraph 2003, Item 24.**

The plaintiff, a railway employee, held the substantive post of a station master in Grade II. Subsequently, though the plaintiff was selected as a Station Master Grade IV on a higher scale of pay he was not promoted to that post. Pending his representation to the higher authorities the scales of pay of the various grades were revised and the old employees were required to exercise their option within a prescribed time either to retain the existing scales or to come in the new scales. The plaintiff opted provisionally for the new scales pending the decision of his representations. The plaintiff was promoted to grade V and he continued to draw his salary for that grade under the old scale. Subsequently, on discovery of the mistake his pay was reduced to the minimum prescribed for Grade V under the new scales. The plaintiff filed a suit claiming that he was entitled to the old scale applicable

to Grade V and also claimed a certain amount representing the difference between the two scales.

Held, on facts (i) that the option exercised by the plaintiff was to be treated either as provisional or in view of paragraph 2 (c) of the circular he should be deemed to have retained the existing scales of pay.

(ii) that the combined effect of item 24 of paragraph 2003 (Vol. II, Railway Establishment Code, Second Reprint) read with Form No. 1 in appendix 24 to Vol. I of that Code, when applied to the case of the plaintiff would be that he was entitled during the relevant period to the old scale of pay of the Station Master of the Fifth Grade.

(iii) That as the plaintiff must be deemed to have been placed in the old scales, he was entitled to draw pay in that scale, and on the authority of 1954 SCJ 300 : AIR 1954 SC 245, Abdul Majid's case, the suit, so far as the relief of arrears of salary was concerned, was maintainable. AIR 1955 Punj 122, Dist. **AIR 1961 Punj 329 (330, 331) (Pt A) (Prs 7 to 9).**

2 (b). Vicarious liability.

——Art. 300 — Tortious act of Government servant — Vicarious liability of the State — Acts done in purported exercise of delegated authority — State cannot be held liable for acts of the servant concerned.

Where a Government servant acts in the discharge of his statutory duties or in exercise of delegated sovereign power, the State is not vicariously liable for any loss caused to the subject resulting from the servant concerned's misconduct or negligence.

This would be so even where the servant concerned abuses powers vested in him for the simple reason that abuse of power does not mean absence of power. Abuse of power resulting in any injury to any person is certainly actionable as it results in withdrawal of any immunity conferred by law from the person guilty of such abuse. But action for such an act shall be against the officer concerned personally.

The Station Officer, in the instant case, who seized the plaintiff-respondent's goods acted in the discharge of his statutory duty. Therefore, the State was not liable vicariously, for any loss to the plaintiffs resulting from Station Officer's misconduct or negligence or misconduct of other State official or officials. AIR 1962 SC 933, Dist. C. A. No. 105 of 1963 Dated 20-9-1964 (SC), Foll. (1861) 4 HCR App. 1, Ref. **1965 All LJ 823.**

——Arts. 300, 265 and 31 (1)—Illegal seizure of goods in execution of certificate under S. 46 (2), I. T. Act — It is wrongful deprivation of property —Action of attaching officer not empowered by law within meaning of expression "levy and collection" in Art. 265 — Immunity of Government for acts of subordinates in exercise of sovereign powers is not a dogma and has to be considered on facts of each case.

Where in execution of a certificate under S. 46 (2) Income Tax Act, goods of the assessee in possession of a pledgee are attached by the Revenue Officer under Ss. 150 and 154 of the Bombay Land Revenue Code the Revenue Officer acts in excess of his authority and the attachment is illegal and not merely irregular.

When the goods are damaged while in the custody of the Government and the pledgee files a suit against the revenue officers in their official as well as private capacities, for recovery of amount due from the pledgor which he could not recover due to illegal action of the officers, the gravamen of the charge is illegal action of the defendants and not negligence by them. Cause of action is not supplied by decay caused to goods when in Government custody but upon illegal seizure. In such a case question of special authorisation to Revenue Officer or subsequent ratification by higher officers would not arise, because the revenue officers had acted for the benefit of Government.

When the conduct of Government servants in the discharge of Governmental functions was questionable, the Government could not be held liable unless it was established that those acts had been done under the orders of the Government or had been subsequently adopted and ratified by it. The question of ratification arises only when Government is sought to be held liable for tort committed by its servants in the discharge of sovereign functions. If the act is ratified, the Government becomes liable notwithstanding that the act was in the discharge of sovereign functions. AIR 1962 All 233, Ref.: AIR 1915 Mad 434 and AIR 1944 FC 41, Distinguished.

The action taken by the Revenue Officer in seizing the goods was not empowered by law within the meaning of the expression "levy and collection" in Art. 265. It is on that ground also that the act was illegal. At the same time, in view of the fact that the Revenue Officer was exercising delegated authority, he cannot be taken to be doing an act in the discharge of his statutory duties. ILR 28 Bom 314 and AIR 1950 All 206 and AIR 1956 All 75 and AIR 1961 Madh Pra 316, Distinguished.

The acts of levying of a tax and its recovery are acts done in the exercise of sovereign functions. At the same time, the provisions of Article 265 of the Constitution of India which lays down that no tax shall be levied or collected except by authority of law or the provisions of Article 31 (1) which lay down that no person shall be deprived of his property save by the authority of law, cannot be ignored. But in the present case, the Revenue Officer has proceeded to levy and recover the tax without any authority and, in fact, beyond the authority. The immunity of the State in respect of acts done by its subordinates in the exercise of sovereign powers cannot be considered as a dogma or a mantra and will have to be considered on the facts of each case. The act is purported to be done under the authority of Ss. 150 and 154 of the Land Revenue Code, but it is found that the act is not only illegal but unconstitutional. ILR 5 Mad 273, Relied on.: (Suit decreed against the Union of India and the Collector, Mamlatdar and the Circle Officer in their official capacity and not in their private capacity) **67 Bom LR 824 : AIR 1966 Bom 134 (140 141, 143, 145) (Pt A) (Prs 8 to 10, 14).**

——Art. 300 — Public servant acting within the scope of his authority receiving payments and embezzling money — Liability of State for fraudulent act of public servant — (T. C. Revenue Recovery Act (7 of 1951), S. 4).

Where the Proverthicar acting within the scope of his authority under S. 4 of the T. C. Revenue Recovery Act, 1951, receives certain payment made by the plaintiff and later embezzles the money, the State cannot plead that the payment is not valid so long as it is not alleged or proved that the plaintiff was a party to such fraud. **ILR (1957) Kerala 31 : 1957 Ker LT 193 : (1957) 8 STC 502 :AIR 1957 Ker 40 (41) (Pt B) (Pr 4) (DB).**

——Art. 300 — Liability of State for acts of its officers — Seizure of logs of wood cut by plain-

tiff from the forest by officer — Order of Board of Revenue asking officer to return property to plaintiff.

Held, on facts that so far as the seizure of logs cut from the village forest was concerned, it was perfectly in pursuance of the statutory provisions. But the moment the order fining the plaintiff and confiscating the timber was set aside by the Board of Revenue with express direction to return the timber there was hardly anything left to be performed by the revenue authorities under any statutory provisions. The refusal to return or the inaction on the part of the revenue authorities in the matter of returning the timber was not under any statutory powers. It was thus a simple case where the State would be deemed to have held the property through its officers for the benefits of the plaintiff and the suit to claim the same being in the nature of an action in detenue based upon its wrongful detention. It was certainly not an action for wrongful conversion. AIR 1958 SC 274, Rel. on. **ILR (1962) Madh Pra 710 : 1963 MPLJ 136 : 1963 Jab LJ 311 : AIR 1963 Madh Pra 174 (175, 176) (Pr 6) (DB).**

——**Art. 300 — Tort by Government servant — Servant discharging duty imposed by law — Government not liable.**

The Sub-divisional Officer starting proceedings against a proprietor for illegal cutting of trees on his land under Rr. 5 and 9 framed by the State Government under S. 202 of the C. P. Land Revenue Act (II of 1917) exercises statutory powers and duties imposed on him by the legislature, and the Government is not liable for tort committed by such officer in the course of such duty. **1961 MPC 267 : 1961 MPLJ 456 : 1961 Jab LJ 601 : AIR 1961 Madh Pra 316 (317, 320) (Pt A) (Prs 9, 20) (DB).**

——**Art. 300** — Liability of State for acts of its servants — State claiming immunity from liability on ground that act was done in performance of sovereign function — Pleading and proof — Absence of — Effect. See Tort. **AIR 1960 Mys 222.**

——**Art. 300 —Liability of Government for negligence of its servants — (Tort — Master and Servant — Vicarious liability) — (Banker and customer) — (C. P. Code (1908), S. 9) — (Bihar and Orissa Local Self Government Act (III of 1835), S. 138 —Rules under — Rr. 22, 23, 25, 27, 38, 40).**

The treasury had issued the cheque-book on the basis of a forged requisition form; the treasury had also received a forged memorandum conveying the intimation that this new cheque-book had been brought into use on 18th October, 1944 and further the treasury had made payments on the basis of certain cheques, bearing forged signatures of the chairman and a member of the Finance Committee of the District Board. All the payments under these forged cheques were made because of negligence and want of proper care on the part of the officers of the treasury as they failed to compare the signature of the Chairman, appearing either on the red requisition form or on the cheques, with the specimen signature of the Chairman kept in the custody of the Accountant of the treasury.

Held, that when the duty to be performed is imposed by law, and not by the will of the employer, the employer is not liable for the wrong done by the agent in such employment. In the present case the officers of the treasury were performing duties imposed upon them by law and not by the will of their employer. Powers and duties, which are fixed by law, are governmental and not commercial and acts done in the exercise of these powers, or in the purported fulfilment of those duties are not within the rule of vicarious liability. The State could not be said to be engaged in the conduct of a business or commercial undertaking as though the State was conducting a sort of business of banking in opening treasuries. It was impossible to hold that the State was engaged in an undertaking which was of a character of private business and it was liable for damages as the act of negligence was committed by its servants in the course of employment and in the discharge of duties which were incidental to the conduct of a private business. Case-law discussed. **1954 BLJR 603 : AIR 1954 Pat 529 (533, 534, 536, 538, 539) (Pt C) (Prs 17, 23, 33, 41, 44 to 46) (DB).**

●——**Art. 300** — Liability of State for tortious act of its servant — Suit against Union of India for tort of military driver — Tort committed while transporting coal to Army General Headquarters — Suit maintainable. AIR 1961 Punj 336 (FB) and AIR 1957 Raj 305, Rel. on; AIR 1959 Punj 39, Disting — Government's immunity from actions in respect of acts of its servants is limited to cases involving Acts of State. Union of India v. Jasso, **64 Punj LR 318 : ILR (1962) 1 Punj 708 : AIR 1962 Punj 315 (317, 318) (Prs 6, 8) (FB).**

●——**Art. 300 (1) — Liability of State for the tortious act of servants — Test.**

By virtue of Art. 300 and the corresponding provisions in the previous Constitution Acts since 1858, the liability of the State is exactly the same as that of the East India Company prior to 1858 and there has been no change in the substantive law relating to tortious liability of the State. The basis of the vicarious liability of the master is that he has absolute power and discretion in the matter of employment and is able to get rid of his servant at will, and further that the servant acts, in the course of his employment, for the benefit of his master. Should it, therefore, appear that a servant employed by the State has acted for the benefit of the State and has in the process committed a tort, the State would be held liable to make good the damage. The State is not absolutely immune from liability.

Where a truck belonging to the Public Works Department driven by the driver in the employment of the Department struck against a motor cycle and as the result of the negligent act the person riding the motor-cycle was seriously injured:

Held, that his employer, although the State, must shoulder the responsibility for his negligent act committed in the course of his employment just as an ordinary employer would. Rup Ram Kalu Ram Aggarwal v. Punjab State, **ILR (1961) 2 Punj 325: 63 Punj LR 231: (1961) 1 Lab LJ 740 : AIR 1961 Punj 336 (337 to 340) (Prs 8, 10, 12) (FB).**

——**Art. 300 — Tort — Negligent driving by military driver while supplying meals to military personnel on duty resulting in death of passer-by — Suit for damages against Union of India — Maintainability.**

Where as a result of rash and negligent act of a driver of a truck of the Military Department of the Union of India, while he was engaged in military duty in supplying meals to military personnel on duty, the plaintiff's father is knocked down and run over, there is no cause of action

against the Union of India for the tort of its servant. 5 Bom HCR Appendix A, p. 1, Rel. on; ILR 40 Cal 391, Ref. **61 Punj LR 30 : ILR (1958) Punj 923: AIR 1959 Punj 39.**

——Art. 300 — Liability of State for acts of its public servants subsequently ratified.

An act done for another by a person not assuming to act for himself but for such other person, though without any precedent authority from the former, becomes the act of the principal, if subsequently ratified by him, and in that case the principal would be bound by the act, whether it be for his detriment or his advantage, and whether it be founded on a tort or a contract, to the same extent as if it were done by his previous authority.

Again, the same principle would be applicable where acts, other than an act of State, are done by public servants for or in the name of their employer, the State, where such acts are ratified by subsequent approval, in much the same way as private transactions. **1962 Raj LW 49 : ILR (1961) 11 Raj 1133 : AIR 1962 Raj 36 (40) (Pt B) (Prs 12, 13).**

——Art. 300 — Suit against Government for compensation for act of Commissioner in ordering wrongful detention under delegated powers — Not maintainable — Maxim 'Respondeat Superior' — Law of Principal and Agent — Applicability — Rajasthan Public Safety Ordinance (IX of 1948), Ss. 3 (1), 43.

Where the Commissioner acting under the powers delegated under S. 43 of the Rajasthan Public Safety Ordinance, IX of 1948, issues warrants of arrest under S. 3 (1) against the plaintiff which action was subsequently approved by the State Government and the order of the Commissioner is found not to have been passed in good faith, a suit by the plaintiff for damages for false imprisonment does not lie against the State Government. The delegation of the power to the Commissioner under S. 43 did not make him an agent of the Government in the ordinary sense of the term for the reason that the Commissioner, after he was clothed with the powers to act under S. 3, had to exercise his own discretion in the matter. The power delegated was a statutory one and in exercising that power, the Commissioner did not act as an agent of the Government.

The maxim 'Respondeat Superior' has no application, nor does the ordinary law relating to principal and Agent, apply to such cases. Whatever wrong he does is his own and not that of his employer, the officer performing such a statutory duty is not obeying any command of the State, but that of the law.: AIR 1916 Mad 1157, and ILR 28 Bom 314 (325) and 16 Ind Cas 714 (Bom), Foll.

The Commissioner not being an agent of the Government, his act in ordering the detention of the plaintiff cannot be said to have been performed on behalf of the Government. Government could not, therefore, ratify it even though it may have approved of the action of the Commissioner. AIR 1951 SC 245, Disting. **1960 Raj LW 225: ILR (1960) 10 Raj 784 : AIR 1961 Raj 64 (71, 72) (Pt E) (Prs 21, 23, 32) (DB).**

——Art. 300 — Liability of State for acts of its servants — Act done in exercise of sovereign powers and acts done in conduct of undertakings which may as well be carried on by private individuals — Distinction — Death caused by rash and negligent driving by Government employee — Liability of Government for damages — Law in England and India. See Tort — Vicarious liability. **AIR 1957 Raj 305 (DB).**

2 (c). Suit against new State.

●——Art. 300 (1) — Service in former Wadhwan State —Formation of Saurashtra State — All existing law in Wadhwan State continued till repealed — No law repealing Dhara No. 29 of Svt. 2004 was passed by Saurashtra State—Rights of plaintiff were, therefore, carried over when Indian Republic was formed — As plaintiff became an Indian citizen, repudiation as an act of State was not possible — Covenant entered into respecting condition of services —Right of servant under existing law not taken away — Compulsory retirement by Saurashtra State — Obligation of the Ruler passed to Saurashtra State — Plaintiff appellant could enforce his right under the existing law — Suit maintainable. Bholanath v. State of Saurashtra, **1955-1 Lab (SC) 355: AIR 1954 SC 680 (682) (Pr 13).**

●——Art. 300 — Contractual liabilities of covenanting Dholpur State — Liabilities devolved on United State of Rajasthan and then on present State of Rajasthan— Liabilities are enforceable in present State of Rajasthan. See Ibid, Art. 295. **AIR 1960 Raj 256 (FB).**

——Art. 300 — International Law — Suit for damages against new State for torts committed by former State which has ceased to exist — Suit is not maintainable — (Torts) — (International Law). AIR 1924 PC 216 and AIR 1958 SC 816, Rel. on. **1960 Raj LW 132 : ILR (1959) 9 Raj 1277 : AIR 1960 Raj 49 (50, 51, 55) (Pt A) (Prs 8, 9, 19) (DB).**

2 (d). Principal and Agent.

——Art. 300 — State and Public Servant — Authority to purchase on behalf of State — Liability of State — Unauthorised purchase — State not liable. See Principal and Agent. **1962 Mys LJ (Supp) 527.**

——Arts. 300, 299 — Government servant entering into contract on behalf of Government— Unauthorised provision inserted in contract — No ratification by Government — Provision is not binding on Government.

Held, that when a particular statute requires a particular act to be done in a specified manner to be valid and binding, it must be done in that manner and any violation of the provisions of the statute will render the act so done unenforceable at law. The acts of a Government Officer bind the Government only when he is acting in the discharge of a certain duty within the limits of his authority or if he exceeds that authority when the Government, in fact or in law, directly or by implication, ratifies the excess. As the Superintending Engineer had no authority to bind the State of Orissa for the payment of sales tax, to that extent the contract must be held to be void. (1883) 8 AC 517 and 8 Moo Ind App 529 (PC) and AIR 1950 Mad 194; AIR 1930 Lah 364, Rel. on; ILR 26 Cal 701 (PC) and AIR 1954 SC 236 and AIR 1922 All 324 and AIR 1915 Cal 54 and AIR 1955 SC 468, Dist. **(1961) 3 Orissa JD 289: AIR 1962 Orissa 117 (121 to 123) (Pt A) (Prs 13, 14, 19) (DB).**

——Arts. 300, 299 — Government servant entering into contract on behalf of Government — Unauthorised provision inserted in contract — No ratification by Government — Provision is not binding on Government. See Ibid, Art. 299. **AIR 1962 Orissa 117.**

2 (e). Extent of State liability.

——**Art. 300** — Liability of State — Extent of — Illegal attachment by tahsildar — Government is not liable for tort — Officer effecting illegal attachment cannot be sued in his official capacity. See Tort — Government Servant. **(1965) 1 An WR 183: AIR 1965 Andh Pra 457 (DB).**

3. Suits on contracts.

——**Art. 300 — Contracts by Government — Formal document — Necessity.**

Contracts by the Government may be embodied in formal documents and even if no formal document is necessary, the correspondences embodying the contract must ex facie show that the contract was entered into by Government or on behalf of the Government. **(1961) 3 Orissa JD 289: AIR 1962 Orissa 117 (119) (Pt B) (Pr 8) (DB).**

——**Art. 300 — Contract between citizen and State — Realisation of contractual dues by State.**

For realisation of purely contractual dues from an individual with whom a State has entered into contract, the State is in the same position as any other citizen in the State. Unless there is a statutory liability imposed by any Act or some other legislative sanction the dues to the State are to be governed by the same law as other contractual dues. **ILR (1959) Cut 365.**

4. Suits on torts.

●——**Art. 300** — Tortious acts committed by public servants in course of employment and in exercise of statutory functions delegated to them by Government — State is immune from liability — Claim for damages held not sustainable. See Torts— Negligence. **1965 (2) Cri LJ 144: AIR 1965 SC 1039.**

●——**Art. 300 — Tortious act by servant of State of Rajasthan — Act done in the course of employment but not in connection with sovereign powers of State — Still the State like any other employer is vicariously liable.**

Where the driver of a jeep, owned and maintained by the State of Rajasthan for the official use of the Collector of a district, drove it rashly and negligently, while bringing it back from the workshop after repairs and knocked down a pedestrian and fatally injured him.

Held, that the State can be made vicariously liable for the tortious act, like any other employer. The State of Rajasthan cannot escape liability so long as there is nothing to show that its predecessor, the Union of Rajasthan, as it was brought into existence by the last stage of integration, just before the coming into effect of the Constitution, was not liable by any rule of positive enactment or by Common Law. State of Rajasthan v. Mst. Vidhyawati, **(1963) 1 SCJ 307: (1963) 1 Mad LJ (SC) 70: (1963) 1 Andh WR (SC) 70: 1962 Supp (2) SCR 989: (1962) 2 SCA 362: AIR 1962 SC 933 (935 to 940) (Prs 4 to 7, 9, 10, 14, 15).**

——**Art. 300 —Suit against State Government on tort — Tortious act of Government or its servants — Government cannot claim immunity.**

Government cannot claim sovereign immunity against liability for its own tortious acts or those of its servants and agents. The State, therefore, cannot claim that the requistitioning of a motor vehicle under the U. P. Requisition of Motor Vehicles Emergency Powers Act is an act of State for which it can claim sovereign immunity. AIR 1957 Raj 305, Rel. on. **AIR 1962 All 233 (235, 236) (Pt A) (Pr 8).**

——**Art. 300 — Suit against Government on tort — U. P. Requisition of Motor Vehicles Emergency Powers Act (U. P. Act 27 of 1947), S. 9 and S. 3 — Delegation of power — Officer requisitioning motor vehicles under S. 3 in exercise of power delegated to him under S. 9 — Tortious act of Government — Officer acts as its agent.**

An officer who requisitions a motor vehicle under S. 3 of the U. P. Requisition of Motor Vehicles Emergency Powers Act, under the authority of an order passed by the State Government delegating its powers to him, acts on behalf of and for the benefit of Government and does not, for the purpose of tortious liability, exercise any functions imposed upon him by law but acts as an agent of the Government which will be liable for his wrongful acts. AIR 1956 All 75 and AIR 1932 All 575 and AIR 1950 All 206, Disting. **AIR 1962 All 233 (236, 237) (Pt B) (Pr 12).**

——**Art. 300 — Suit against Government for tort of its employees — Loss of property through negligence of officers in discharge of their legal duty — Government not liable — Tort — Negligence.**

The Government is not liable for the negligence of its officers while acting in discharge of their legal duty. Where the property suspected to be stolen was seized by the police officers and kept in their custody in the police Malkhana in the exercise of their statutory duty under the relevant provisions of the Cr. P. Code, the police officers were not acting as servants of the Government but were acting in the discharge of their statutory duty and were not amenable to the control of the Government in the discharge of their duty, so that the Government, even though it is their employer, would not be liable for their negligence. AIR 1950 All 209; AIR 1956 All 75, Foll; 1959 ALJ 845, Distinguished. **1960 All WR (HC) 394: 1960 All LJ 529.**

——**Art. 300 — Suits on torts — Tortious act of Government servant ratified by Government—Suit for compensation against Government is maintainable.**

The State Government, when it ratifies the illegal acts of its officers committed by them in excess of the powers conferred by the statute and in consequence reaps benefit therefrom, becomes liable for the acts of its officers and a suit for damages for tortious acts of those servants will lie against it. **26 Cut LT 605: (1960) 2 Orissa JD 353.**

——**Art. 300** —Vicarious liability — Principle of — How far applicable to State — State taking over management of plaintiff's estate under Bihar Act 21 of 1949 — Loss caused to plaintiff due to wilful default or gross negligence of estate manager — State held liable. See Master and Servant. **AIR 1964 Pat 13.**

——**Art. 300** — Liability of Union of India to be sued in Tort — Central Excises and Salt Act (1944), S. 40. **1958 Pat LR 139: 1958 BLJR 354: AIR 1958 Pat 439 (440, 441) (Prs 2 to 4) (DB).**

——**Art. 300** — Liability of State for acts of its servants — Death caused by rash and negligent driving by Government employee — Liability of Government for damages. **1957 Raj LW 404: ILR (1957) 7 Raj 773: AIR 1957 Raj 305.**

5. Act of State.

——**Art. 300** — Act of State. See C. P. Code, (1908), S. 9. **1959 All LJ 845.**

——**Art. 300** — Civil P. C. (1908), S. 9 — Act of State when justified. See Civil P. C. (1908), S. 9. **AIR 1953 Assam 116 (DB).**

——**Art. 300** — Act of State, liability for — Trespass by servants of State for Government purposes — Trespass accompanied by damage to property — State is liable for damages. See Civil P. C. (1908), S. 9. **AIR 1953 Assam 116.**

——**Art. 300** — Act of State — Liability to be sued. See Civil P. C. (1908), S. 9. **(1953) 55 Bom LR 746: AIR 1954 Bom 129 (DB).**

——**Art. 300** — Act of state — Formation of State of Travancore-Cochin was act of State but not formation of Kerala State — Plaintiff's claim to annuity recognised by State of Travancore-Cochin — Suit for such claim against Kerala State entertainable by municipal Court. See Ibid, Art. 3. **AIR 1964 Ker 123 (DB).**

——**Art. 300** — Act of State — Law — Personal grant by ruler of Nabha as a sovereign— It is law — Grant repudiated by new Pepsu State— Repudiation is not act of State and is justiciable in municipal Courts—Act of State. **ILR (1959) Punj 2341: AIR 1960 Punj 644 (645, 646) (Prs 4, 5).**

6. "Can sue or be sued".

——**Art. 300** — The expression "sue" includes execution proceedings. See Indian Independence Pakistan Court (Pending Proceedings) Act (1952), S. 3. **AIR 1952 Assam 159 (166) (Pt D) (Pr 12) (DB).**

——**Art. 300** — 'Person' — Meaning — Includes Government — Suit against Rajasthan State Government for tortious act of Commissioner — Government can claim protection under S. 44 of Rajasthan Public Safety Ordinance, 1948 (9 of 1948) as bar to suit if other conditions laid down in the Section are satisfied. See Public Safety — Rajasthan Public Safety Ordinance, 1948, S. 44. **AIR 1961 Raj 64 (DB).**

7. Writ proceedings.

——**Arts. 300 and 226 —Application for writ of certiorari by Union of India — Maintainability of.**

The words "sue or be sued" appearing in section 176, Government of India Act, 1935 have been held to have included proceeding in certiorari. AIR 1950 SC 222 (236); 1950 SCJ 471; (1950) 2 MLJ 703 (SC), Rel. on.

The particular writ that a body like the Union of India can ask for is of course limited to the very nature of things. It cannot for example ask for a writ in the nature of habeas corpus and possibly not for a writ of quo warranto. However, it can ask for a writ in the nature of mandamus, prohibition or certiorari. Modern Legislation often confers rights and imposes liabilities upon the Government. As such, it cannot be denied the right to come up to the High Court for the enforcement thereof.

This unfettered right to apply for certiorari existed in the Dominion of India and can appropriately be invoked by the Indian Union, under the power vested in it by Art. 300. **AIR 1955 Cal 581 (583, 584) (Pt B) (Prs 4, 6).**

——**Art. 300** — Petition for writ of mandamus against Collector and Assistant Collector — In view of S. 79 C. P. C., cannot be interpreted as directed against the State Government. See Ibid, Art. 226. **AIR 1952 Him Pra 16.**

——**Arts. 300 and 226** — Art. 226 is not subject to provisions of Art. 300. **ILR (1953) Punj 472: AIR 1953 Punj 137 (144, 145) (Pt B) (Pr 30) (DB).**

8. Contempt of Court.

●——**Art. 300** — Scope — Disobedience of order of temporary injunction by State — Expression 'person' in O. 39, R. 2 (3) is employed comprehensively and not for excluding any defendant— Can be proceeded against in contempt for disobedience of the order. State of Bihar v. Rani Sonabati, **1960 Mad WN 818: (1960) 2 Ker LR 681: 1961 SCD 173: 1961 BLJR 285: (1961) 1 SCA 399: (1961) 1 SCR 728: 1961 Pat LR (SC) 26: ILR 40 Pat 216: AIR 1961 SC 221 (228 to 230) (Pt C) (Prs 26, 28, 29, 35, 36).**

——**Art. 300** — Article applies to proceedings by way of suit against the State or the Union of India — Cannot be extended to apply to contempt proceedings. See Contempt of Courts Act (1926), S. 2. **(1952) 56 Cal WN 387: AIR 1952 Cal 919 (DB).**

9. Proceedings pending at the commencement of the Constitution.

——**Art. 300 (2) (b) — Substitution under —Defence open to substituted State — Civil P. C. (1908), O. 22, R. 10 — Applicability.**

The principles, which hold good in the case of a party substituted under O. 22, R. 10, C. P. Code cannot apply to the case of a State, which has been substituted in its constitutional right. The provisions for substitution contained in Art. 300 of the Constitution have been obviously made to cover those cases where the liability has been accepted by the succeeding State. It must be established that there is a right which can be enforced against the succeeding State. If the right itself has lapsed, then the substitution will not revive the plaintiff's right. In such a case, the substitution takes place for enabling the substituted State to resist the plaintiff's claim. **ILR (1961) Bom 101: 62 Bom LR 735: AIR 1961 Bom 11 (19) (Pt E) (Pr 15) (DB).**

——**Art. 300** — Agreement before partition on behalf of Governor-General in Council. See Ibid, Art. 294 (b). **AIR 1955 NUC (Cal) 2912 (DB).**

——**Art. 300** — Suit against East Indian Railway in the name of Dominion of India —In appeal arising out of suit name of Union of India substituted due to constitutional changes — Special power of attorney executed in favour of B by General Manager, East Indian Railway — In view of specific provision in Arts. 294 and 300 of the Constitution, continuity of proceedings is not in any way affected, in spite of the transfer of power from the Dominion of India to the Union of India. See Ibid, Art. 294. **AIR 1956 Pat 511 (DB).**

10. States.

——**Arts. 300 and 295 (1) (b) and 294 (b)** — Loss of goods by Nizam State Railway —Suit for damages against then Hyderabad Government — Maintainability of suit — Union Government— Its liability as successor Government. **ILR (1957) Andh Pra 320: AIR 1958 Andh Pra 394 (395, 396) (Prs 5, 6).**

——**Art. 300**—(Hyderabad) Suits Against Government Act (V of 1320 F), S. 3 — Validity. See (Hyderabad) Suits Against Government Act (V of 1320 F), S. 3. **AIR 1958 Andh Pra 315 (DB).**

——**Art. 300** — Companies Act, 1956, S. 433 (e) — Application for winding up Tripura State Bank — Merger of State — Formation of State into Union Territory — Application for winding up filed by Tripura Administration — Competency. See Companies Act (1956), S. 433 (e). **AIR 1959 Tri 41.**

11. Personal exemption of President or Governor.

——**Art. 300** — Arbitration Act (1940), S. 15 — Contract between contractor and Union of India but entered into in name of President of India — Arbitrator by mistake passing award against President — Mistake held could be corrected by Court under S. 15. See Arbitration Act (1940), S. 15. **AIR 1964 Cal 91.**

12. State as juristic person.

●——**Art. 300 — Union and the States — Whether constitutional or juristic entities.**

Under Article 300 of the Constitution, the Government of the Union and the Government of a State are enabled to sue and be sued in the name of Union of India and of the Government of the State, as the case may be. It would not, therefore, be improper to speak of the Union and the State as constitutional entities which have attributes defined by the Constitution. State of Punjab v. Okara Grain Buyers Syndicate, Ltd., Okara. **(1964) 5 SCR 307 : (1964) 2 SCA 451 AIR 1964 SC 669 (679) (Pt B) (Pr 20).**

——**Art. 300** — Person — Includes Officer representing Food Department of W. B. State. See Municipalities — Calcutta Municipal Act (III of 1923), S. 386 (1) (a). **1955 Cri LJ 792 : AIR 1955 Cal 282 (DB).**

[**Reversed** on another point in AIR 1960 SC 1355.]

——**Art. 300** — "Person" — Meaning — Includes Government. See Public Safety — Rajasthan Public Safety Ordinance (9 of 1948), S. 44. **AIR 1961 Raj 64 (DB).**

——**Arts. 300, 1, 239, 298** — State of Vindhya Pradesh is a legal entity capable of suing and being sued. See Ibid, Art. 1. **AIR 1956 V. P. 1.**

13. Crown, when bound by Statute.

●——**Art. 300** — State — Whether bound by statute — English common law rule that Crown is not bound by any statute — Whether applies to India after the Constitution — Calcutta Municipal Act (3 of 1923), Ss. 386 (1) (a), 488 — Whether applies to Government — AIR 1955 Cal 282, **Reversed;** ILR 25 Mad 457, **Overruled.** Director of Rationing and Distribution v. Corporation of Calcutta. **(1961) 1 SCR 158 : 1960 Cri LJ 1684 : 1960 Mad WN 797 : (1960) 2 Ker LR 656 : (1961) 1 SCJ 406 : (1961) 1 Andh WR (SC) 88 : (1961) 1 MLJ (SC) 88 : 1961 Mad LJ (Cri) 225 : (1961) 1 SCA 507 : AIR 1960 SC 1355.**

●——**Art. 300** — Crown prerogative — Priority of Crown debts — Common Law doctrine — Doctrine is not displaced by S. 46 (2), Income-tax Act (1922) or R. 22, Sch. II of Bengal Public Demands Recovery Act. See Income-tax Act (1922), S. 46. **AIR 1965 SC 1061.**

——**Art. 300 — Crown how far bound by Statute —Legal proceedings against.**

The Crown is not bound by a statute unless expressly named or bound by necessary implication. It is also a part of the common law that no proceeding, civil or criminal, is maintainable against the Crown in the ordinary Courts of law. **1951 MWN 391 : (1951) 1 Mad LJ 709 : AIR 1951 Mad 880 (881) (Pt B) (Pr 3) (DB).**

——**Art. 300** — S. 31 of Bih. Act 21 of 1949 — Person exercising rights under Statute is not liable unless it is proved that he acted unreasonably or negligently. See Bihar State Management of Estates and Tenures Act (21 of 1949), Section 31. **AIR 1964 Pat 13.**

14. Duty of the executive to obey the law.

——**Art. 300** — Punjab Public Premises and Land (Eviction and Rent Recovery) Act (XXXI of 1959), Ss. 2 (3) and 4 — Government transferring premises to purchaser — Latter to hold them as absolute owner — Premises can not be said to be public premises — Government cannot resume premises by reference to S. 4 — Purchaser cannot be evicted in exercise of executive power — Constitution of India, Arts. 162, 299 and 300. AIR 1955 SC 549, Disting. See Houses and Rents — Punjab Public Premises and Land (Eviction and Rent Recovery) Act (XXXI of 1959), S. 2 (3). **ILR (1965) 1 Punj 215.**

15. Suit against the railway.

——**Art. 300** — Wrongful detention of goods by railway owned by Government — Liability of Government to return goods. See Torts —Wrongful detention. **AIR 1958 Cal 183.**

——**Art. 300** — Amendment of cause title or addition of party — Plaintiff describing defendant as Dominion of India through Governor-General of India —Notices under S. 77, Railways Act and S. 80, Civil P. C. served on G. I. P. and B. N. Railway Managers — Effect. See Civil P. C. (1908), S. 79. **1951 Nag LJ (Notes) 96.**

——**Art. 300** — Suit against Railway administered by Government — Summons or notice of suit on whom to be served — East Indian Railway — Notice to be served on General Manager. See C. P. Code (1908), S. 79. **AIR 1956 Pat 511 (DB).**

16. Local jurisdiction.

●——**Art. 300** — Civil P. C. (1908), S. 20 (a) — Carries on business — Application to Government — Running of railways — Is a business even in hands of Government — Profit motive not necessary —Principal place of railway administration is place of business for S. 20. See Civil P. C. (1908), S. 20 (a). **(1963) SCD 887 : AIR 1963 SC 1681.**

——**Art. 300** — Territorial jurisdiction of High Courts —High Court cannot issue a writ against Union of India. See Ibid, Art. 226. **AIR 1955 All 468 (DB).**

——**Art. 300** —Suit against Government — Local jurisdiction of Courts. See Letters Patent (Cal) Cl. (12). **AIR 1960 Cal 430 (DB).**

——**Art. 300** — Suit for damages for loss of goods by railway — Allegation that Union of India carried on business in the name of East India Railway at Calcutta —Suit instituted without obtaining leave under Cl. 12 — Maintainability. See Letters Patent (Calcutta), Cl. 12. **(1958) 1 Cal LJ 67.**

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A. I. R. Commentaries Judicially Appreciated

A.I.R. 1948 Patna 460 (462) (Pr. 9) [V 35 C 161] (D. B.)—Per *Meredith J.*—"I will make two quotations from Chitaley and Annaji Rao's annotated edition of the Civil Procedure Code, 4th Edn. Vol. III, because those learned commentators have, in my opinion, correctly summed up the position in language which cannot be bettered.

CONSTITUTION OF INDIA.

1961 Manipur 1 (4) (Pr. 11) [A.I.R. V 48 C 1]—*Tirumalpad J. C.*—"What is prohibited (in Art. 28 (1)) is begar and other similar forms of forced labour. The A. I. R. Commentaries on the Constitution of India at page 685 define 'begar' as a system under which persons are pressed to carry burdens for individuals or public or to perform other forms of menial service under compulsion".

1961 M. P. 216 (219) (Pr. 11) [A.I.R. V 48 C 70]—*Shrivastava J.*—"In this connection, we may refer to the following passage from the Constitution of India by Chitaley (Vol. 3), Art. 254, Note 17 (d) Pt. 5 : . . . . . ."

1956 All. 341 (345) (Pr. 33) [(S) A.I.R. V 43 C 126] (DB).—*Desai J.*—"Shri Jagdish Sahai could not cite any authority in support of his contention that the right given to the Court to draw an adverse inference is equal to compelling the accused to be a witness against himself. We notice that Chitaley in his Commentary on Constitution, Vol. I, pp. 497-498, does not see any conflict between the provisions of Art. 20 (3) and those of S. 342, Cr. P. C."

1956 J. & K. 1 (10) (Pr. 34) [(S) A.I.R. V 43 C 1] (F.B.)—*Kilam J.*—"The learned author Chitaley in his luminous commentary on the Constitution has, after discussing almost the whole case law on the subject, enunciated some principles which I might give more or less in his own language. According to the learned author . . . ." (Points from Note 8 (g) to Art. 21, p. 533 quoted.)

CIVIL PROCEDURE CODE, 1908.

1953 S. C. 23 (27) [A.I.R. V 40 C 7] —[Touching the revisional jurisdiction of the High Court set out in S. 115, Civil P. C.] "A large number of cases have been collected in Edn. 4 of Chitaley & Rao's Code of Civil Procedure (Vol. I) which only serve to show that the High Courts have not always appreciated the limits of the jurisdiction conferred by this section."

P. L. D. 1965 (W. P.) Lahore 590 (594, 595) (DB).—*Sajjad Ahmad J.*—"There has been a conflict of judicial opinion on the question of the applicability of this section to decrees in appeals under the Letters Patent. The High Courts of Bombay, Punjab, Madhya Pradesh and Madras have held that the section applies. The High Court of Patna took a contrary view (*See* Chitaley's Commentary on S. 114 of the Civil P. C.—headnote 1, at page 1507, Vol. II, 1963, Edition.) In a recent Full Bench decision reported in *Jwala Prasad* v. *Jwala Bank Ltd.*, A. I. R. 1961 All. 381, the Allahabad High Court has held that . . . and has overruled an earlier decision to the contrary given by another Full Bench of the same Court reported in *Mst. Abhilakhi* v. *Sada Nand*, A. I. R. 1931 All. 244."

1965 All. 527 (531) (Pr. 28) [A. I. R. V 52 C 148] — *Oak J.* — "Mr. Brij Lal Gupta pointed out that the Court dealing with the matter in April 1947 was a Munsif. The present suit was tried by a Civil Judge. The valuation of the suit was Rs. 35,000. The Munsif had no jurisdiction to try the present suit. Under S. 11, C. P. C., the Court trying the former suit should have been competent to try the subsequent suit itself. (See Chitaley's Commentary on the Code of Civil Procedure Volume I, Page 415). (Now see 1963 (7th Edn.) pp. 379, 380)."

1955 Punj. 494 (496) [A.I.R. C 157 Pr 7]—*Shamsher Bahadur J.*—"The words 'for any other substantial cause' (in O. 41, R. 27 (b)) must be read with the word 'requires' in the beginning of the sentence and need not be construed in the narrow sense suggested by the doctrine of ejusdem generis . . . . . Reference may be made to Chitaley's Commentary on the Code of Civil Procedure, Vol. IV, at page 4819".

1965 Punj. 166 (168) (Pr. 7) [A. I. R. V 52 C 55]—*Shamsher Bahadur J.*—"Mr. S. L. Puri has further contended that O. 21, R. 15 is not concerned with disputes inter se the decree-holders and has relied on a passage in Chitaley's Code of Civil Procedure Vol. III, 7th edition, at page 2820. It is thus stated that . . . . . ." (Contention accepted.)

1965 Kerala 104 (105) (Pr. 3) — *S. Velu Pillai J.* — "The rights inter se of rival purchasers in sales in execution of decrees on mortgages, have been the subject of consideration in several decided cases. The result of these has been summarised as follows in A. I. R. Commentaries on Civil Procedure Code, Vol. 3, 1957 (6th) Edn. pp. 3791 and 3792. (Now see 1963 (7th Edn.), pp. 3807, 3808, O. 34, R. 1, N. 39, Pts. 26 to 34) . . . . . ."

('64) I. L. R. (1964) 1 Ker. 320 (322)—*Madhavan Nair J.* — "The A. I. R. Commentaries on the Code of Civil Procedure in Note No. 4 to O. 84, R. 7 put the position succinctly thus . . . . . ."

1963 Rajasthan 4 (5) (Pr. 3) [A.I.R. V 50 C 3]—*Jagat Narayan J.*—"There is conflict of opinion on the question whether an appeal lies against an order staying or refusing to stay an execution proceeding. The different views have been classified as follows by Chitaley in Note 44 to S. 47, Code of Civil Procedure: ".

COURT-FEES ACT, 1870 & SUITS VALUATION ACT, 1887.

1965 Punj. 1 (11) (Pr. 25) [A. I. R. V 52 C 1] (FB) — *P. C. Pandit J.* — "With regard to this definition (of 'consequential relief'), Chitaley in his Commentaries on the 'Court-fees Act and the Suits Valuation Act (Second Edition)', on page 185 has observed thus—".

1956 Madras 593 (595) (Pr. 8) [A. I. R. V 43 C 187]—*Ramaswami J.*—"The permutations and combinations which arise in regard to the procedure to be followed has been comprehensively and accurately summarised in the well-known A. I. R. Commentaries on the Court-fees Act and Suits Valuation Act (2nd Edn.) at page 871 as follows :—" [Quoted and relied upon]

CRIMINAL PROCEDURE CODE, 1898.

('62) 1962 (1) Cr. L. J. 96 (98) (Pr. 13)—*T. N. R. Tirumalpad J. C.*—"This is the view which I find has been accepted as correct in the A. I. R. Commentaries to the Code of Criminal Procedure at Pages 880 and 881. It is seen from the said Commentaries that there is a conflict of decisions on the question . . . . . The Commentators are of the opinion that the view expressed in the Calcutta case is not the correct view. I certainly agree with the A. I. R. Commentaries on this point."

1958 All. 439 (442) (Pr. 14) [A.I.R. V 45 C 109] (DB)—*James J.*—"I would also refer to the opinion of the learned authors of the A.I.R. Commentary on the Code of Criminal Procedure, Vol. IV, 5th Edn., appended under S. 540 : . . . ."

LIMITATION ACT, 1908.

1963 Punj. 457 (459) (Pr. 7) [A. I. R. V 50 C 127]—*Grover J.*—"As stated in Chitaley's Limitation Act, (3rd Edition), Volume 1 Page 524, the words 'Stayed by an injunction or order' have reference to an order of a court and not to a disability to sue or to apply arising from other causes."

1961 Pat. 134 (137) (Pr. 18) [A.I.R. V 48 C 36]—*Raj Kishore Prasad J.* — "The question under consideration has been thoroughly and clearly dealt with in A.I.R. Commentaries on the Indian Limitation Act, 3rd Edition, Vol. I, Note 11, page 595, Note 18, pages 601-604 and Note 32 page 638."

1960 Kerala 306 (308) (Pr. 17) [A.I.R. V 47 C 144]—*M. S. Menon and T. K. Joseph JJ.* — "As pointed out by Chitaley : 'Where no time is fixed for delivery, if the correspondence between the parties shows that the matter was being enquired into and that there was no refusal to deliver up to well within a year of the suit, this article (Art. 31) cannot be pleaded as a bar . . . . . ' (Limitation Act, Vol. 2, Page 1187)".

1959 Mad. 26 (27, 28) (Pr. 10) [A.I.R. V 46 C 6]—*Ramaswami J.*—"This conflict of opinion has been settled by a Bench decision of this Court in *Kamppanna Gounder* v. *Ponnuthayee*, 1955-2 Mad. L J. (N. R. C.) 62=(A. I. R. 1956 Mad. 198). . . . . In this connection it is interesting to note that in the A. I. R. Commentaries on the Limitation Act, the view expressed in this Bench decision is submitted to be the correct view (Vol. I page 568)."

REGISTRATION ACT, 1908.

1960 Madh. Pra. 3 (Pr. 8) [A.I.R. V 47 C 2] — *Dixit J.*—"The prinolple laid down in I. L. R. 4 Bom. 126 has been followed in many cases which have been noted in Chitaley's Registration Act (Second Edition) at page 367. . . . . ."

1960 Mad. 244 (Pr. 9) [A.I.R. V 47 C 77] — *Ramaswami J.*—"It is interesting in this connection to note that the A. I. R. Commentaries on the Registration Act (Second Edition) at pages 526 to 530, after an elaborate discussion of the entire case-law and the principles of S. 77 of the Registration Act, mention at p. 530 that the view expressed by Abdur Rahman J. is correct."

STAMP ACT, 1899.

1967 Him. Pra. 29 (31) (Pr. 11) [A. I. R. V 54 C 9)—*Om Prakash J. C.*—"From the language, used in the document, it is capable of falling within the definition of a bond, as defined in sub-s. (5) (b) of S. 2, Stamp Act, and also within the definition of a promissory note, under sub-s. (22) of that section. The maxim being, specialia generalibus derogant, an instrument which satisfies the definition under sub-s. (5) (b) must be held to be taken out of the more general definition in sub-s. (22), vide A. I. R. Commentaries on the Stamp Act, p. 70."

TRANSFER OF PROPERTY ACT, 1882.

1964 Punj. 210 (211) (Pr. 4) [A.I.R. V 51 C 52] — *S. S. Dulat Actg. C. J. and D. K. Mahajan J.* — "It is significant that the provisions of this section (S. 111, T. P. Act) have never been applied as a rule of equity, justice or good conscience by any of the High Courts in the territories to which this provision is not made applicable under S. 1 of the T. P. Act, whereas a number of cases will be found at page 173, Note 4, of Chitaley's Transfer of Property Act, Vol. I, where principles underlying the provisions of the Transfer of Property Act have been so applied . . . . . ."

1961 Mad. 28 (30) (Pr. 7) [A. I. R. V 48 C 7] — *Ramaswami J.* — "In this connection the learned District Munsiff has pertinently pointed out the implications of the decision in *Gopal Chandra Das* v. *Harendra Nath Datta*, 68 Ind. Cas. 483 (Cal.) . . . . This decision has been cited with approval in the well-known commentaries on the Transfer of Property Act by Chitaley and Annaji Rao, Third Edition (1950), page 1861".

1957 Jammu and Kashmir 16 (Pr. 2) [A.I.R. V 44 C 13] — *Shahmiri J.*—"In this connection reference may also be invited to Note 9 under S. 114 of Chitaley's Transfer of Property Act, 3rd Edition at page 1898 which reads as follows :—. . . . ."

A. I. R. MANUAL (2ND EDN.) JUDICIALLY APPRECIATED

P. N. RAMASWAMI J. : — "A person who is in occupation of grazing land is its occupier within the meaning of this section, (S. 10 of the Cattle Trespass Act, 1871) and he is entitled to seize cattle within the meaning of this section, and he is entitled to seize cattle trespassing on such land and doing damage thereon. (For an exhaustive citation of the relevant cases see the most welcome 2nd (1960) Edn. of the A. I. R. Manual Vol. I referring to A. I. R. 1947 Pat. 172=47 Cri. L. J. 986 ; A. I. R. 1943 Sind 152=44 Cri. L. J. 761 ; A. I. R. 1916 Lah. 281=17 Cri. L. J. 63 ; A. I. R. 1919 Cal. 93=20 Cri. L. J. 398." — *A. I. R. 1960 Mad. 331 (332)=1960 Cri. L. J. 932 (933)*

—*See also A. I. R. 1960 Mad. 443 (446) = 1960 Cri. L. J. 1340 (1344)* *(Vol. 4 of the A. I. R. Manual (2nd Edn.) referred to.)*